

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.376 of 2022

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Krishna Mohan Prasad Vaidya, son of Mahendra Prasad Vaidya, resident of Chakkadih, Police Station- Banka, District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Department, Bishweshraiya Bhawan, Bailey Road, Patna.
2. The Engineer in Chief, Building Construction Department, Bihar, Patna.
3. The Chief Engineer, Building Construction Department, Nirman Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, Building Construction Circle, Bhagalpur.
5. The District Magistrate, Banka.
6. The Executive Engineer, Building Construction Division, Banka.
7. The Assistant Engineer, Building Construction Division, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajib Ranjan Jha, Advocate
For the Respondent/s : Mr. Syed Iqbal Ahmad, SC-20

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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Date : 18-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-



“For issuance of appropriate writ or writs, direction or directions commanding the respondent to pay the remaining dues of Rs.6,34,000/- for the work done by the petitioner in pursuance of an agreement vide No. 4F2 2018-19 on 23.06.2018 with the respondent No.6 for renovation work in the campus Development Footpath main Gate and other works in the campus of Krishi Udyog Pradarshani Kendra situated at Bounsi Mela in Bounsi Block under the Banka District for which sanction letter for Rs.1,06,43,163/- including the claim of the petitioner has already been issued and or issuance of any other consequential writ or writs to pay the statutory as well as Penal interest thereon.”

The present petition stands filed for a direction to the respondents to pay the dues alleged to be admitted.

We find that scores of petitions are filed before this Court, of similar nature, whereby a vested right is alleged to have been accrued in favour of the petitioners for payment of dues allegedly admitted by the respondents.

The present petition, in our considered view is totally misconceived, both on facts and law. What are admitted dues? what is an admission? and what are the circumstances under which a Court can issue a writ of mandamus directing the State to release the amount as payment due and admissible, which is undisputed, in fact admitted for carrying out works of civil nature, is now well settled.



The Executive Engineer is not the competent authority under the agreement to make the admissions. He has only recommended the bills of the petitioner to the superior authority or the authority under the contract to take a decision for clearing the bills and release the payment.

There is no unequivocal admission on the part of the State admitting the work executed by the petitioner or the amount payable to him.

Petitioner can take recourse to the remedies, equally efficacious, stipulated under the agreement and the relevant applicable statutes.

The recent decision of the Hon'ble Apex Court in **Phoenix ARC Private Limited versus Vishwa Bharati Vidya Mandir & Ors. (Civil Appeal Nos.257-259 of 2022)** decided on January 12, 2022 is evidently clear, more so, para 7 in toto that in the existence of equally alternative remedy, Court would be loath in entertaining the writ petition filed under Article 226 of the Constitution of India.

Similar view was taken by Hon'ble the Apex Court in **M/s. Madhusudan Gordhandas & Co. versus Madhu Woolen Industries Pvt. Ltd., (1971) 3 SCC 632**, in relation to proceedings of amount due under the provisions of the



Companies Act, 1956 wherein the Court observed as under:

“21. Where the debt is undisputed the court will not act upon a defence that the company has the ability to pay the debt but the company chooses not to pay that particular debt, see *Re. A Company*. [94 SJ 369] Where however there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely See *Re Tweeds Garages Ltd.* [1962 Ch 406] The principles on which the court acts are first that the defence of the company is in good faith and one of substance, secondly, the defence is likely to succeed in point of law and thirdly the company adduces prima facie proof of the facts on which the defence depends.”

There is yet another decision of the Hon’ble Apex Court in **Kalpraj Dharamshi and another versus Kotak Investment Advisors Limited and another (2021) 10 SCC 401**, wherein the Court has reiterated the principles as under:-

73. By now, it is a settled principle of law, that non-exercise of jurisdiction by the High Court under Article 226 of the Constitution is not a hard-and-fast rule, but a rule of self-restraint. As early as in 1969, in *Baburam Prakash Chandra Maheshwari* [*Baburam Prakash Chandra Maheshwari v. Zila Parishad*, (1969) 1 SCR 518 : AIR 1969 SC 556], this Court observed thus : (AIR p. 558, para 3)

“3. It is a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by this Court in *Rashid Ahmed v. Municipal Board, Kairana* [*Rashid Ahmed v. Municipal Board, Kairana*, 1950 SCC 221 : 1950



SCR 566] , ‘the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs’ and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefore. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self-imposed limitation, a rule of policy, and discretion rather than a rule of law and the court may therefore in exceptional cases issue a writ such as a writ of certiorari notwithstanding the fact that the statutory remedies have not been exhausted.”

74. This Court further laid down two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies, which reads thus : (*Baburam Prakash Chandra Maheshwari case* [*Baburam Prakash Chandra Maheshwari v. Zila Parishad*, (1969) 1 SCR 518 : AIR 1969 SC 556] , AIR p. 559, para 3)

“3. ... There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course.—(See the decisions of this Court in *Carl Still GmbH v. State of Bihar* [*Carl Still GmbH v. State of Bihar*, AIR 1961 SC 1615] and *Bengal Immunity Co. Ltd. v. State of Bihar* [*Bengal Immunity Co. Ltd. v. State of Bihar*, (1955) 2 SCR 603 : AIR 1955 SC 661] .) In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice. (See *State of U.P. v. Mohd. Nooh* [*State of U.P. v. Mohd. Nooh*, 1958 SCR 595 : AIR 1958 SC 86] .)”

75. It has been clearly held, that when the proceedings invoked before a statutory authority are dehors the jurisdiction or when they are in breach of principles of natural justice, the party would be entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

76. Referring to earlier judgments, this Court in *Whirlpool Corpn.* [*Whirlpool Corpn. v. Registrar of Trade Marks*, (1998) 8 SCC 1] observed thus : (SCC pp. 9-10, para 15)

“15. Under Article 226 of the Constitution, the High



Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

77. A similar view has been reiterated in the judgment of this Court in *Nivedita Sharma v. COAI* [*Nivedita Sharma v. COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] .

Hence, having given thoughtful consideration, we refrain from entertaining the present petition leaving it open to the petitioner to take recourse to such remedies as are otherwise available in accordance with law.

Needless to add, the period for which the present petition was preferred and pursued before this Court, shall be excluded for the purposes of determining the issue of limitation, for as we notice the agreement was executed on 23rd June, 2018 and the petition filed on 21st December, 2021 was registered on 07.01.2022.

Hence, for all the aforesaid reasons, the writ petition



stands disposed off with the aforesaid observation/direction.

Interlocutory Application, if any, shall stand disposed
of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	20.06.2022
Transmission Date	

