



2025:CGHC:27959-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 3218 of 2025**

M/s. Rsa Infra Project Pvt. Ltd, A Private Limited Company Registered Under The Companies Act, 1956 Having Its Registered Office At Shri Shyam Tower, Kavita Nagar, Avanti Vihar, Raipur, District- Raipur (C.G.), Through Its Director Namely Mr. Radheshyam Agrawal, Aged About 59 Years, R/o. Sewa Kunj Road, Raigarh, District- Raigarh (C.G.)

... Petitioner(s)**versus**

1 - South East Central Railway Bilaspur, Through Its Chief Engineer (Road Safety Works), Bilaspur, District- Bilaspur (C.G.)

2 - National Projects Construction Corporation Limited (A Government Of India Enterprise) Through Its Zonal Manger, National Projects Construction Corporation Limited, Chhattisgarh Zonal Office, P-4a/704, Sector 27, Atal Nagar, Nawa Raipur, District- Raipur (C.G.)

3 - The Head Of Department National Projects Construction Corporation Limited, Corporate Office Gurugram, Haryana

4 - Punjab National Bank Through Its Branch Manger, Branch Katora Talab, Raipur, District- Raipur (C.G.)

... Respondent(s)

For Petitioner(s) : Mr. Manoj Paranjpe, Advocate

For Respondent(s) : Mr. Ramakant Mishra, Deputy Solicitor

General for respondent No.1, Mr. Amrito Das,
Adv. for respondent No.3 and Mr. Sharad
Mishra, Adv. for respondent No.4

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

26.06.2025

1. Heard Mr. Manoj Paranjpe, learned counsel for the petitioner. Also heard Mr. Ramakant Mishra, learned Deputy Solicitor General for respondent No.1, Mr. Amrito Das, learned counsel for respondent No.3 and Mr. Sharad Mishra, learned counsel for respondent No.4
2. By this petition, the petitioner has prayed for the following relief(s):

"1] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions quashing the impugned order dated 20.06.2025 (Annex.P/1) and the authorities may kindly be directed to revive the contract and they may further be directed to hand over the site free from all hindrances so that the work could be executed in accordance with the term of the LOI.

2] That, this Hon'ble Court may kindly be pleased to writ/writs, issue a order/orders, direction/directions and the action on the part of the respondents with regard to encashment of the performance security guarantee to the tune of Rs. 1,84,12,354/- may kindly be declare as unreasonable, arbitrary and the authorities may further be directed not to encased the performance security guarantee.

3] That, this Hon'ble Court may kindly be pleased to issue a writ/writs, order/orders, direction/directions and the respondent authorities may kindly be directed to reconsider the case of the petitioner for signing of the

agreement and fixed the date and time for signing of the agreement.

4] That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case."

3. Learned counsel for the petitioner submits that the impugned order is illegal, erroneous and contrary to law. The termination of the contract on the allegations of poor performance and non-execution of the agreement are non-sustainable and are outcome of malafides. Further, the Letter of Intent (LOI) was issued and terms and conditions of the LOI shows that, it is concluded contract and infact the contractor has started the work and in the minutes of meeting the petitioner company has also recognized the same. The non-signing of the agreement which is formal in nature would not be a ground for cancellation of the contract/LOI. The petitioner was always ready and wiling to sign the agreement infact the authorized signatory was also sent for singing the agreement, but the authorities have refused. Also, the minutes of meeting dated 11.12.2024 and their contents thereof itself shows that, due to hindrances on the site the work has been affected. The said minutes of meeting itself recognized the hindrances on site. The reply dated 31.05.2025 has not been considered. In the said reply, the petitioner company has categorically mentioned and requested the authority for early resolution for pending approval confirmation of date of agreement signing scheduling of remaining joint survey and test, but instead of doing the needful the impugned order has been issued. The authorities have

invoked Clause No. 72.2, 72.4, 84, 85(i) & 85(ii), no clause of GCC as mentioned in the termination letter would authorized the respondent to forfeit the performance security guarantee. Further, the repeated letters/representations and timely requests for removal of hindrances shows that, due to such hindrances the petitioner company could not show the timely performance and the authorities who were at fault have taken the advantage of their own wrong.

4. Learned counsel for the petitioner also submits that the impugned order of termination of LOI and forfeiture of performance security is illegal and arbitrary, even no formal order of encashment of Bank Guarantee passed been has communicated to the petitioner company, but letter has been issued to the bank for encashment. At the most the authorities can encase the EMD amount, so far as the enashment of bank guarantee is concerned the Hon'ble High Court of Chhattisgarh in the matter of ***M/s BGR Energy Systems Ltd. v. Chhattisgarh State Power Generation Co. Ltd.***, passed in W.A. No. 498/2023 has held as under;

10. The exception of irretrievable injury applies in the present case irrespective of the unconditional nature of the BGs. Invocation of BGs in the present case not only involves irretrievable injury, but also existence of special equities which has been laid down as the third exception to the general rule of invocation of BGs by the Hon'ble Supreme Court in *Standard Chartered Bank v. Heavy Engineering Corporation Ltd. & Another* {(2020) 13 SCC 574 at para 23 and 26}. The

Hon'ble Supreme Court, Enterprises Ltd. v. Union of India & Ors. Gangotri {(2016) 11 SCC 720} granted injunction in favour of the petitioner therein as the sum claimed by the respondent in that case in the nature of damages had not yet been adjudicated upon in arbitration proceedings.

5. On the other hand, learned counsel appearing for the respondents opposes the submissions made by learned counsel for the petitioner and submits that the petitioner has an alternative efficacious remedy under the Arbitration and Conciliation Act. As such, the present writ petition as framed and filed is not maintainable.
6. We have learned counsel for the parties, perused the impugned order and other documents appended with writ petition.
7. It is settled law that the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India when it raises disputed question of facts.
8. The Hon'ble Supreme Court in the case of **Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and others v. Sukamani Das (Smt.) and another, (1999) 7 SCC 298** was dealing with the question of whether the High Court had made an error in entertaining a writ petition filed seeking compensation for the death of a person due to electrocution, which had allegedly been caused due to the negligence of the authorities. The Supreme Court in the said case observed as under:

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed

questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995." (emphasis supplied)

9. The aforesaid judgment has been relied/ reiterated by the Supreme Court in **S.P.S. Rathore v. State of Haryana and others, (2005) 10 SCC 1** wherein it observed as follows:

"16. In *Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das* [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Court held that it is the settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In *T.N. Electricity Board v. Sumathi* [(2000) 4 SCC 543] it was held that when a

disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution."

(emphasis supplied)

10. Similarly, the Hon'ble Supreme Court in **Shubhas Jain v. Rajeshwari Shivam, 2021 SCC OnLine SC 562** has held as under:

"26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable."

11. Subsequently, in **Union of India Vs. Puna Hinda, (2021) 10 SCC 690**, the Hon'ble Supreme Court has observed:

"24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the

amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads."

12. Recently, the Hon'ble Supreme Court in the case of **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703**, while dealing with the issue of exercise of writ jurisdiction by a Court in matters arising out of a contract, has stated:

"82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which

is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit." (emphasis supplied)

13. A reading of the aforesaid judgments makes it clear that it is well settled proposition of law that when there are disputed question of facts involved in a case, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India. It has been held that the remedy under Article 226 of the Constitution of India may not be proper.
14. From perusal of the pleadings, it appears that the petitioner has prayed for issuance of direction to the respondents to revive the contract and to hand over the site free from all hindrances so that the work could be executed in accordance with the term of the LOI and direct the action on the part of the respondents with regard to encashment of the performance security guarantee to the tune of Rs. 1,84,12,354/-.
15. In the instant case, the relief of admitted and undisputed amount sought by the petitioner is contingent upon the resolution of the disputed question of facts raised, and these questions cannot be adjudicated under Article 226 of the Constitution of India. In view of the aforesaid, it would not be appropriate for this Court to

entertain the instant writ petition as there are disputed questions of fact involved.

16. Considering the submissions advanced by learned counsel for the parties, further considering the disputed questions of law involved in this writ petition, the relief sought by the petitioner and in view of law laid down by the Supreme Court in the above-stated judgments (*supra*), we do not find any good ground to entertain this writ petition.
17. Accordingly, the writ petition being devoid of merit is liable to be and is hereby **dismissed**. However, liberty is reserved in favour of the petitioner to take recourse to other alternate remedies available to him under the law. No cost(s).

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice