



GAHC010128482022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4398/2022

MUKTI NATH RAI
S/O LATE SRI RAI, R/O RQAI BAHADUR LANE, P.O. AND P.S.-JORHAT, DIST-
JORHAT, ASSAM, PIN-785001

VERSUS

THE EXECUTIVE DIRECTOR, FOOD CORPORATION OF INDIA AND 8 ORS
ZONAL OFFICE, NORTH EAST, ULUBARI, 6TH FLOOR, G.L. PUBLICATION
BUILDING, GUWAHATI, ASSAM

2:THE DISTRICT MANAGER
FOOD CORPORATION OF INDIA
DISTRICT OFFICE
GUWAHATI

3:THE SENIOR REGIONAL MANAGER
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
ASSAM REGION
ULUBARI
G.S. ROAD
GUWAHATI-781007
ASSAM

4:THE GENERAL MANAGER
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
PALTAN BAZAR
GUWAHATI-781008
ASSAM

5:THE DISTRICT MANAGER
FOOD CORPORATION OF INDIA
DISTRICT OFFICE



BONGAIGAON
ASSAM

6:THE DISTRICT MANAGER
FOOD CORPORATION OF INDIA
DISTRICT OFFICE
JORHAT
ASSAM

7:THE DISTRICT MANAGER
FOOD CORPORATION OF INDIA
DISTRICT OFFICE
KOKRAJHAR
ASSAM

8:THE ASST. GENERAL MANAGER
FOOD CORPORATION OF INDIA
REGIONAL OFFICE
PALTAN BAZAR
GUWAHATI-781008
ASSAM

9:UNION OF INDIA
REPRESENTED BY DEPARTMENT OF FOOD
SUPPLIES AND CONSUMER AFFAIRS
NEW DELH

Advocate for the Petitioner : MR A C BORBORA

Advocate for the Respondent : SC, F C I

BEFORE

HON'BLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 30.08.2022.

Date of judgment : **14.09.2022.**

JUDGMENT & ORDER (CAV)

Heard Mr. A. C. Borbora, learned senior counsel assisted by Mr. M. Smith,
learned counsel appearing for the writ petitioner. I have also heard Mr. P. K. Roy,



learned senior counsel assisted by Ms. A. Chakraborty, learned counsel appearing for the respondents (FCI).

2. The instant writ petition has been filed with a prayer to enforce the legal rights of the petitioner by issuing a direction upon the respondents (FCI authorities) to release the security deposit and the unpaid bills of the petitioner together with interest without any further delay. The facts and circumstances, giving rise to the filing of the writ petition, as projected through the pleadings, are briefly stated herein below.

3. Pursuant to a process of competitive bidding, the writ petitioner was appointed as a transport contractor under the FCI for a period of two years, i.e. during 28.03.1985 to 27.03.1987, in respect of three different routes. The appointment letters and the routes assigned to the petitioner are 1) "Ex-New Bongaigaon Railway Station to FSD Dimapur by Letter dated 28-03-1985", 2) "Ex-Barua Bamungaon to FSD Golaghat by Letter dated 12-12-1984" and 3) Ex- FSD Dergaon to FSD Dimapur by Letter dated 09-08-1985". For the purpose of executing the aforementioned transportation contracts the petitioner had deposited an amount of Rs 1,84,250/- as security deposits with the respondent authorities and started execution of the works. According to the writ petitioner he had transported 44 truck load of rice to the Dimapur godown of the FCI. However, 26 trucks of foodgrains transported by the writ petitioner were not received by the Depot Manager of FCI at Dimapur due to non-availability of godown space. Situated thus, the petitioner had to store the food items in a private godown and thereafter, issue a letter intimating the respondents about

the matter with a request to take possession of the transported goods but to no avail.

The petitioner has alleged that instead of taking delivery of the 26 truck load of rice bags, the respondents had terminated all the three transportation contracts and instituted Money Suit No 20/2007 in the court of Civil Judge (Senior Division) Jorhat for recovery of an amount of Rs 11,88,393 /-from the petitioner and his agent. That apart, the respondents had also lodged a criminal complaint against the petitioner and his agent Akhil Bhowal which was registered and numbered as BGR Case No.209 /1986 u/s 406 of the IPC. After the dismissal of the above proceedings, the petitioner had submitted several representations and also sent a legal Notice to the respondents demanding release of the security deposit and outstanding contractual dues amounting to Rs.3,80,299.98 along with interest but till date the amount has not been released. Hence, this writ petition.

4. The respondent nos.1 to 8 have filed a joint counter-affidavit questioning the maintainability of the writ petition *inter-alia* contending that the petitioner's claim is barred by time and this being a very old case, records pertaining to the transactions were also not available with the department.

5. By referring to the materials available on record, Mr. Borbora, learned senior counsel for the petitioner has submitted that the petitioner did not violate the contract agreement at any point of time so as to forfeit his contractual dues. That apart, after the dismissal of Money Suit No.20/1987 filed by the FCI for recovery of money claimed from the petitioner and on dismissal of the appeal as well as the SLP preferred by the FCI, there was no ground whatsoever for the respondents to sit over



the pending bills of the petitioner. Mr. Borbora has also invited the attention of this Court to the order dated 10.07.1992 passed by the learned Chief Judicial Magistrate, Bongaigaon in connection with BGR Case No.290/1986 to contend that even the criminal proceeding registered against the petitioner under Section 407 of the IPC was dropped by learned Judicial Magistrate on the ground that there was no *prima facie* material to proceed in the matter. Under the circumstances and in view of the categorical admission made in the communication dated 02.04.2019 issued by the respondent No.8 addressed to the respondent No.1 recommending release of security deposit and pending bills of the petitioner, there was no justifiable ground for the respondents to with-hold the amount due and payable to the petitioner.

6. Mr. Borbora has also submitted that the petitioner is suffering from various ailments including the dreaded disease of cancer and therefore, he is in urgent need of money for the purpose of availing medical treatment. As such, a writ of mandamus be issued directing the respondents to release the amount due and payable to the writ petitioner along with interest. In support of his argument for payment of interest, Mr. Borbora has relied upon a decision of the Supreme Court of India rendered in the case of **Union of India and others vs. M/S. Willowood Chemicals Pvt. Ltd. & another** [Civil Appeal Nos.2995-2996 of 2022] to contend that since there is neither any statutory bar nor any clause in the contract agreement prohibiting payment of interest, hence, taking note of the peculiar facts and circumstances of the case, a direction may be issued to the respondents to pay reasonable interest on the unpaid dues of the petitioner.

7. Opposing the submissions advanced by the petitioner's counsel, the learned senior counsel appearing for the respondents Mr. P. K. Roy, has argued that on account of failure on the part of the petitioner to deliver the goods at the FSD Dimapur, the contract had been terminated. Since, the petitioner has not challenged the order of termination of contract which is the basic order, he cannot question the consequential action on the part of the respondents in not releasing the security deposit and the outstanding bills. It is also the submission of Mr. Roy that since it is a very old matter and the petitioner has failed to pursue his claim by making a counter-claim in the civil suit seeking a decree for recovery of the amount claimed in this petition, there is no scope for this Court to grant relief to the petitioner in exercise of writ jurisdiction.

8. Mr. Roy has also vociferously opposed the prayer for grant of interest on the outstanding dues by contending that there is no such provision in the contract agreement for payment of interest. Moreover, the petitioner has also failed to offer proper explanation for the delay in approaching this Court. In support of his above arguments Mr. Roy has relied upon the following decisions:-

- 1) **State of Madhya Pradesh vs. Bhailal Bhai and others [(1964) 6 SCR 261].**
- 2) **Sethi Auto Service Station and others vs. Delhi Development Authority and others [(2009) 1 SCC 180].**
- 3) **Edukanti Kistamma (Dead) thr. Lrs. and others vs. S. Venkatareddy (Dead) thr. Lrs. and others [(2009)1 SCC 756].**

9. I have considered the submissions advanced by the learned counsel for both



the parties and have also gone through the materials available on record.

10. The basic facts of the case are more or less admitted. It is the admitted position of fact that pursuant to a tender process the petitioner was awarded the contract by the FCI for transportation of foodgrains for a period of two years. In execution of the aforesaid contracts, the petitioner had transported 44 trucks filled with bags of rice to Dimapur FSD out of which, 26 trucks loaded with rice valued at Rs.11,88,393/- could not be delivered by the petitioner at the FSD Godown at Dimapur. It is also the admitted position of fact that on 23.02.1987 the FCI had filed Money Suit No.20/1987 before the court of Civil Judge (Senior Division) at Jorhat praying for a decree for recovery of an amount of Rs.11,88,393/- for alleged breach of the transportation contract by the writ petitioner due to his failure to deliver the 26 trucks of rice bags at the FCI godown at Dimapur. However, the suit was dismissed by the learned Civil Judge by the judgment and order dated 11.08.1999. RFA No.102/1999 preferred by the FCI before this Court against the judgment dated 11.08.1999 was dismissed for non-prosecution, on 12.09.2006 and thereafter, restoration petition filed by the FCI with a prayer to condone the delay of 1061 days was also dismissed by order dated 09.02.2011 passed by this Court. It appears that being aggrieved by the order dated 09-02-2011, the FCI had preferred a Special Leave Petition before the Supreme Court which was also dismissed. Although there is no document brought on record by either side to indicate the date of dismissal of the SLP, yet, it appears that SLP No.18820/2011 preferred by the FCI against the order dated 09.02.2011 passed by this Court in Misc. Case No.2469/2009 arising out of RFA No.102/1999 was dismissed by the Hon'ble Supreme Court on 29.07.2011.



11. It also appears from the materials on record that based on a complaint lodged by the FCI, BGR Case No.209/1986 was registered against the petitioner and his agent under Section 407 of the IPC. However, at the stage of framing of charge, the learned Chief Judicial Magistrate, Bongaigaon had passed an order dated 10.07.1992 discharging the petitioner with an observation that there was no material to proceed against him under Section 407 of the IPC.

12. I also find from the materials available on record that on 09-12-2008, the writ petitioner had submitted a representation before the respondent No 3 requesting for release of his contractual dues with interest amounting to Rs 1,50,39,039.65/-. Along with the said representation, the petitioner had submitted a statement of claim indicating that a sum of Rs 3,80,299.98 being the principal amount was due and payable to him. Thereafter, the petitioner had submitted another representation dated 09-04-2013 before the respondent No. 3 renewing his claim. On 25-02-2014, the Assistant General Manager (Cont) i.e. the respondent No.8 had issued a letter to the petitioner asking him to furnish relevant records lying with him pertaining to the contract with the FCI for processing the matter for release of his dues lying with the FCI. In the letter dated 25-02-2014, it was specifically mentioned that the same was issued with the approval of the Competent Authority. The petitioner has categorically averred in paragraph 14 of the writ petition that in terms of the letter dated 25-02-2014, he had submitted all relevant documents in respect of the contracts in question. The said statement made in the writ petition has not been denied or disputed by the respondents in the counter-affidavit.

13. It also appears from the materials brought on record that on 09.08.2016 the petitioner had submitted an appeal before the Chairman, Grievance Redressal Cell (GRC), Zonal Office, North East, with a prayer for release of the security deposit and unpaid bills along with interest totaling to Rs.4 Crores 6 Lakhs. It appears from the documents available on record that the petitioner had claimed interest on the unpaid dues at different rates varying between 14.25% to 17.25%. The said representation was followed by a Legal Notice sent on behalf of the petitioner on 16.10.2017 demanding release of payment of a sum of Rs.4 Crores 6 Lakhs being the security deposit, outstanding bills as well as interest accruing on the said amount. It appears that on receipt of the aforesaid communications from the petitioner, the matter was examined by the respondents whereafter, the Assistant General Manager (Cont.) i.e. the respondent No.8 acting on behalf of the General Manager (Region) had addressed a letter dated 02.04.2019 to the respondent No.1 *inter-alia* recommending the release of security deposit and pending bills of the contractor but without interest. In the said letter, it has been mentioned that the security deposit pertaining to the contract was Rs.87,000/-. However, it has also been mentioned that in so far as the pending bills are concerned, no details was available on record. The operative part of the letter dated 02.04.2019 appearing in paragraph 9 is reproduced herein below for ready reference :-

“9. Zonal Grievance Redressal Cell has directed GM(R) Assam for issuance of Speaking Order in respect of the said case and accordingly the same is being prepared and the same is submitted to ZO GRC for final settlement of the case.



In light of the above stated facts and direction of Court, it is recommended to approve the release of the Security Deposits and the Pending Bills of the said Contractor without any interest subject to credit availability/availability of necessary reconciliation to meet the ends of justice & subject to approval of ZO (NE)."

14. From the letter dated 02-04-2019 issued by the respondent No. 8 what is apparent is the fact that there is not only a clear acknowledgement of the contractual dues of the petitioner but there is also a recommendation for releasing the payments. Although the amount of security deposit has been indicated as Rs 87,000/- only, yet, it is evident from the communication dated 0204-2019 that the same relates to only one of the contracts i.e. "Ex- New Bongaigaon to FSD Dimapur" awarded vide order dated 28-03-1985. The objection, if any, was only on account of claim for payment of interest which was declined without, however, assigning any proper reason. From the tenor of the stand taken by the respondents it appears that despite the judgment dated 11.08.1999 passed by the civil court, they were still treating the petitioner as a defaulter in execution of the transportation contract.

15. In the above context, it would be pertinent to note herein that in the judgment dated 11.08.1999 passed by the learned civil court in Money Suit No.20/1987, finding of facts have been recorded to the effect that the District Manager, Dimapur had received only 18 trucks loaded with foodgrains from the petitioner but he had refused to receive the balance 26 trucks loaded with rice on the ground of lack of storage space. The petitioner (contractor) had made repeated requests to the District Manager, Dimapur to receive the 26 trucks loaded with rice but in vain. Consequently, the petitioner had to arrange for a private godown at his own

expenses so as to save the foodgrains from being damaged. The petitioner had also written a letter to the Senior Manager, FCI, Guwahati dated 04.09.1985 intimating him about the matter along with a request to do the needful to save the foodgrains. Accordingly, the Regional Manager had also sent a telegram dated 03.05.1986 to the petitioner with a direction to deliver the goods to the Manager, FCI, Dimapur. However, when the petitioner showed the telegram to the District Manager, FCI, Dimapur and requested him to take delivery of the foodgrains, he had refused to do so by stating that he was not obliged to comply with the direction of the Regional Manager, Guwahati without the direction from the Regional Manager, Shillong. The petitioner had then sent a letter dated 20.05.1986 addressed to the Senior Manager, Guwahati informing him about the matter which was also acknowledged by the Senior Regional Manager by his letter dated 28.08.1986. Taking note of the aforesaid materials brought on record, the learned trial court had observed that the defendant (i.e. the writ petitioner) could not deliver the foodgrains at the FCI Dimapur Godown due to refusal by the District Manager, Dimapur to receive the same on the ground of non-availability of space and also for non-receipt of any direction from the Regional Manager, Shillong under whom he was working. Accordingly, the learned Civil Judge had decided the issue Nos.6, 7 and 8 against the respondents/plaintiffs (FCI) by holding that there was no negligence on the part of the contractor and therefore, it cannot be said that the contractor i.e. the writ petitioner had violated the terms and conditions of the contract. On the basis of such findings and conclusions the Money Suit was dismissed.

16. The judgment and order dated 11.08.1999 was not interfered with by this Court

as well as the Hon'ble Supreme Court. Therefore, the aforesaid judgment of the Civil Court has attained finality in the eye of law. As such, it would have a binding effect qua the parties in the Money Suit. In view of the verdict of the Civil Court on Money Suit No 20/2007 instituted by the FCI, it was evident that by necessary implication, the termination of the transportation contracts entered into by the FCI with the petitioner on the ground of non-delivery of 26 truck load of rice at the FSD Dimapur stood invalidated. In other words, the learned Civil Court had rejected the plea of the FCI that the petitioner had acted in breach of the contract agreement by failing to deliver the rice bags at the Dimapur godown of the FCI. Rather, the Civil Court has held that it was the Depot Manager of FCI who had failed to receive the items when sought to be delivered by the petitioner. Under the circumstance, it was not open for the respondents to withhold the contractual dues of the writ petitioner on the ground of breach of contract.

17. It may be correct to say that the petitioner had the opportunity to file a counter-claim in the Money Suit for recovery of his contractual dues which he had failed to do. However, such failure on the part of the petitioner by itself would not precluded him from agitating his grievance before the appropriate forum at a subsequent stage if there is a proper cause of action to do so. The use of the expression "may" in Order VIII Rule 6-A of the Code of Civil Procedure makes it amply clear that filing of a counter-claim by the defendant in a suit was optional. Therefore, I am unable to agree with the submission of Mr. Roy, learned senior counsel for the respondent Nos.1 to 8, that the claim of the petitioner would stand extinguished under the law merely on account of his failure to lodge a counter-claim in Money Suit

No 20/1987.

18. In so far as the plea of the petitioner's claim being barred under the law of Limitations is concerned, this court finds that the core issue arising for decision of the Civil Court in Money Suit No 20/1987 was as to whether the writ petitioner was liable for breach of contract due to non-delivery of the rice bags at the Dimapur FCI godwon. Until such time the aforesaid issue was decided by the Civil Court, there was no scope for the petitioner to assert his claim for payment of the out –standing contractual dues. After the dismissal of suit as well as the appeals preferred by the FCI, the petitioner had not only submitted representations dated 09-04-2013 but had also served a legal Notice on the respondents on 16-10-2017. Not only that, the petitioner had also submitted an appeal before the Chairman of the Grievance Redressal Cell of the FCI. Thereafter, the respondent No. 8 had issued the letter dated 02-04-2019 virtually acknowledging the debt of the petitioner. A copy of the letter dated 02-04-2019 was also marked to the petitioner. The above facts go to show that the petitioner was not only pursuing the matter by making repeated representations before the authorities but even the respondents had conveyed to him that they were processing his claim for release of the dues but without payment of interest. Be that as it may, law is fairly well settled that the writ jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extra-ordinary, equitable and discretionary in nature and can be invoked for enforcement of fundamental and legal rights of the citizens. By various judicial pronouncements it has been held that Article 226 of the Constitution does not admit of any limitations on the powers of the High Court. The jurisdiction of the High Court under Article 226 is plenary and can be

exercised for doing complete justice to the parties after taking note of the facts and circumstances of the case.

19. In the case of **Ajay Hasia vs Kahlid Mujib Sehravardi** reported in **(1981)1 SCC 722** a Constitution Bench of the Supreme Court has held that any arbitrary or unreasonable action of an ' authority ' under Art 12 of the Constitution would be violative of fundamental rights guaranteed under Article 14 of the Constitution.

20. Again, in the case of **Kumari Shreelekha Vidarhi and others vs State of U.P. and others** reported in **(1991) 1 SCC 212** the Apex Court has held that every arbitrary action of the State would be open to challenge on the ground of violation of Article 14.

21. In the case of **Union of India and another vs. S. B. Vohra and others** reported in **(2004) 2 SCC 150** the Supreme Court has discussed the principles of judicial review and has observed that judicial review is considered to be a basic feature of the Constitution. It was held that the High Court, in exercise of its power of judicial review would zealously guard the human rights, fundamental rights and legitimate expectations of the citizens. In that case, it was further observed that although it was not possible to lay down standards exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not, it will depend on the discretion of the Court as well as the law which governs the field.

22. In the case of **Smt. Sudama Devi vs. Commissioner and others** reported in **(1983)2 SCC 1** the Supreme Court has held that there is no period of limitation prescribed by any law for filing a writ petition under Article 226 of the Constitution. However, in every case it would have to be decided on the facts and circumstances

of the case as to whether, the petitioner is guilty of laches but that would have to be done without taking into account any specific period as period of limitation. The Supreme Court has also observed that there may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner.

23. In another decision rendered in the case of **Bangalore City Cooperative Housing Society Ltd. vs. State of Karnataka and others** reported in **2012 (3) Supreme 209** a similar view has been expressed by the Supreme Court by holding that there is no period of limitation for filing petitions under Articles 32 and 226 of the Constitution. However, the petitioner should approach the court without loss of time and if there is delay then cogent explanation should be offered for the same.

24. From the aforesaid decisions of the Supreme Court, what crystallizes is that there is no strict application of the law of limitation in case of a writ petition filed under Article 226 of the Constitution. However, in case of delay or laches on the part of the petitioner, the Writ Court will have to examine the matter on the basis of peculiar facts and circumstances of the case before invoking a discretionary jurisdiction.

25. Coming to the facts of this case, there is no wrangle at the Bar that the Food Corporation of India (FCI) was established under the Food Corporation of India Act, 1964 and therefore, the Government of India has deep and pervasive control over the FCI. As such, FCI is an 'authority' within the meaning of Article 12 of the Constitution of India. It is also not in dispute that the petitioner had in fact executed



the work but his contractual dues had not been cleared till date. Even assuming that the respondents had some valid ground to withhold the payments due to the petitioner during the pendency of the Money Suit, yet, after the dismissal of the suit, the said ground had also become non-existent. In any view of the matter, after the termination of the Criminal Proceeding on 10-07-1992 and dismissal of the SLP on 29-07-2011, there was no legitimate ground, what so ever, available to the respondents to withhold the payments due to the petitioner. Notwithstanding the same, the contractual dues of the petitioner were not released. Since there is specific finding of fact by the Civil Court, as referred to above, that the petitioner had in fact executed the contract and delivered the food grains at the FSD at Dimapur but it was the District Manager of FCI at Dimapur who had refused to receive the goods contained in those 26 trucks, it cannot be said that the writ petitioner is guilty of breach of contract. Situated thus, I am of the unhesitant opinion that this is not a case where there is a bona fide contractual dispute between the FCI and the petitioner. Rather, it is a clear case of arbitrary and high handed action on the part of the respondents wherein they have illegally withheld the payments due to the petitioner for the work executed by him. The respondent Nos.1 to 8 have acted in a highly arbitrary and illegal manner in refusing to release the outstanding contractual dues of the petitioner which he was legitimately entitled to receive from the FCI authorities against the contractual works executed by him even after acknowledging his claim. In view of the above, violation of petitioner's fundamental right under Article 14 of the Constitution is self evident from the circumstances of the case.



26. In the writ petition the petitioner has categorically stated that the amount of unpaid dues along with security deposit stood at Rs.3,80,200/- at the relevant point of time. The aforesaid amount is also reflected in the statement of claim annexed to the representation dated 09.12.2008 submitted by the petitioner before the Senior Regional Manager seeking release of his outstanding dues. There is no specific denial of the said assertion of the petitioner in the counter-affidavit filed on behalf of the respondent Nos.1 to 8. As a matter of fact despite the order dated 24.08.2022 passed in this case indicating that the writ petition will be taken up for expeditious disposal, the respondents have not replied to the petitioner's claim on merit in the counter affidavit filed by them. The writ petition was also taken up for final disposal with the consent of both the sides. In view of the above, this court is of the considered opinion that the amount of Rs.3,80,200/- claimed by the petitioner as the principal amount can be treated to be the admitted amount.

27. This court has also taken note of the fact that the petitioner has been suffering from some very serious ailments as a result of which he is in urgent need of money for medical treatment. Such assertion of the petitioner has also not been disputed by the respondents. Taking note of the peculiar facts of the case, this court is of the view that it is not an ordinary case of money claim but a clear case where the petitioner has been subjected to undue harassment and arbitrary treatment at the hands of the authorities thereby denying his legitimate expectation. Under the circumstances, if the respondent Nos.1 to 8 are allowed to with-hold the contractual dues of the petitioner any further, then such an action of the respondents would not only be

confiscatory in nature but the same would also amount to un-just enrichment of the respondents at the cost of the petitioner. Therefore, this court is of the opinion that a writ of mandamus directing the respondents to release the principal amount of Rs.3,80,200/- would lie in the facts of this case.

28. Coming to the next issue raised in this writ petition regarding award of interest on the unpaid bills of the petitioner, the learned counsel for the respondents has failed to draw the attention of this court to any condition in the contract which prohibits award of interest. As has already been observed, the facts of this case are very special and therefore, the relief for award of interest made by the petitioner has to be considered in the factual back drop of the case.

29. Section 3 of The Interest Act, 1978 confers discretionary power on the court to award interest in a proceeding for recovery of any debt, at a rate not exceeding the current rate of interest. Section 34 of the Code of Civil Procedure also confers discretionary jurisdiction on the Civil Court to award interest on the principal sum in a decree for payment of money at such rate as the court may deem reasonable. Taking note of the aforesaid provisions of law, the Supreme Court, in a decision rendered in the case of **Tahazhathe Purayil Sarabi vs. Union of India** reported in **(2009)7 SCC 372** has observed as follows :-

“17. The Courts are consistent in their view that normally when a money decree is passed, it is most essential that interest be granted for the period during which the money was due, but could not be utilized by the person in whose favour an order of recovery of money was passed. As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilize the money

due, which has been, in fact, utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed. The only question to be decided is since when is such interest payable on such a decree. Though, there are two divergent views, one indicating that interest is payable from the date when claim for the principal sum is made, namely, the date of institution of the proceedings till the recovery of the amount, the other view is that such interest is payable only when a determination is made and order is passed for recovery of the dues. However, the more consistent view has been the former and in rare cases interest has been awarded for periods even prior to the institution of the proceedings for recovery of the dues, where the same is provided for the terms of the agreement entered into between the parties or where the same is permissible by statute."

30. In the case of **M/S. Willowood Chemicals Pvt. Ltd. and another** (supra) relied upon by Mr. Borbora the Hon'ble Supreme Court had taken note of the divergent views expressed in the case of **Union of India and others vs. Orient Enterprise and another** reported in **(1998) 3 SCC 501** observing that the relief of payment of interest on delayed refund would not be maintainable and also the view expressed in the case of **Godavari Sugar Mills Ltd. vs. State of Maharashtra & others** reported in **(2011) 2 SCC 439** wherein it was held that relief for payment of interest made in a writ petition will be maintainable. The Supreme Court has expounded the law by making the following observations:-

*"18. Coming back to the present cases, the relevant provision has prescribed rate of interest at 6 per cent where the case for refund is governed by the principal provision of Section 56 of the CGST Act. As has been clarified by this Court in **Modi Industries Ltd. and Godavari Sugar Mills Ltd.** wherever a statute*

specifies or regulates the interest, the interest will be payable in terms of the provisions of the statute. Wherever a statute, on the other hand, is silent about the rate of interest and there is no express bar for payment of interest, any delay in paying the compensation or the amounts due, would attract award of interest at a reasonable rate on equitable grounds. It is precisely for this reason that paragraph 9 of the decision in **Godavari Sugar Mills Ltd.** accepted the submission made by the learned counsel for the respondents and confined the rate of interest to the prescription made in the statute. The award of interest at a rate in excess of what was prescribed by the statute was only for a period beyond 20 years where the matter was not strictly covered by the statute and as such it would be in the realm of discretion of the Court. It must also be noted here that the inordinate delay of up to 17 years in making refunds was a special circumstance when this Court was persuaded to accept grant of interest at the rate of 9 per cent per annum in **Sandvik Asia Ltd.** Even while doing so, the observations made by this Court in Paragraph 48 of the decision are quite clear that "the award of interest in refund and amount must be as per the statutory provisions of law and whenever a specific provision has been made under the statute such a provision has to govern the field." The subsequent decision of the bench of three Judges in **Gujarat Fluoro Chemicals** noticed that the grant of interest at the rate of 9 per cent was in the facts of the case in **Sandvik Asia Ltd.**"

31. Coming to the facts of this case, it is apparent that after 29.07.2011, except for raising some technical plea on the question of maintainability of the writ petition, no justifiable ground has been shown by the respondents for not releasing the payments due to the petitioner. Although the respondent's counsel has submitted that the relevant records had been misplaced and hence the delay, yet, I find that all documents were furnished by the petitioner after the receipt of the letter dated 25-



02-2014 issued by the respondent No. 8. There is, however, no explanation as to why the payments could not be processed based on such documents and despite the letter dated 02-04-2019. Therefore, it is evident that there has been deliberate and unexplained delay on the part of the respondents in processing the payments due to the petitioner as a result of which, the writ petitioner has been made to suffer. If that be so, there cannot be any doubt or dispute about that fact that the petitioner would be entitled to some compensation from the respondents Nos.1 to 8 in the form of interest. The only question would be the date from which and the rate at which such interest is to be awarded.

32. After a careful examination of the materials available on record, this court finds that the work was executed by the petitioner nearly 35 years back and therefore, this is undoubtedly a very old matter. However, it is also evident from the materials available on record that the FCI has initiated both civil and criminal proceedings against the petitioner in the form of Money Suit No.20/1987 as well as BGR Case No.209/1986. In both these proceedings the FCI took a plea that by failing to deliver the rice bags the petitioner was liable to be proceeded against for breach of contract. Therefore, during the pendency of these proceedings, save and except filing a counter-claim in Money Suit No.20/1987 there was practically no scope for the petitioner for instituting any other proceeding before any forum for recovery of his contractual dues.

33. Be that as it may, after the dismissal of the SLP on 09.02.2011 the proceedings initiated by the FCI against the writ petitioner pertaining to the transportation contracts had evidently come to an end. Therefore, there was no hindrance on the



part of the petitioner to institute any legal proceeding against the FCI for recovery of his contractual dues. However, it appears from the materials available on record that save and except submitting some representations and appeal before the FCI authorities, the writ petitioner did not take any step for institution of any legal proceeding until 24.06.2022, when the instant writ petition was filed. It is, thus, evident that while there was enormous delay on the part of the respondents in processing the release of payment in favour of the petitioner, the inaction on the part of the petitioner had also contributed to the delay. There is not even an iota of explanation in the writ petition as to the reason why the petitioner could not have approached this Court at an earlier date. Under ordinary circumstances, this Court would decline relief to the writ petitioner only on the ground of delay. However, considering the fact that the petitioner is a cancer patient and in view of the submission made by the learned senior counsel for the petitioner that his client had been practically confined at home for over a decade due to various ailments suffered by him, this Court is not inclined to non-suit the petitioner merely on the ground of delay. The petitioner cannot, however, claim benefit in terms of payment of interest for the period during which he had failed to pursue appropriate legal remedy for realization of his contractual dues.

34. I find from the record that it was only on 16.10.2017 when the petitioner had served a legal notice upon the respondents demanding release of his claim. It also appears that pursuant to the legal notice his claim was examined by the authorities and a recommendation for release of the payment was made on 02.04.2019. By the communication dated 02.04.2019 the petitioner's claim for award of interest was



rejected. But the communication dated 02.04.2019, to the extent it rejects the claim for payment of interest has not been assailed in this writ petition. Having regard to the peculiar facts and circumstances of the case, this Court is, therefore, of the opinion that the petitioner cannot claim interest for any period prior to 02.04.2019 i.e. the date before which his claim for release of the principal amount was acknowledged by the departmental authorities. However, having acknowledged the claim of the petitioner and having recommended release of the payment, the respondents did not have any justifiable ground to withhold the payment due to the writ petitioner. Section 34 of the Code of Civil Procedure also empowers the court to award interest on the principal sum from the date of the suit in addition to interest for any period prior to institution of the suit. This Court is, therefore, of the opinion that the writ petitioner will be entitled to claim interest on the unpaid due with effect from 02.04.2019 till realization.

35. In so far as the argument of Mr. Roy, learned senior counsel for the respondents, to the effect that the petitioner cannot claim any benefit out of the letter dated 02.04.2019, the same being an inter-departmental communication, I am unable to accept the said submission of Mr. Roy simply on account of the fact that the letter dated 02.04.2019 itself mentions that the same was issued as per direction of the Zonal Grievance Redressal Cell for issuing a speaking order for settlement of the claim of the petitioner and the copy of the said communication was also marked to the writ petitioner.

36. Since this Court has already held that this is not a case involving a contractual dispute simplicitor but arbitrary inaction on the part of the respondents in their failure



to release the payment of the writ petitioner, hence, the argument advanced by the learned senior counsel for the respondents that the petitioner having failed to challenge the consequential order after termination of the contract would be debarred from seeking any relief, also stands rejected. In view of the above, the decisions relied upon by Mr. P. K. Roy, in the opinion of this Court, would not have any bearing in the facts and circumstances of the present case.

37. It is trite law that award of interest in a writ petition comes within the ambit of discretionary jurisdiction of the Writ Court. Having regard to the special facts and circumstances of the case and balancing the equities, this Court is of the opinion that although the claim of the petitioner is a very old one, yet, the prayer for award of interest made by the petitioner can be considered only with effect from the date on which his claim was acknowledged by the respondents i.e. 02.04.2019. That apart, this Court is also of the opinion that ends of justice would be met if interest at the rate of 9% per annum is directed to be paid on the unpaid dues of the petitioner calculated from 02.04.2019 till the date of realization of the amount.

38. In view of the above, it is hereby directed that the respondent Nos.1 to 8 will ensure that the principal amount and the security deposit of the writ petitioner amounting to Rs.3,80,200/- (Rupees Three Lakhs Eighty Thousand Two Hundred only) be released within a period of 30 days from the date of receipt of a certified copy of this order along with interest calculated at the rate of 9% per annum with effect from 02.04.2019 till the date of realization. It is made clear that if the amount is not released within 30 days from the date of receipt of a certified copy of this order, then in addition to other consequences that may ensue on account of violation of this



Court's order, the respondents shall also have to pay additional interest calculated at the rate of 12% per annum on the unpaid dues from the date of default of this order till realization.

39. This Court is also of the opinion that due to the delay and inaction on the part of the respondents in releasing his contractual dues the petitioner has been made to suffer harassment and mental agony. As such, the petitioner would be entitled to be suitably compensated for the said purpose as well.

40. This writ petition is, therefore, allowed to the extent indicated above with a cost of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the respondents to the writ petitioner along with the principal amount, as directed above.

This writ petition stands disposed of accordingly.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant