



2025:DHC:3680



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21.04.2025+ W.P.(C) 12528/2021 and CM APPL.39432/2021

VIDA ENGG CO

REPRESENTED BY ITS SOLE PROPRIETORPetitioner

Through: Mr. Shambo Nandy, Adv.

versus

NBCC (INDIA) LIMITED & ANR.Respondents

Through: Mr. Tushar Sannu, SC and Ms. Aqsa,
Adv. for NBCC.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed by the petitioner, *inter alia*, praying as under –

- “ a) Issue a writ/order/direction in the nature of writ of mandamus directing the Respondent np.1 to furnish details of the fixed deposit account and the interest which has accrued in such account till date;
- b) Issue a writ/order/direction in the nature of writ of mandamus directing the Respondent No.1 to pay interest which has been accrued till date on the fixed deposit of the principal amount of Rs. 1,17,76,290/- “

2. The background of the matter is that the petitioner was awarded a contract under the Pradhan Mantri Gram Sadak Yojana (PMGSY) through a Letter of Acceptance dated 20.08.2007, issued by the respondent no. 1 / NBCC (India) Limited (NBCC) for construction and maintenance of road segments L022, L054 & L033 at Hrishyamukh Block of South Tripura.



NBCC was acting as the implementing agency for the said project under PMGSY.

3. It is submitted that as per the contractual conditions stipulated under Clause 46.1 of the General Conditions of Contract (GCC), the petitioner furnished a Performance Bank Guarantee (PBG) worth ₹1,17,76,290/-. The PBG was to remain valid until 45 days after the completion of the Defect Liability Period (DLP). Clause 46.1 of GCC is reproduced as under –

“46.1 The Performance Security equal to five percent of the contract price and additional security for unbalanced bids shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in the form given in the Contract Data and by a scheduled commercial bank. The Performance Security and additional performance security for routine maintenance shall be valid until a date 45 days from the date of expiry of Defect Liability Period and the additional security for unbalanced bids shall be valid until a date of 45 days from the date of issue of the certificate of completion.

If the Performance Security is in the form of a Bank Guarantee, the period of validity of Bank Guarantee could be one year initially, however, the bidder/ contractor would get this Bank Guarantee extended in such a way that an amount equal to 5% of the contract price is always available with the employer until 45 days after the lapse of defect liability period. If the Bidder/ Contractor fails to maintain above performance security, the employer would recover the same from any dues payable to the contractor.”

4. It is submitted that the petitioner duly renewed the PBG from time to time, the last renewal being valid until 24.08.2011. After the completion of the construction work and during the maintenance period, NBCC, by its letter dated 07.07.2011, directed the petitioner to renew the PBG for one additional year with a further claim period of 45 days. The letter dated 07.07.2011 is reproduced as under –

“We would like to inform you that the above mentioned Bank Guarantee executed by you in our favour on behalf of M/S. Vida Engineering Co. is going to be expire on 24.08.2011 M/s Vida Engineering Co. have



however not yet completed all their obligations under the terms of the contracts against which the above Bank Guarantees are required.

You are, therefore, requested to extend the validity of the above Bank Guarantee on the existing terms and conditions for a further period of One year with a further claim period of 45 days and forward to us the extended Bank Guarantee with immediate effect. If for any reason (s) whatsoever such extension is not issued before the expiry of the existing validity, i.e., 24.08.2011, please treat this letter as our invocation notice of the above Guarantee in terms of various clauses of the said Bank Guarantee and remit to us the sum of Rs. 1,17,76,290.00 by Demand Draft in favour of NBCC payable at Agartala being the guaranteed amount treating this as our notice of demand for encashment of above Bank Guarantee, as the Corporation would otherwise suffer a loss consequent on the non compliance of the contractual obligation by contractor in terms of the contract.

The extension of the Guarantee is to be effected on non-judicial stamp paper of appropriate value as per provision of stamp Act.”

5. It is submitted that while relying upon Clause 46.1 of GCC, the petitioner requested that instead of renewing the PBG, an equivalent amount be recovered from the final bill amounts that were then pending and payable to the petitioner.

6. However, NBCC, without considering the said request, proceeded to encash the PBG. Thereafter, by letter dated 29.08.2011, the petitioner requested NBCC to place the encashed amount in a bank so that the same could be released on expiry of the required period with accrued interest. Letter dated 29.08.2011 is reproduced as under -

“Respected Sir,

We understand that the above Performance Bank Guarantee has been encashed by you in absence of renewal of the same. Now, we request your goodself that the above amount may kindly be fixed suitably in a bank so that the same amount could be released on expiry of the required period, as per contract) with accrued interests therewith and oblige.”

7. It is submitted that this request was made in accordance with Clause 43.5 of the GCC. Clause 43 is reproduced as under -



“43. Security Deposit

43.1 The Employer shall retain security deposit of 5% of the amount from each payment due to the Contractor until completion of the whole of the construction Work No security deposit/ retention shall be retained from the payments for Routine Maintenance of works.

43.2 On the satisfactory completion of the whole of the Construction work, half the total amount retained as security deposit is re-paid to the contractor, one-fourth of the total amount retained as security deposit is re-paid to the contractor at the end of 2nd year after completion of the construction work and balance of the amount retained as security deposit is re-paid to the contractor at the end of 3rd year after completion of construction work subject to condition that the Engineer has certified that all defects notified by the Engineer to the Contractor before the end of period prescribed for re-payment have been corrected.

43.3 The additional performance security for unbalanced bids as detailed in Clause 51 of Conditions of Contract is repaid to the contractor when the construction work is complete.

43.4 The performance security equal to the five percent of the Contract price and additional performance security for Routine Maintenance as detailed in Clause 51 of Conditions. of Contract is repaid to the contractor when the period of five years fixed for Routine Maintenance is over and the Engineer has certified that the contractor has satisfactorily carried out the Routine Maintenance for the works.

If the Routine Maintenance part of the contract is not carried out by the Contractor as per this contract, the employer will be free to carry out Routine Maintenance work and the amount required for this work will be recovered from the amount of Performance Security available with the employer and/ or from any amounts of the contractor whatever is due.

43.5 If the contractor so desires then the Security Deposit can be, converted into any interest-bearing security of scheduled commercial bank in the name of the Employer or National Saving Certificates duly pledged in favour of the Employer for Defect Liability Period.”

8. It is submitted that the NBCC accepted this arrangement and placed the amount in a fixed deposit.

9. It is further submitted that due to some land acquisition issues, the progress of the project was impeded as a result of which the road segments could not be handed over to NBCC on time. It is submitted that NBCC itself acknowledged that these delays were not attributable to the petitioner, as



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evidenced by NBCC's communication dated 08.09.2010. Relevant portion of the communication dated 08.09.2010 is reproduced as under –

Since the delays are not attributable to the contractor M/S. VIDA Engg. Co., extension of time is proposed to be granted up to 31.12.2010 without imposition of LD.

The competent authority for grant of Extension of time without imposition of LD is Director (Projects).

Submitted for approval please.

10. After the resolution of these issues, the petitioner completed the maintenance period of five years and handed over the road segments L022, L054 and L033 on 26.11.2014, 15.12.2015 and 15.03.2018 respectively. Thereafter, the petitioner formally requested issuance of Completion Certificates and release of the final dues.

11. It is submitted that despite completing the work satisfactorily, NBCC delayed issuing the Completion Certificate until 29.01.2019. Completion certificate dated 29.01.2019 is reproduced as under –



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ANNEXURE P-7

एनबीसीसी (इंडिया) लिमिटेड
NBCC (INDIA) LIMITED
 (Formerly National Buildings Construction Corporation Ltd.)
 Zonal Office : Jackson Gate Building, 3rd Floor,
 Lenin Sarani, Agartala, Tripura (W) - 799001
 Tel No. : 0381-2382430
 e-mail : tripura@nbccindia.com

No. CGM/SBG-(Tripura & Sikkim)/PMGSY/CC/2019/714

Date : 29.01.2019

TO WHOM IT MAY CONCERN

This is to certify that M/S Vida Engg. has successfully completed the work of Construction of Rural Roads (New-Connectivity) in Hrishyamukh Block of South Tripura District, Package -XVIII (Ph- V(a))- DPR NO - TR-02-72,105,106 as per details given below:

- | | |
|-----------------------------------|---|
| 1. Name of Work: | Construction of Rural Roads under PMGSY Scheme. |
| 2. LOA No. | GM/AGT/PMGSY/14(56)/07/1188 Date: 20.08.2007 |
| 3. Package No: | XVIII |
| 4. Phase No: | Ph- V(a), Hrishyamukh Block of South Tripura District |
| 5. Date of Commencement: | 11.09.2007 |
| 6. Stipulated Date of Completion: | 10.09.2008 |
| 7. Actual Date of Completion: | Jan'2011 |
| 8. Contract Value: | Rs. 2211.42 lacs |
| 9. Completion Cost: | Rs.2176.81 lacs. |

The certificate has been issued as per request of the individual.

J.S. SINGH
 J.S. SINGH 29/01/2019
 General Manager (Engg.)

CORPORATE OFFICE
 NBCC Bhawan, Lodhi Road, New Delhi-110003
 Tel. EPABX : 91-11-43591555, 24367314-15

12. Upon completion of the project and receipt of the Completion Certificate, the petitioner repeatedly requested the release of its security deposit/fixed deposit (amount placed in a fixed deposit by the respondent pursuant to the encashment of the petitioner's PBG). One such letter dated 28.03.2019 is reproduced as under:-

"1. We are addressing this letter in reference to the aforesaid contract and our letter no. NBCC/03/2019 dated March 05, 2019, addressed to the General Manager, NBCC (India) Ltd., PMGSY Works, Agartala (copy enclosed herewith), read with several other correspondences, exchanged between ourselves and NBCC (India) Ltd. on the subject.

2. It is an indisputable fact and you may be otherwise aware of the fact that a sum of Rs. 1,17,76,290/- is being held by NBCC being the encashed value of the Bank Guarantee submitted by us towards Performance Security which was invoked on August 24 2011. Immediately thereafter, we had requested NBCC (India) Ltd., vide our letter no. NBCC-BG/RNU01, dated August 29, 2011 (copy enclosed herewith), to invest the said sum in an appropriate fixed deposit account so that the said sum could fetch reasonable interest thereon and NBCC (India) Ltd., as per information given to us, fixed the amount in SBI in the name of the employer (ref. clause 43.5 of Standard Bidding Document for PMGSY at page 46 of the contract).



3. In view of the aforesaid, you are holding the said sum of Rs. 1, 17,76,290/- on our behalf as 'Trustee' and is liable to refund the said sum to us together with interest accruing thereon till the actual date of refund, upon discharge of all our contractual obligations.

4. In the meantime, entire contractual works including routine maintenance works in respect of all the roads segments has been successfully completed by us to the entire satisfaction of NBCC & TRRDA; the road is handed over to State PWD Tripura during March, 2018 (letter of GM, dt 05.09.2018 enclosed herewith), i.e., at present nearly one long year has passed after completion of the contract.

5. The said sum or any part thereof, can be withheld or forfeited by NBCC (India) Ltd., being the employer only in the event of failure on our part as the Contractor in executing the contractual work. In the instant case and in view of complete discharge of all our obligations under the contract (completion certificate enclosed), we are entitled to and NBCC (India) Ltd. is obliged to refund the entire sum of Rs. 1, 17, 76,290/- together with interest accruing thereon forthwith.

6. However, it is conspicuous to note that for one reason or other NBCC (India) Ltd. is delaying the payment of the aforesaid sum which is not only unfair, unjust and unconscionable but also per se illegal; NBCC (India) Ltd.; being the 'trustee' of our asset, is not permitted to enjoy a state of 'unjust enrichment' in perverse manner. NBCC, also being a public authority, is bound by considerations of honesty and good faith and should be held to a high standard of rectangular rectitude while dealing with a private entrepreneur, like ours. We firmly believe, NBCC (India) Ltd. will surely not violate such well settled doctrine of honesty.

7. Intentionally we are not making any elaborate presentation of the subject matter on the presumption that you will be provide with all the relevant records and correct inputs by your concerned department. In any event, we are ready and willing to provide any further information or clarification that you may require for dispassionate consideration of request.

8. In the aforesaid premises, we shall be deeply obliged if you kindly do the needful in passing necessary directive to the concerned department of NBCC (India) Ltd. for releasing the aforesaid sum of Rs. 1,17,76,290/- together with interest accruing thereon within a period of fifteen days from the date of receipt of this letter. As per privity of contract the said sum may please be remitted to us through RTGS or other e-modes to our under-mentioned bank account which is known to NBCC (India) Ltd., under intimation to us:

Account No. 31032577887



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*Bank Details: State Bank of India, Kalighat Branch,
IFSC Code: SBIN0001722”*

13. It is submitted that instead of releasing the security deposit/fixed deposit, NBCC started raising objections, such as alleged delays in completion of work, the matter being sub-judice, and even claiming that the refund is time-barred.

14. Due to this persistent denial of refund, the petitioner filed a complaint to the Centralised Public Grievance Redress and Monitoring System (CPGRAMS). This prompted respondent no. 2/National Rural Infrastructure Development Agency (NRIDA) to convene a meeting on 26.08.2019 in New Delhi with representatives of respondent no. 1. During this meeting, it was resolved that NBCC would issue a speaking order within 7 days in response to the petitioner’s complaint. Furthermore, NRIDA wrote to NBCC on 13.09.2019, explicitly stating that the withholding of the PBG amount was not in accordance with the contract and that NBCC’s conduct could result in unnecessary litigation.

15. It is submitted that following a series of communications exchanged between the petitioner and respondent no. 1, the latter verbally informed the petitioner that only the principal amount of the Performance Security Deposit would be released, excluding the interest accrued on the corresponding fixed deposit. The petitioner estimates the accrued interest, which is being withheld, to exceed ₹1 crore.

16. The petitioner objected to this, *via* a letter dated 02.11.2020, reiterating that interest must also be paid by NBCC. The same is reproduced as under –

“Ref: Our discussion over phone on 24.10.2020 & 30.10.2020



Dear Sir,

This is with reference to the above old issue. That,

1. NBCC had agreed before all concerned Authorities (viz., TRRDA, NRIDA, MORD) the above contract was successfully completed by the contractor and handed over to Tripura State PWD long back, during early March, 2018 NBCC had issued proper Extension of Time (EOT) and also, issued successful completion certificate to the contractor without mention of any penalty.

2. The initial PBG, submitted by the contractor, was encashed by NBCC due to non-renewal in time, on 23.08.2011 i.e., during DLP. This was not as any penalty of performance; and was retained immediately as per CL 43.5 of Standard Bidding Document of the contract, in the name of NBCC, the Client, as interest bearing FD in SBI, with the consent of the contractor.

3. Also, a petition No. 06 of 18 made of Sri Arun Kr Dey & oths., a third Party, relating to Case No. Civil Misc. (M.S. 02 of 18), with a futile attempt to injunct the release of Security Deposit of Vida Engg. Co., h' ad been disposed of by the Ld. Court on 25.06.2019.

The above facts are not only matter of records but also are amply circulated to all concerned Authorities relating to the PMGSY Work viz., MORD, NRIDA, TRRDA.

In view of the aforesaid NBCC, being "the Trustee" of the Performance Security (Fixed) Deposit, was supposed to release the FD with accrued interests as on date, to the contractor, on 'as is where is' basis. Whereas, in the above telephonic discussions you have mentioned that only the 'Principal Amount' of the FD would be released to us, the contractor, on submission of a no objection certificate from this side to ratify your such action & to signify that we have no further claim against NBCC in this regard. Further, you denied to issue any sort of written communication in this connection.

Now we request your good-self to justify your above statement and/or intention of your management within 7 days of receipt of this letter."

17. In reply dated 12.11.2020, NBCC stated that the petitioner's claim for interest was without merit, and the principal PBG amount would only be



released subject to the petitioner furnishing a No Objection Certificate (NOC). Reply dated 12.11.2020 is reproduced as under –

“Dear Sir,

In reference to your aforesaid letter, it is submitted that as per Clause 46.1 of contractual conditions, the Performance Bank Guarantee ("PBG") should have been in possession of NBCC till the successful completion of construction, operation and maintenance period and handing over to Client which is 1 year +5 years+ 45 days. In this regard it is also an undisputed fact that the PBG was encashed by NBCC due to admitted failure at your end to renew the same as per provisions of contract.

It is also a matter of record that not once during the aforesaid period of encashment did you ever submit a renewed PBG to NBCC till date to cure your default in non-renewing of PBG. As such, your instant insistence on releasing PBG amount along with interest appears to be a belated attempt to try and take advantage of your defaults and is totally devoid of merit.

It may also be mentioned here that Sri Arun Kr Dey & ors have filed MS No 2 of 2018 praying for a permanent injunction on release of encashed PBG amongst others which is still pending before the Civil Court at Tripura. While the Interim prayer of Sri Arun Kumar Dey & ors for an ad Interim injunction on release of encashed PBG amongst others has been disposed by the Civil Court, it is pertinent to clarify that the main suit is still pending as on date.

Notwithstanding the aforementioned facts, your reliance on Clause 43.5 of Standard Bidding document appears to be misconceived as the said clause relates to Security Deposit and does not in any manner relate to PBG.

It is therefore requested that Bank details may be provided along with No dues certificate to enable NBCC to release the principal amount of PBG.”

18. The petitioner objected to this condition through a letter dated 09.12.2020, stating that submission of an NOC was not a contractual



requirement and that it was being wrongly imposed to avoid paying interest. NBCC, however, reiterated its position *via* letter dated 12.02.2021.

19. It is submitted that the actions of NBCC, in first illegally withholding the PSD for over a decade, then refusing to pay the accrued interest, and finally making release of the principal amount conditional upon the submission of a non-contractual NOC are arbitrary.

20. Being aggrieved by the same, the petitioner has filed the present petition.

21. Learned Counsel for the NBCC while refuting the contentions of the petitioner has submitted as under -

- a. It is submitted that the dispute raised by the petitioner arises from a contractual relationship between the parties. Relying on ***Joshi Technologies International Inc. v. Union of India*** (2015) 7 SCC 728, it is submitted that the matters which are purely contractual in nature and do not involve any element of public law cannot be adjudicated through writ jurisdiction.
- b. Relying upon ***Union of India v. Puna Hinda*** (AIR 2021 SC 4187), it is submitted that writ jurisdiction should not be exercised in matters involving complex factual disputes or monetary claims. It is submitted that the question of how much money is payable, if any, is a factual issue best left to adjudication by the appropriate civil forum.
- c. It is further submitted that the petitioner has failed to exhaust the adequate alternative remedies available under law, including civil suits. It is submitted that when a contract provides a specific dispute resolution mechanism, the parties are required to adhere to it.



- d. It is submitted that the petitioner was required to furnish a Performance Security and an additional security for unbalanced bid in terms of Clause 27.4 of Invitation to Bidders, in the format detailed in Clause 32 of Invitation for an amount of Rs. 1,17,76,290/- within 10 days of the receipt of the Letter of Acceptance until 45 days after the lapse of Defects Liability period. Accordingly, on 25.08.2007, a Performance Bank Guarantee PBG of Rs. 1,17,76,290/- was submitted by the petitioner. The contract stipulated a completion period ending on 13.09.2008, followed by a 5-year maintenance period. However, the petitioner failed to complete the project within the stipulated timeframe. It is submitted that repeated instructions to extend the validity of the PBG were ignored by the petitioner. Consequently, NBCC issued a notice on 07.07.2011 invoking the PBG and eventually encashed it in accordance with the contract.
- e. It is submitted that despite clear communication and sufficient notice, the petitioner did not raise any objection or challenge to the encashment of the PBG.
- f. It is submitted that the petitioner has failed to disclose the existence of other civil suits pending before courts in Tripura involving the same parties and subject matter.
- g. During the course of the hearing, it was submitted that NBCC is willing to refund the security deposit, subject to the petitioner furnishing a No Objection Certificate (NOC). It was further submitted that NBCC is not liable to refund any interest accrued thereon, as the encashment of the PBG and the subsequent placement of the amount



in a fixed deposit occurred solely due to the petitioner's failure to maintain the PBG.

22. Respective counsel have been duly heard.

23. This Court finds no merit in the objections raised by the respondent concerning the maintainability of the writ petition on the ground that it pertains to contractual matters involving disputed questions of fact or monetary claims. Similarly, this Court is not persuaded by the objection regarding the existence of an alternative remedy.

24. A Division Bench of this Court, in a recent judgment titled ***Sahakar Global Limited JV and Another v. Municipal Corporation of Delhi***, 2025 SCC OnLine Del 2273 after an elaborate discussion of the principles laid down by the Supreme Court in ***Subodh Kumar Singh Rathour v. Chief Executive Officer***, 2024 SCC OnLine SC 1682 and ***M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd.***, (2023) 2 SCC 703, has clearly delineated the scope of judicial review in matters concerning government contracts and tenders. The relevant portion of the said judgment is extracted below:

35. As already observed above, Subodh Kumar Singh Rathour, (supra) discusses the past judgments on the issue and has quoted with approval, the judgment of the Apex Court in M.P. Power Management Co. Ltd. (supra) where the scope of judicial review by the Courts in contractual disputes concerning public authorities has been exhaustively discussed. M.P. Power Management Co. Ltd. (supra) finds mentioned in Subodh Kumar Singh Rathour (supra) in paragraph 55 which is also extracted herein below:

“55. Thereafter, this Court in its decision in M.P. Power Management Co. Ltd., Jabalpur v. Sky Power Southeast Solar India Pvt. Ltd., (2023) 2 SCC 703 exhaustively delineated the scope



of judicial review of the courts in contractual disputes concerning public authorities. The aforesaid decision is in the following parts:—

[...](i) Scope of Judicial Review in matters pertaining to Contractual Disputes:—

This Court held that the earlier position of law that all rights against any action of the State in a non-statutory contract would be governed by the contract alone and thus not amenable to the writ jurisdiction of the courts is no longer a good law in view of the subsequent rulings. Although writ jurisdiction is a public law remedy, yet a relief would still lie under it if it is sought against an arbitrary action or inaction of the State, even if they arise from a non-statutory contract. The relevant observations read as under:—

“53. [...] when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr. Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

i. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

ii. The principle laid down in Bareilly Development Authority (supra) that in the case of a non statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal (supra), may not continue to hold good, in the light of what has been laid down in ABL (supra) and as followed in the recent judgment in Sudhir Kumar Singh (supra).

iii. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the



complaining party is able to establish that the action/inaction is, per se, arbitrary.”

(Emphasis supplied)

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(iii) Exercise of Writ Jurisdiction after the Contract comes into Existence:—

This court held that even after the contract comes into existence an action may lie by way of a writ to either **(I)** obviate an arbitrary or unreasonable action on part of the State or **(II)** to call upon it to honour its obligations unless there is a serious or genuine dispute as regards the liability of the State from honouring such obligation. Existence of an alternative remedy or a disputed question of fact may be a ground to not entertain the parties in a writ as long as it is not being used as smokescreen to defeat genuine claims of public law remedy. The relevant observations read as under:—

“v. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

vi. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

vii. 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.



viii. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a Writ Petition (See in this regard, the view of this Court even in ABL (supra) explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co., by its observations in paragraph-14 in ABL (supra)].

ix. The need to deal with disputed questions of fact, cannot be made a smokescreen to quillotine a genuine claim raised in a Writ Petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

x. The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State."

(Emphasis supplied)

(iv) Exercise of Writ Jurisdiction after Termination or Breach of the Contract:—

A relief by way of a writ under Article 226 of the Constitution will also lie against a termination or a breach of a contract, wherever such action is found to either be palpably unauthorized or arbitrary. Before turning away the parties to the remedy of civil suit, the courts must be mindful to see whether such termination or breach was within the contractual domain or whether the State was merely purporting to exercise powers under the contract for any ulterior motive. Any action of the State to cancel or terminate a contract which is beyond the terms agreed thereunder will be amenable to the writ jurisdiction to ascertain if such decision is imbued with arbitrariness or influenced by any extraneous considerations. The relevant observations read as under:—

xi. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The



intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the Fundamental Right of the Petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible Rule in favour of the Court turning away the Petitioner to alternate Fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the Writ Court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL Limited (supra), if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL (supra). It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

xii. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate Forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (See in this regard Kumari Shrilekha Vidyarthi v. State of U.P.). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely malafide, can hardly be



described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.”

(Emphasis supplied)

(v) Other relevant considerations for Exercise of Writ Jurisdiction:— Lastly, this Court held that the courts may entertain a contractual dispute under its writ jurisdiction where **(I)** there is any violation of natural justice or **(II)** where doing so would serve the public interest or **(III)** where though the facts are convoluted or disputed, but the courts have already undertaken an in-depth scrutiny of the same provided that the it was pursuant to a sound exercise of its writ jurisdiction. The relevant observations read as under:—

xiii. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate Forum.

xiv. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the Writ Petition itself.

xv. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh (supra)].

(Emphasis supplied)”

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39. The subject matter of discussion in Subodh Kumar Singh Rathour, (supra) was, thus, an arbitrary cancellation of contract, and it is in these circumstances that the Hon'ble Supreme Court has observed that cancellation of a contract deprives a person of his very valuable rights and is a very drastic step. It has further been observed that, therefore, public authorities should be circumspect in disturbing their contractual obligations through means beyond the terms of the contract in the



exercise of their executive powers. The Hon'ble Supreme Court, however, in the same breath, also observes that it is not that the State has no power to alter or cancel a contract that it has entered, however, if the State deems it necessary to alter or cancel a contract on the grounds of public interest or change in policy, then such considerations must be bona-fide and should be earnestly reflected in the decision-making process and also in the final decision itself. Paragraph 129 of the judgment in Subodh Kumar Singh Rathour, (supra) is apposite to be referred to, which reads as under:

“129. We caution the public authorities to be circumspect in disturbing or wriggling out of its contractual obligations through means beyond the terms of the contract in exercise of their executive powers. We do not say for a moment that the State has no power to alter or cancel a contract that it has entered into. However, if the State deems it necessary to alter or cancel a contract on the ground of public interest or change in policy then such considerations must be bona-fide and should be earnestly reflected in the decision-making process and also in the final decision itself. We say so because otherwise, it would have a very chilling effect as participating and winning a tender would tend to be viewed as a situation worse than losing one at the threshold.”

40. Thus, Subodh Kumar Singh Rathour (supra) is a case where a contract pursuant to the tender process which was entered into, was cancelled at a stage pursuant to the contract work by the contractor that had already been commenced, whereas, in the instant case, no letter of award or work order has been issued. The contract, pursuant to the declaration of the Petitioner as ‘H-1’ in pursuance of the subject tender, has also not been constituted.

41. M.P. Power Management Co. Ltd. (supra) has been quoted with the approval in Subodh Kumar Singh Rathour (supra) wherein it has been held that an action under writ jurisdiction will lie even at the stage prior to award of contract by the State wherever such award of a contract is imbued with procedural impropriety, arbitrariness, favouritism or without any application of mind.

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44. The judgment in M.P. Power Management Co. Ltd. (supra) has extensively been quoted by the Apex Court in Subodh Kumar Singh Rathour, (supra) which has been discussed above. The conclusions drawn in M.P. Power Management Co. Ltd. (supra) by the Apex Court



can be found in paragraphs 82 to 82.15 of the said judgment, which are extracted herein below:—

“82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706].

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651].

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition.

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious



and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

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.

82.8. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22], by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]].

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to quillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

82.10. The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.



.....**82.13.** A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.

82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706]).”

45. From the afore-quoted extract of the judgment in *M.P. Power Management Co. Ltd. (supra)*, what we find is that it is settled that a writ petition would lie when the State purports to award any largesse even at a stage prior to the contract being entered into. However, the Apex Court has further observed that such judicial scrutiny would be undertaken within the nature of judicial review as declared by the Apex Court in its decision in *Tata Cellular v. Union of India*, (1994) 6 SCC 651. Thus, there is no doubt that the action on the part of the State or its instrumentality in the matter relating to Government contracts will lie even to the stage prior to the contract being executed. However, judicial review in such matters has to be undertaken in terms of the principles declared by the Apex Court in *Tata Cellular*, (supra).

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49. In view of the aforesaid discussion, the scope and extent of judicial review of the action of the State by this Court in the exercise of its jurisdiction under Article 226 of the Constitution in matters relating to tender/contract is well established which can be summarized, so far as the same is relevant for the purpose of consideration of the issue arising in this case, as below:

A. Judicial review of State action, even in matters of contract, is permissible in disputes which arise after the contract is entered into by an authority.



B. Judicial review is also permissible in relation to disputes which arise in a tender/contract matter that are to be awarded by the public authorities at the stage prior to the award of the contract.

C. Even at the stage after termination or breach of contract, actions of the State/instrumentality can be subjected to judicial review.

D. However, judicial review of the actions of the public authorities are permissible on the grounds of the action complained against being arbitrary, unfair or unreasonable, being contrary to the principle enunciated under Article 14 of the Constitution of India.

E. The writ Court, while exercising judicial review in relation to disputes arising at a stage prior to the award of contract, can undertake scrutiny, however, such judicial review/scrutiny would be undertaken within the nature of judicial review as declared by the Apex Court in the decision in Tata Cellular (supra).

F. The writ Court can judicially review a contractual dispute where one of the parties to the contract is a public authority and also in such a situation where there is a violation of principles of natural justice, where the action complained against does not serve any public interest and the public authority has not acted in good faith.

25. There is no doubt as regards the factual matrix in the present petition. It is undisputed that the petitioner is entitled to refund of the security deposit [placed in a fixed deposit by the respondent following the encashment of the petitioner's Performance Bank Guarantee (PBG)]. However, the respondent insists on production of NOC by the petitioner as pre-condition for such refund.

26. The legal position is well settled that for release of the admitted contractual entitlements of the petitioner, it is impermissible for the respondent to require the petitioner to furnish an NOC.

27. *Ex-facie*, the NBCC's insistence on a production of NOC by the petitioner as pre-condition for release of the admitted dues of the petitioner, is unsustainable. Hence, this Court directs NBCC to release the amount due and payable to the petitioner towards refund of security deposit without



insisting on an NOC from the petitioner.

28. Further, *prima facie*, the petitioner is entitled to the interest in terms of Clause 43.5 of the GCC. The same explicitly contemplates that a security deposit can be converted into any interest bearing asset of any scheduled commercial bank. The contractual obligation of the petitioner is to maintain the security deposit to the extent contemplated under the contract; any interest which has accrued on the security deposit will necessarily enure to the benefit of the person who has furnished the security deposit and who is contractually entitled to the refund thereof. Also, at the relevant point of time, the petitioner had addressed communications to the respondent requesting that the concerned amount may be kept in a fixed deposit so that the same could be released to the petitioner at the end of the requisite period contemplated under the contract.

29. However, learned counsel for the respondent submits that there are extenuating circumstances which disentitle the petitioner to interest. *Prima facie*, the said contention is untenable; however, in the present proceedings, this Court is refraining from rendering any final findings as regards thereto and considers it apposite to direct the respondent to consider all the relevant aspects of the matter and take a suitable decision as regards release of the interest amount accrued on the security deposit, to the petitioner. Let an opportunity of hearing be granted to the petitioner and the requisite decision be taken expeditiously.

30. The present petition stands disposed of in the above terms. Pending application also stands disposed of.

SACHIN DATTA, J

APRIL 21, 2025/sv