

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.25102 of 2022

**ILEAD Foundation and another
Vs.
State of West Bengal and another**

For the petitioners	:	Mr. Chayan Gupta, Mr. Rittick Chowdhury, Mr. Dwip Raj Basu
For the State	:	Mr. Sk. Md. Galib, Mr. K.M. Hossain
Hearing concluded on	:	10.10.2023
Judgment on	:	17.11.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is an institute of technology which approached the respondent no.2 for execution of a project floated by the Ministry of Rural Development, Government of India by way of a Scheme named “Din Dayal Upadhyaya Grameen Kaushaliya Yojana” (for short, “the Scheme”). Under the Scheme, the subsidy was to be given in tranches at different stages, upon completion of specific percentages of the project. The petitioner no.1 was appointed as a Project Implementing Agency (PIA). The proposal of the petitioner no.1 on such count was accepted by the respondent no.2 by a sanction order dated August 30, 2017, stipulating that a total number of 880 residential candidates were to be trained under the project and the total project cost would

be Rs.4,79,67,440/-. A Memorandum of Understanding (MOU) for implementation of the project as per the Standard Operating Procedure (SOP) and Guidelines were also executed on the same date. The petitioner no.1 started its work accordingly. Although the first instalment was paid to the petitioners, the second instalment was withheld by the respondent no.2 on certain allegations, which has prompted the petitioners to move this court in the writ jurisdiction.

2. Learned counsel for the petitioners relies on Clause 4.1.2 of the MOU which ensures timely release of financial grants to the PIA. Clause 5 speaks about sanction for skill development training of 880 students in the District of North 24 Parganas, Kolkata. It is submitted that the petitioner no.1 was disbursed 25 per cent of the project cost as per the conditions. Despite the petitioners having achieved the milestones required for the release of the second instalment of 25 per cent of the project cost and having submitted all requisite documents, it is argued that the respondent have withheld the second instalment of Rs.1,19,91,860/-.
3. Addressing the question of maintainability raised by the respondents, it is argued that arbitration would not be an equally efficacious alternative remedy since due to non-disbursal of the second instalment, the entire training programme is being stalled and the future of 880 enrolled students is at stake. By citing *Union of India v. Tania Construction (P) Ltd.*, reported at (2011) 5 SCC 697, it is argued that existence of arbitration clause is not an absolute bar to a writ petition. The judgments cited by the respondent on such count have

been substantially watered down, since existence of an arbitration clause is not an absolute bar to a writ petition, as there are no disputed questions of fact requiring adjudication as per the petitioners.

4. The quantum claimed by the writ petitioners is ascertained and there are no disputed questions of fact. It is argued that the respondents have sought to raise bogies of disputes in their opposition, which never existed between the parties.
5. Learned counsel places reliance on the affidavit-in-reply of the petitioners in their affidavit-in-reply to submit that the petitioners have successfully answer all the queries raised by the respondents.
6. Learned counsel for the petitioners cites *Khaitan Winding Wire Private Limited and another Vs. Steel Authority of India Limited*, in WP 8692 (W) of 2019 for the proposition that even if there is admitted monetary claim, a writ petition lies for recovery of the same.
7. Learned counsel also relies on *M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd. and others*, reported at (2023) 2 SCC 703, for the proposition that a writ petition is maintainable even in contractual disputes.
8. Learned counsel for the respondent nos.1 and 2 argues that the writ petition is not maintainable as the *lis* involves liabilities arising out of contractual relations between the parties and the contract between the parties has an arbitration clause. The contract is non-statutory, for which the writ petition is not maintainable, particularly since it

involves complex questions of fact and law requiring elucidation by leading evidence.

- 9.** In support of the objection as to maintainability, learned counsel cites the following judgments:

- I) 2022 SCC OnLine SC 1591 [*M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd. and ors.*];
- II) (1996) 6 SCC 22 [*State of U.P. and ors. v. Bridge & Roof Co. (India) Ltd.*];
- III) (2004) 3 SCC 553 [*ABL International Ltd. and Anr. v. Export Credit Guarantee Corpn. of India Ltd. and ors.*];
- IV) (1975) 2 SCC 436 [*Titagarh Paper Mills Ltd. v. Orissa State Electricity Board and Anr.*];
- V) (2004) 9 SCC 786 [*National Textile Corpn. Ltd. and ors. v. Haribox Swalram and ors.*];
- VI) (1974) 2 SCC 706 [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and ors.*];
- VII) (2000) 3 SCC 379 [*India Thermal Power Ltd. v. State of M.P. and ors.*];
- VIII) 2023 SCC OnLine SC 1223 [*BTL EPC Ltd. v. Macawber Beekay (P) Ltd. and ors.*].

- 10.** On merits, it is argued by the respondents that the petitioners failed to comply with the necessary pre-conditions for release of the second instalment of the funds as provided in the Notification dated October 21, 2019 annexed at page 25 of the affidavit-in-opposition filed by the respondents.

11. Several inspections were held by the respondents, upon which various irregularities were found. Many of the candidates enrolled by the petitioners are not rural youth for whom the project is specifically designated. That apart, there have been diversions of funds and investment on unaccounted-for assets by the petitioners.
12. Upon due inspection being held and hearing being given to the petitioners on December 22, 2021 by the Chairman of the hearing committee and project director, a chance was given to the petitioners to make good, within 30 days, all the irregularities regarding training, placement of candidates and financial aspects. Instead of complying, the petitioners issued a reminder on March 14, 2022 for disbursement of the second instalment without bothering to rectify their deviations and faults in terms of the directions as recorded in the minutes of hearing dated December 22, 2021.
13. The Guidelines and SOP which are binding on both the parties were contravened by the petitioners, it is alleged, leading to the withholding of the amount-in-question by the respondents.
14. Upon hearing learned counsel for the parties, the issue of maintainability acquires prime importance in the present case. Before entering into the merits as such, the said issue is taken up for adjudication.
15. The respondent nos. 1 and 2 have referred to several judgments. In *Titagarh Paper Mills (supra)*, interference by the High Court under Article 226 to determine questions which formed the subject-matter of arbitration was deprecated.

16. In *National Textile Corpn. Ltd(supra)* interference by the writ court in simple business contracts has been discouraged.
17. In *State of U.P. and ors. v. Bridge & Roof Co. (India) Ltd.(supra)*, exhaustion of alternative remedy has been encouraged by the Supreme Court before interference under Article 226 of the Constitution.
18. In *ABL International (supra)*, the Supreme Court observed that the writ court can interfere in appropriate cases involving disputed questions of fact and that there is no absolute bar in interference. It has also been observed that in some cases, oral evidence can be taken. Naturally, the respondents have placed strong reliance on the said judgment.
19. The said judgment laid down the proposition that even in contractual matters, the remedy of Article 226 lies in certain cases and is not absolutely barred. The stress in the said judgment was on the proposition that merely because disputed questions of fact are involved, the writ court may not shy away in all cases.
20. However, it is evident from the judgments cited by the parties, the writ jurisdiction has evolved considerably since, thereby diluting the bar of alternative remedy. However, the said bar does not altogether negate the self-imposed restriction of Constitutional courts in case of availability of alternative remedy. The jurisprudence which has evolved in the field, as evident from the judgments relied on by both sides, is clearly that interference under Article 226 by the High Court is circumscribed by certain tests. If there is gross arbitrariness,

palpable illegality, violation of the *Wednesbury principle*, perversity, *mala fides*, unreasonableness or violation of any fundamental right, the writ court can interfere.

- 21.** However, the Supreme Court has never laid down that in any and every case where there is an existence of an alternative remedy, the writ jurisdiction can be invoked despite such remedy as a matter of rule, which would tantamount to erasing such alternative remedy from the statute books.
- 22.** One such important bar to the interference of the writ court is where disputed questions of fact arise between the parties.
- 23.** Even in the judgments cited by the petitioners, it is found that a writ court may interfere in money claims or contractual cases or otherwise, although the contract is not statutory, subject to the satisfaction of the above window of interference. In the present case, there is nothing palpable on the face of the materials to indicate that there was any patent arbitrariness, unreasonableness or *mala fides* or existence of such like ground calling for such interference by this Court.
- 24.** It is found from the annexures to the affidavit in opposition that hearing was given to the petitioners. Moreover, there were several reports and an elaborate prior exercise by the respondent-authorities before refusing to disburse the second instalment of funds to the petitioners under the concerned project. In the very provisions of the Scheme, the training contemplated was to be imparted to rural candidates. Admittedly, at least in certain cases, the said rule was

deviated from. That apart, there were specific delineated peripheries of utilisation of the investments, which have arguably not been adhered to by the petitioners.

- 25.** The respondent nos. 1 and 2, in their opposition, have annexed several inspection reports which are detailed and comprehensive in nature and point out numerous major deficiencies and irregularities on the part of the petitioners.
- 26.** Although the petitioners have disputed those, the very nature of the allegations are such that they strike at the root of the execution of the project within the contemplation of the SOP and the MOU between the parties.
- 27.** The quality of training, the persons to whom it is imparted and the subsequent placement, which are essential components of the project, affected by the irregularities as per the allegations of the respondents.
- 28.** Clause 5.3 of the MOU between the parties clearly stipulates that all payments to the PIA may be suspended if the PIA fails to perform any of its obligations under the MOU and the respondent-authorities shall take the action after giving due notice to the PIA which has apparently been given in the present case, granting the petitioners/PIA ample opportunity to take remedial measures as specified in the Notice.
- 29.** The right to get the subsequent instalment of disbursements are not unfettered. Clause 4.1.2 of the MOU, strongly relied on by the writ petitioners, itself provides that timely release of financial grants are to be as per the prescribed service standards and operational norms which are provided in the MOU as well as the SOP. In view of the

serious allegations of contravention of the said provisions by the petitioners, it would not be prudent for the writ court, by the stroke of a pen, to issue a Rule of Mandamus, which is a prerogative writ against the respondents, without entering into the factual disputes involved.

- 30.** By their very nature, the allegations, defences and counter-allegations by the parties call for a detailed adjudication upon an elaborate factual assessment of materials and evidences, which is entirely beyond the domain of the writ court.
- 31.** In such view of the matter, since disputed questions of fact calling for detailed assessment of evidence is required, this Court is not inclined to interfere under the writ jurisdiction.
- 32.** Thus, WPA No.25102 of 2022 is dismissed as not maintainable on the grounds as indicated above.
- 33.** Nothing in this order, however, shall preclude the parties from approaching the appropriate Arbitral Tribunal and/or other forum, if they are so entitled in law, for adjudication of the disputes raised between the parties in the present writ petition.
- 34.** For the sake of clarity, this Court has not entered into the merits of the respective contentions of the parties and it will be open to any forum having jurisdiction, as and when approached, to decide independently all issues of law and fact involved between the parties without being prejudiced in any manner by any of the observations made herein.
- 35.** There will be no order as to costs.

- 36.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)