



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 30 of 2023

Reserved Date: 17.06.2026

Pronouncement Date: 14.09.2026

M/s. Ashima Projects Pvt. Ltd.,
Through its Director, Shri. Upendra Nath Saha,
having its registered office at : Room No. 6,
Council Building, Tura Bazar, P.O. & P.S.
Tura, West Garo Hills, Meghalaya-794001.

..... Petitioner

- Vs-

1. State of Meghalaya through its Chief Secretary,
Government of Meghalaya.
2. The Chief Engineer (NH), P.W.D. (Roads),
Government of Meghalaya.
3. The Executive Engineer, P.W.D. (Roads),
Baghmara NH Division, Baghmara,
South Garo Hills, Meghalaya
4. The Regional Officer
Ministry of Surface, Road & Highways,
Rajgarh Road, Guwahati – 781003.

..... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. D. Sahu, Adv.
Mr. P.R. Paske, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with
Ms. R. Colney, GA. for R 1-3.



Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv. for R 4.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. Pleadings found in this petition reveals that the petitioner is a private limited construction company, registered under the Indian Companies Act. 1956. It is also registered as a Class-I Government Contractor of a number of government departments, e.g., PWD, PHED, MePDCL.

2. In the year 2007-2008, a tender was floated for construction of a High-Level Bridge across the river Dabua at Gasuapara in KM 187 on NH-62, including approaches in South Garo Hills District of Meghalaya. The petitioner having participated in the said bidding process, was accordingly awarded the contract vide Final Work Order No. PW/TB/BR/74/2005/Pt/13 dated 01.10.2007 for the amount of ₹ 3,00,35,800/- (Rupees Three Crore, Thirty-Five Thousand, Eight Hundred) only. Then, after completing the work in the year 2014, the petitioner raised the total bill of ₹ 3,04,62,164/- (Rupees Three Crore, Four Lakh, Sixty-Two Thousand, One Hundred and Sixty-Four) only.

3. It is stated in the petition that on completion of the said contract work/project in the year 2014, on being satisfied thereof, the respondent



authority took charge of the same by issuing a completion certificate to the petitioner.

4. The petitioner was assured by the concerned department that the final bill will be cleared soon, he waited for the same for a few months, however, inspite of such assurance, the said bills have not been paid till date.

5. That in the meantime, the relevant respondent sought for undertaking of some additional/supplementary work pertaining to CC wearing coat at bridge No. 186/8 for which the working estimates have been prepared and duly approved by the Office of the Additional Chief Engineer, PWD (Roads) Western Zone, the total amount of which comes to ₹ 4,31,000/- (Rupees Four Lakh, Thirty-One Thousand) only. In this regard, a Tender Process was also carried out for the said work and the petitioner being the successful bidder, a preliminary work order vide letter No. PW/WZ/CS-4/NH-62/2017-18/2 dated 07.07.2017 was also issued in favour of the petitioner. The Final Work Order was eventually issued by the Office of the Additional Chief Engineer, PWD (Roads) Western Zone, Tura, Government of Meghalaya, vide letter dated 10.07.2017.

6. The department having failed to fulfil to settle the said outstanding bills, the petitioner issued several letters to the Executive Engineer, PWD (Roads), Baghmara NH Division ranging from 25.02.2014 to 23.03.2021, the respondent department has failed to clear the outstanding bills amounting to ₹ 3,04,62,164/- (Rupees Three Crore, Four Lakh, Sixty-Two Thousand, One



Hundred and Sixty-Four) only.

7. In spite of a number of letters sent to the department, the said outstanding bills not being paid, the petitioner was compelled to issue a Legal Notice dated 23.04.2021. Such action of the respondent department demonstrating lack of interest, the same being arbitrary, illegal and tantamount to violation of Article 14 of the Constitution and other legal rights of the petitioner which permits the approach before this Court with this instant petition under Article 226 of the Constitution.

8. Mr. D. Sahu, learned counsel for the petitioner has submitted that during the construction period, the petitioner has raised 3 Nos. of AR (Running) Bills bearing Nos. CC-I for ₹ 30,03,580/- (Rupees Thirty Lakh, Three Thousand, Five Hundred Eighty) only; CC-II for ₹ 41,20,081/- (Rupees Forty One Lakh, Twenty Thousand, Eighty One) only and CC-III for ₹ 60,92,538/- (Rupees Sixty Lakh, Ninety Two Thousand, Five Hundred Thirty Eight) only (Total AR Bills raised for ₹ 1,32,16,199/-). The respondent has released payment against the three running bills amounting to ₹ 1,18,25,724/- (Rupees One Crore, Eighteen Lakh, Twenty-Five Thousand, Seven Hundred Twenty-Four) only after deducting ₹ 11,89,475/-.

9. It is further submitted that the petitioner has submitted the final bill bearing No. FCC-IV/243BGNH dated 15.12.2014 for ₹ 3,00,36,148/- out of which ₹ 1,33,88,983/- was released to the petitioner through running bills and



the remaining amount of ₹ 1,66,47,165/- against the final bill has not been paid yet.

10. Demand was also raised as regard cost escalation during the material period for which the petitioner has raised demand for cost escalation bill dated 05.01.2015 amounting to ₹ 1,19,83,919/- and that the total outstanding amount entitled to by the petitioner is ₹ 2,86,31,084/-.

11. The learned counsel has also submitted that, by not releasing the petitioner's legitimate dues, the same is violative of Article 14 of the Constitution, arbitrariness being apparent in such act of unreasonableness. As such, this Court exercising jurisdiction under Article 226 of the Constitution can direct the respondents to release the outstanding dues of the petitioner. The case of **M/s Gvpr Engineers Ltd. v. The Managing Director, Karnataka Neevari Nigam Ltd. [WP(C) No. 8182 of 2022]**, reported in **2024 Supreme (Kar) 210** has been referred to in support of this contention.

12. The learned counsel for the petitioner has also submitted that for the delay in payment of the dues of the petitioner, therefore, interest on such delayed payment till final release of the said dues has to be made to the petitioner. The case of **State of Kerala v. P. Edward John, 2015 (Supreme Online (Ker), 46582**, para 17 & 22 has been cited in this regard.

13. On the issue of limitation, the learned counsel has submitted that the



provisions of the Limitation Act are not applicable to reliefs sought for on an application under Article 226. Though it is admitted that it was incumbent upon the petitioner to approach the court within a reasonable time period, however, the same depends on the facts and circumstances of each case. The case of **Shri Vallabh Glass Works Ltd. & Anr v. Union of India & Ors, (1984) 3 SCC 362**, para 9 as well as the case of **Sachindra Nath Sen Gupta v. General Manager, NEF Railway, 1973 AIR (Gua) 108**, para 4 was referred to, to sustain this contention.

14. Finally, the learned counsel has argued that in a writ petition involving disputed question of facts or for a monetary claim, the same is maintainable in exercise of the discretionary powers of the court. The case of **ABL International Ltd. V. Export Credit Guarantee Corporation of India Ltd., (2004) 3 SCC 553** has been put into service in this connection.

15. Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA appearing for the State respondents No. 1-3, in his response has submitted that admittedly, the work for reconstruction of the High-Level Bridge over the river Dabua at Gasuapara, is a project sanctioned by the Ministry of Road Transport and Highways (MoRTH), Government of India.

16. However, in the instant case, no fund towards payment of the contractual dues have been released by the sanctioning authority to the Government Department (PWD) for disbursement of the same to the



contractor/petitioner.

17. The first objection raised by the learned AAG is on the issue of maintainability of this petition. It is the contention of the learned AAG that through this writ, the petitioner seeks enforcement of contractual dues arising from works contracts. As such, dispute involving payment of dues etc. are in the realm of private law remedy which the petitioner ought to have resorted to and not by way of a writ petition. To this contention, the case of **Union of India & Ors. v. Puna Hinda, (2021) 10 SCC 690**, para 18 & 24 was referred to by the learned AAG in support of his case.

18. The next contention of the learned AAG is with regard to the fact that though, in the contract agreement, there is an arbitration clause which provides for settlement of disputed contractual claims through the medium of arbitration, this alternative remedy being available, the petitioner is therefore precluded to seek redressal of his alleged grievance by way of a writ petition under Article 226 of the Constitution. To this, the case of **Joshi Technologies International INC. v. Union of India and Ors. (2015) 7 SCC 728**, para 55, 59, 69.2 has been cited.

19. The next point of contention raised by the learned AAG is on the issue of delay and laches where it was said that the petitioner for alleged failure of the concerned department to clear his contractual dues relevant for the year 2014, he has approached this Court by way of this writ petition only in the year



2023, knowing fully well that, if he had proceeded by the regular process by approaching the civil court, his claim would be hit by limitation as per the provisions of the Limitation Act, therefore, to skirt such process, he has come before this Court with this instant petition. The action of the petitioner in this respect cannot be condoned, as such, this petition being hit by delay and laches, the same ought to be dismissed in limine, submits the learned AAG. On this, the case of **State of Maharashtra v. Digambar, (1995) 4 SCC 683**, para 14; has been referred to.

20. Dr. N. Mozika, learned DSGI assisted by Ms. K. Gurung, learned appearing for the respondent No. 4/Regional Officer (MoRTH), Guwahati in his argument, has raised similar contentions as was done by the learned AAG for the State respondent as far as the issue of disputed question of facts is concerned and also on the point of an alternate remedy being available to the petitioner. That the petitioner has suppressed the fact that there was an arbitration clause in the Contract agreement, vis-a-vis reference of dispute arising out of the contract to arbitration was also another contention brought forth by the learned DSGI while presenting his argument in favour of the respondent No. 4. Finally, that there was delay and laches on the part of the petitioner in preferring this petition before this Court, therefore, the same ought to be dismissed on this ground too, is also the submission of the learned DSGI.

21. It is also the submission of the learned DSGI that under the contract



there is no provision for price escalation, as such, the amount of ₹1,19,83,919/- (Rupees One Crore, Nineteen Lakh, Eighty-Three Thousand, Nine Hundred Nineteen) only submitted to the respondent No. 3 herein was not received by the respondent No. 4.

22. Therefore, in view of such disputed factual situation, this petition is liable to be dismissed on this ground alone, since the petitioner has an alternate redressal forum in the form of a civil court of competent jurisdiction, submits the learned DSGI.

23. This Court, on consideration of the submission made by the learned counsel for the parties herein, has also looked into the contents of the petition as well as the counter-affidavit filed by the State respondents No. 1, 2 & 3 and also respondent No. 4 respectively. The rejoinder to the said affidavit has also been taken note of.

24. What is apparent is that there was a contract agreement executed between the petitioner and the relevant respondent authorities for construction of the High-Level Bridge across the river Dabua at Gasuapara in KM 187 on NH-62, including approaches in South Garo Hills District of Meghalaya. The petitioner has however stated at para 4 of this petition that the total bill amount raised and submitted to the respondent is ₹ 3,04,62,164/- (Rupees Three Crore, Four Lakh, Sixty-Two Thousand, One Hundred Sixty-Four) only which was not disputed by the respondent department.



25. As have been noticed hereinabove, the learned counsel for the petitioner, in course of argument, have mentioned an amount of ₹ 4,31,000/- (Rupees Four Lakh, Thirty-One Thousand) only, being the total amount for carrying out additional/supplementary work in the year 2017 pertaining to CC wearing coat at Bridge No. 186/8 (High-Level Bridge across the river Dabua at Gasuapara).

26. The petitioner has also stated in his written argument that out of the total bill of ₹ 3,00,36,148/- (Rupees Three Crore, Thirty-Six Lakh, One Hundred Forty-Eight) only ₹ 1,33,88,983/- (Rupees One Crore, Thirty-Three Lakh, Eighty-Eight Thousand, Nine Hundred Eighty-Three) only have been released to the petitioner through running bills. The outstanding amount to be realized by the petitioner comes to ₹ 1,66,47,165/- (Rupees One Crore, Sixty-Six Lakh, Forty-Seven Thousand, One Hundred Sixty-Five) only. However, it is also the argument of the petitioner that there is a cost escalation bill dated 05.01.2015 raised by the petitioner for ₹ 1,19,83,919/-, the total outstanding amount due and payable to the petitioner being ₹ 2,86,31,084/- only.

27. It is the observation of this Court that the detailed claim made by the petitioner is not found in the petition. No mention of the amount of the bill for price escalation has been stated in the petition. As such, this aspect of the matter cannot be countenanced by this Court in the absence of clear and precise pleadings, since the petitioner has advanced argument beyond the pleadings and



has introduced facts which were not found in the petition.

28. Even otherwise, on a wholesome consideration of the facts and circumstances of the case of the parties, there is no doubt that disputed question of facts is involved herein. In this regard, the authority cited by the learned AAG that is, the case of Puna Hinda (supra), para 18 and 24 which is relevant is quoted herein below:

“18. Mr Nataraj also placed reliance on the judgment of this Court reported as Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728 wherein the following was held: (SCC pp. 757-58 & 766, paras 55, 59 & 69)

“55. Law in this aspect has developed through a catena of judgments of this Court and from the reading of these judgments it would follow that in pure contractual matters the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere such remedies are available only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract. Some of the case law to bring home this cardinal principle is taken note of hereinafter.

59. On the basis of these facts, this Court observed that the aforesaid observations of the High Court, (1986 SCC OnLine All 110) relying upon Ramana Dayaram Shetty case, (1979) 3 SCC 489 were not correct. Thus observed the Court, speaking through Ratnavel Pandian, J.: (Ajai Pal Singh case, (1989) 2 SCC 116, SCC pp. 125-26, paras 21-22)

‘21. This finding in our view, is not correct in the light of the facts and circumstances of this case because in Ramana Dayaram Shetty case, (1979) 3 SCC 489, there was no concluded contract as in this case. Even conceding that the BDA has the trappings



of a State or would be comprehended in "other authority" for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the "authority" or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple - Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457, Premji Bhai Parmar v. DDA, (1980) 2 SCC 129 and Divl. Forest Officer v. Bishwanath Tea Co. Ltd. (1981) 3 SCC 238.

69. The position thus summarised in the aforesaid principles has to be understood in the context of discussions that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of



dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.”

“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.”

29. Similarly, the case of Joshi Technologies International Inc.(supra), para 55, 59, 69.2 being relevant is reproduced herein below as:

“55. Law in this aspect has developed through catena of judgments of this Court and from the reading of these judgments it would follow that in pure contractual matters the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere such remedies are



available only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract. Some of the case law to bring home this cardinal principle is taken note of hereinafter.

59. *On the basis of these facts, this Court observed that the aforesaid observations of the High Court relying upon Ramana Dayaram Shetty case, (1979) 3 SCC 489, were not correct. Thus observed the Court, speaking through Ratnavel Pandian. J.: (Ajai Pal Singh case, (1989) 2 SCC 116, SCC pp. 125-26, paras 21-22)*

“21. This finding in our view, is not correct in the light of the facts and circumstances of this case because in Ramana Dayaram Shetty case (1979) 3 SCC 489 there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the 'authority' or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple - Radhakrishna Agarwal v. State of Bihar (1977) 3 SCC 457, Premji Bhai Parmar v. DDA (1980) 2 SCC 129 and Divl. Forest Officer v. Bishwanath Tea Co. Ltd. (1981) 3 SCC 238”

69.2. *Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of*



disputes is to be resorted to through the means of arbitration.”

30. Based on the authorities referred to herein above, the principle has also been adverted to by this Court in the case of Smti. Priyanchi R. Marak (supra), the relevant para being noted herein below as para 37, 38 and 39:

37. Venturing to ignore such a situation replete with disputed question of facts would reduce this Court to a trial court wherein evidence has to be looked into and appreciated, which is not a duty cast upon a constitutional Court, considering the facts and circumstances of this instant case. In this regard, the observations of a Division Bench of this Court in the case of Adarsh Saraswati Mahila Shiksha and Gramin Vikas Samiti v. State of Meghalaya & Ors. in MC(WA) No. 16/2023 in W.A. No. 22/2023, at para 7 of Judgment dated 19.07.2023, is found relevant to the factual situation of this instant case, wherein it was observed as follows:

“7. For the wealth of reasons indicated in the order impugned, the writ court held that the writ petition was liable to be dismissed as not maintainable. Indeed, notwithstanding the wide authority available to a Constitutional Court under Article 226 of the Constitution, there is an element of self-restraint that is exercised. Since writ proceedings are decided on affidavit evidence and on summary procedure, disputed questions of fact which require proof are not entertained. In any event, at the end of the day, the real grievance of the petitioner is that the petitioner has been unfairly treated and has been deprived of the profits that the petitioner was entitled to upon successful completion of the work. Such grievance sounds in money and the relief that the petitioner should pursue should be by way of a suit for damages.”

38. This Court having convinced itself that there appears to be question of disputed facts to be looked into, the relevant authorities cited in this regard may not be off the mark. In the case of Poona Hinda(supra) at para 24 the Hon’ble Supreme Court has held that “...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.”

39. In the case of Joshi Technologies International Inc.(supra) at para 69 of the same, the Hon’ble Supreme Court has observed that though there is no bar to the maintainability of a writ petition in a contractual matter where there are disputed questions of fact or even when monetary claim is raised, however discretion is bestowed upon the High Court to refuse to exercise such jurisdiction, when there are serious disputed questions of fact and money claims arising out of contractual obligations are normally not to be entertained, the fact being that there is proper forum for determination of the parties’ right, for example a civil court of competent jurisdiction.

31. In view of the above, this Court is of the opinion that the grievance of the petitioner can only be remedied by an approach before the civil court of competent jurisdiction. Considering the fact that the proceedings before this Court has travelled a long distance since the year 2023, therefore, provided the petitioner approach such civil court within a period of 60 days from the date of this order, the period spent before this Court is hereby condoned as far as the rigors of the provisions of the Limitation Act is concerned.

32. In the final analysis, this petition is hereby disposed of in the terms hereinabove set out. No costs.

Judge