IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.17174 of 2025
Date of Decision: 03.11.2026

Shiv Ram .....Petitioner

Versus

State of Himachal Pradesh & Ors. … Respondents

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1]

For the Petitioner: Mr. Lokesh Thakur, Advocate.

For the Respondents: Mr. Rajan Kahol, Additional Advocate General with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondents-State.

Sandeep Sharma, Judge(oral):

By way of instant petition, petitioner has prayed for the following main reliefs:-

> *"a. That the respondents may kindly be directed to release the payment of Rs. 82,14,168/- to the petitioner by issuing of writ of mandamus.*
>
> *b. That the respondents may kindly be directed to pay interest @ 10% per annum on the remaining amount of Rs. 82,14,168/- since November, 2024 till its realization by issuing of writ of mandamus.*

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Lokesh

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

Thakur, learned counsel for the petitioner, is that though petitioner has completed substantial work at the spot pursuant to work awarded to him through tender, but payment due to him, which already stands verified and approved, has not been released.

3. Precisely, the facts of the case, as emerge from the pleadings as well as other material placed on record by the respective parties, are that petitioner, who is an 'A' Class contractor registered with the H.P. Public Works Department, was awarded construction work of Government Senior Secondary School at Talehli, Tehsil Sundernagar, District Mandi, H.P., vide award letter No. PW/SNR/C.B/E-Tender/Award/2023-18605-13 dated 12.03.2024 and the time allowed for completion of the work was 18 months, which was to be reckoned after 15 days from the date of issuance of the award letter (Annexure P-1).

4. Pursuant to award letter issued in his favour, petitioner commenced execution of the work within the stipulated time and the work is still in progress.

5. Though payment against the first running bill has been cleared to the petitioner, but payment against the second running bill, amounting to Rs. 82,14,168/-, which was passed by the office of the Executive Engineer, H.P. PWD, in November 2014, has not been released to him, as a result thereof he is facing financial distress.

Since despite repeated requests, no steps have been taken by the respondent-department to release payment against the second running bill, petitioner has approached this Court in the instant proceedings, praying therein for the reliefs, as have been reproduced hereinabove.

6. Having taken note of the averments contained in the petition, which is duly supported by an affidavit, this Court, vide order dated 04.07.2025, called upon the learned Additional Advocate General to have instructions.

7. On 14.07.2026, communication dated 20.04.2026 came to be placed on record, suggestive of the fact that respondents do not dispute their financial liability towards the petitioner. In the aforesaid background, matter was adjourned for two weeks, enabling the respondents to release the payment to the petitioner, but the fact remains that till date, needful has not been done. On 12.08.2026, learned Additional Advocate General placed on record instructions dated 10.08.2026 received from the Executive Engineer, H.P. PWD Division, Sundernagar, District Mandi, conveying that out of the total pending claims of the petitioner, a sum of Rs. 74,00,000/- had already been released in his favour on 10.08.2026.

8. Since the entire amount had not been released to the petitioner, this Court, while impleading the Director, Empowerment of

SCs, OBCs, Minorities and Specially Abled, Himachal Pradesh, as respondent No. 6 and the State of Himachal Pradesh through the Principal Secretary (Finance) to the Government of Himachal Pradesh as respondent No. 7, directed learned Additional Advocate General to have instructions from respondents No. 6 and 7 to ensure satisfaction of the admissible claim of the petitioner by the next date of hearing.

9. In terms of the aforesaid order, learned Additional Advocate General placed on record communication dated 20.08.2026, issued under the signatures of the Director, Empowerment of SCs, OBCs, Minorities and Specially Abled, Himachal Pradesh, to state that though Director of School Education, vide letter dated 03.10.2025, had submitted a proposal seeking additional funds amounting to Rs. 2,76,76,000/- (Rupees two crore seventy-six lakh seventy-six thousand) for completion of the construction work of Government Senior Secondary School, Talehli, District Mandi, under Demand No. 32, but since no funds were available at that time to accommodate the proposed additional requirement, needful could not be done. It was also clarified in the aforesaid communication that no additional funds had been sanctioned or committed by the Directorate of Empowerment of SCs, OBCs, Minorities and Specially Abled, Himachal Pradesh.

10. During the proceedings held on 03.09.2026, it was submitted on behalf of the petitioner that payment against the 9th running bill, which had been duly verified and sanctioned, had not been released to him. In the aforesaid background, this Court called upon the learned Additional Advocate General to have instructions with regard to the admitted amount which had not been released in favour of the petitioner, within one week.

11. Pursuant to the aforesaid order, communication dated 02.11.2026, issued under the signatures of the Executive Engineer, Sundernagar Division, H.P. PWD, Sundernagar, has been placed on record, which is taken on record and read as under:-

> *"To*
>
> *Ld. Advocate General*
> *State of HP Shimla-1*
>
> *Subject: - CWP No. 17174/2026-Titled as Shiv Ram Vs State of HP & Ors.*
> *Reference: Your office letter No. CWP 17174/2025 dt: 16.10.2026*
> *Respected Sir,*
>
> *Your kind attention is invited towards the subject cited matter which has been ordered to be listed on 03.11.2026.*
>
> *In this regard, it is submitted that the work: - C/o Govt. Sen. Sec. School Taleli, District Mandi was awarded to the petitioner for an amount of Rs.4,50,39,186/- including GST.*

Therefore, in this regard it is also submitted that payment to the tune of Rs. 31,85,601/- is yet to be made to the claimant and demand for funds in this regard is submitted to the concerned department vide Executive Engineer Sundernagar letter No. 8645-48 dt 28.10.2026.

All the pending claims will be released to the claimant as and when the funds from the client department i.e. Education department will be received.

In this regard, it is also submitted that this office is making all possible efforts to ensure compliance with the directions of the Hon'ble High Court, and the balance payment will be released immediately upon receipt of the remaining funds from the client department

In view of the above, you are requested to kindly apprise the Hon'ble High Court on the date of hearing, ie., 03.11.2026, that further necessary action regarding release of pending payment shall be taken promptly upon receipt of the funds from the client department.

Executive Engineer
Sundernagar Division
HPPWD Sunderagar

Copy forwarded to the Assistant Engineer, Dehar Sub-Division, HPPWD, Dehar, with the direction to take up the matter with the Office of the Advocate General, Himachal Pradesh, and submit the requisite status/report to this office accordingly.

Executive Engineer
Sundernagar Division
HPPWD Sundernagar

12. It is evident from the aforesaid communication that payment to the tune of Rs. 31,85,601/- is yet to be made to the petitioner and demand for funds in this regard has been submitted to the concerned department vide letter No. 8645-48 dated 28.10.2026 issued by the Executive Engineer, Sundernagar. However, the aforesaid amount shall be released only upon availability of adequate funds from the Government of Himachal Pradesh.

13. Though it is not in dispute *inter se* parties, that in terms of agreement arrived inter se them, dispute if any, qua non payment of bill is to be adjudicated by the arbitrator, if any, appointed with the consent of parties or as per direction issued by the Court under Section 11 of the Arbitration and Conciliation Act, but once there is no dispute qua the liability of the respondents and as of today, Rs. 31,85,601/- is payable to the petitioner, this Court sees no impediment in considering the prayer of the petitioner, while exercising power under Article 226 of the Constitution of India. Aforesaid issue has already been settled by the Hon'ble Apex Court in **ABL International Ltd. Vs. Export Credit Guarantee Corpn. of India Ltd.** (2004) 3 SCC 5553, whereby Hon'ble Apex Court has categorically held that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the Court

entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit, rather, in writ petition, if the facts require, even oral evidence can be taken. Crux of the aforesaid judgment is that writ Court has jurisdiction to entertain writ petition, where disputed questions of facts exist and there is no absolute bar for entertaining writ petition if the same arises out of contractual obligations or involves disputed question of facts. Relevant paras of judgment supra, are reproduced herein:

> "19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Smt. Gunwant Kaur (supra), this Court even went to the extent of holding that in a writ petition, if facts required, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and or involves some disputed questions of fact.
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> 27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-
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> (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
>
> (b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
>
> (c) A writ petition involving a consequential relief of monetary claim is also maintainable."

14. In the aforesaid judgment, it has been categorically held that in appropriate cases, a writ petition against State or instrumentalities of State, arising out of contractual obligation is maintainable even if some disputed questions of facts arise for consideration.

15. Hon'ble Apex Court, while placing reliance on ABL International supra, reiterated in **Food Corporation of India v. SEIL Ltd.** (2008) 3 SCC 440, that the matters involving public law elements, are amenable to writ jurisdiction. Relevant paras of the aforesaid judgment are reproduced herein under:

> "21. Jurisdiction of the High Court to entertain a writ application involving contractual matter was considered by a Bench of this Court in ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors. [(2004) 3 SCC553] wherein upon referring to a large number of decisions, it was held :
> "23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.
> 22. Reliance placed by Mr. Sharan on M/s. Burmah Construction Company v. The State of Orissa & Ors. [AIR 1962 SC 1320] is not apposite. Claim made therein was a pure money claim. It was in that situation observed that the High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract to pay an amount of money due to the claimant.
> 23. Article 14 of the Constitution of India has received a liberal interpretation over the years. Its scope has also been expanded by creative interpretation of the court. The law has developed in this field to a great extent. In this case, no disputed question of fact is involved. 24. The High Court, in an appropriate case, may grant such relief to which the writ petitioner would be entitled to in law as well as in equity.
> 25. We do not, thus, find any substance in the contention of Mr. Sharan that while exercising its review jurisdiction, no interest on the principal sum could have been directed to be granted by the High Court. A writ court exercises its power of Review under Article 226 of the Constitution of India itself. While exercising the said jurisdiction, it not only acts as a court of law but also as a court of equity. A clear error or omission on the part of the court to consider a justifiable claim on its part would be subject to review; amongst others on the principle of actus curiae neminem gravabit (An act of the courts shall prejudice none). We

> appreciate the manner in which the learned Judge accepted his mistake and granted relief to the respondents."

16. High court of Andhra Pradesh had an occasion to deal with similar facts as exist in present case while rendering judgment dated 22.3.2022 in Writ Petition No. 2511 of 2022. In the said judgment, High Court of Andhra Pradesh held that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable. High Court of Andhra Pradesh, while returning aforesaid finding also placed reliance upon judgment rendered by Hon'ble Apex Court in ABL International supra. Relevant para of the aforesaid judgment is reproduced herein below:

> "13. This Court opine that when the State or its instrumentalities failed to act legally within reasonable period to make payment to the petitioner for the works executed by her and infringed the fundamental rights of the petitioner, we hold that the Writ Court is having jurisdiction to entertain the claim of the petitioner and as such, this Writ Petition is maintainable."

17. Leaving everything aside, once the liability to pay the amount, sought to be released through instant petition, is admitted, coupled with the fact that some amount had become due to the petitioner in the year 2024, this Court sees no impediment in exercising power under Article 226 of the Constitution of India, thereby directing the respondent-department to pay the balance

amount to the tune of Rs. 31,85,601/- to the petitioner expeditiously, preferably within a period of three months, failing which, petitioner would be entitled to interest at the rate of 6% per annum from the date of afore amount had actually become due to the petitioner. Ordered accordingly.

18. In view of the above, the present petition is disposed of with a direction to the respondents to release the admitted amount of Rs. 31,85,601/- to the petitioner within a period of two months, failing which petitioner shall be entitled to interest @ 6% per annum.

19. Needless to say, petitioner shall be at liberty to file appropriate proceedings before the appropriate court of law for the remaining payment, if any, in accordance with law as well as agreement entered *inter se* the parties.

The writ petition stands disposed of in the aforesaid terms, along with any pending application(s).

(Sandeep Sharma),
Judge

November 03,2026
(sunil)