



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 444 of 2022

Reserved Date: 17.06.2026

Pronouncement Date: 14.09.2026

Shri. Upendra Nath Saha,
S/o (L) Shri. Kali Prasanna Saha,
R/o. Fancy Valley, P.O. & P.S. Tura,
West Garo Hills, Meghalaya-794001.

..... **Petitioner**

- Vs-

1. State of Meghalaya through its Chief Secretary,
Government Meghalaya.
2. Chief Engineer, P.W.D. (Roads),
Public Works Department (Roads),
Government of Meghalaya.
3. Executive Engineer, P.W.D. (Roads),
Baghmara NH Division, Baghmara,
South Garo Hills, Meghalaya
4. Chief Engineer, National Highway (NH),
Public Works Department (Roads),
Meghalaya, Shillong.
**[Impleaded as per Court's
order dated 09.05.2023 passed in
M.C. [WP(C)] No. 34 of 2023].**
5. The Regional Officer,
Ministry of Roads,
Transport & Highways,
Government of India, Guwahati, Assam
**[Impleaded as per Court's
order dated 06.07.2023 passed in
M.C. [WP(C)] No. 143 of 2023]**

..... **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 1-4. Dr. N. Mozika, DSGI with Ms. K. Gurung, Adv. for R 5.

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 2008, a tender was floated for construction of RCC Bridge No. 166/5 (Balance Work) including Bridge No. 166/4 (within approach) on the NH-62 in South Garo Hills District. The petitioner having participated in the said bidding process, he was accordingly awarded the contract vide Final Work Order No. PW/TB/BR/46/2005/Pt/10 dated 24.07.2008, the tender value of the work being ₹ 4,87,30,500/- (Rupees Four Crore, Eighty-Seven Lakh, Thirty Thousand Five Hundred) only. Then, after completing the work in the year 2013, the



petitioner raised the total bill of ₹ 4,08,30,668/- (Rupees Four Crore, Eight Lakh, Thirty Thousand, Six Hundred and Sixty-Eight) only.

3. 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 and thereafter, he visited the office of the PWD, Shillong, making verbal request for the said bills to be paid. However, since nothing was forthcoming from the part of the department, the petitioner then sends written requests to the Executive Engineer, PWD, (Roads), Baghmara NH Division through several letters dated 25.02.2014 and others.

4. The department having failed to fulfil to settle the said outstanding bills amounting to ₹ 4,08,30,668/-, the petitioner was compelled to cause issuance of a Legal Notice dated 23.04.2021, calling upon the department to pay the said bills together with interest @ 18% p.a. within 15 days from the date of receipt of the said Legal Notice.

5. In spite of a number of letters sent to the department and the Legal Notice dated 23.04.2021 issued, the said bills have not been cleared till the time of filing of this petition, such action 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.



6. The submission of the learned counsel for the petitioner Mr. D. Sahu, apart from reiterating the above facts, have also mentioned the revised cost estimate of the project of ₹ 7,54,53,000/- (Rupees Seven Crore, Fifty-Four Lakh, Fifty-Three Thousand) only, issued by the Chief Engineer (NH) PWD (Roads) vide letter No. PW/TB/BR/46/2005/18 dated 18.05.2011 said to be based on the guidelines issued by the Ministry of Road Transport and Highways dated 04.11.2011. Another, modified cost estimate for sanction of ₹ 7,96,84,106/- (Rupees Seven Crore, Ninety-Six Lakh, Eighty-Four Thousand One Hundred Six) only was issued by the Chief Engineer (NH) PWD (Roads) vide letter No. PW/TB/BR/46/2005/24 dated 18.03.2017.

7. The learned counsel has also submitted that the petitioner has executed the whole work Contract in the year 2013 within the time span as extended by the respondent from time to time and the project was handed over to the respondent No. 3 in June, 2013. However, no Completion Certificate has been issued pending sanction of the Revised Cost Estimate and preparation of the Final Bill by the respondents.

8. The learned counsel has further submitted that in the meantime, the concerned respondent has issued six RA (Running) bills, the total value of which comes to ₹ 4,38,47,396/- (Rupees Four Crore, Thirty Eight Lakh, Forty Seven Thousand Three Hundred Ninety Six) only, the payment released however, was ₹ 3,96,99,089/- (Rupees Three Crore, Ninety Six Lakh, Ninety Nine Thousand



and Eight Nine) only, since ₹ 34,62,097/- (Rupees Thirty Four Lakh, Sixty Two Thousand and Ninety Seven) only has been deducted as Agency Charges.

9. The learned counsel has also submitted that the petitioner is entitled to receive the following outstanding dues from the respondent as under:

(a) <i>Differential Amount withhold on Final Bill- CC-VI</i>	<i>Rs. 74,51,556/-</i>
<i>Cost of escalation Bill up to Dec, 2011 (Upto RA Bill-VI)</i>	<i>Rs. 71,25,845/-</i>
(b) <i>Cost of escalation Bill up to June, 2013</i>	<i>Rs. 67,70,887/-</i>
(c) <i>8% Security deposit deducted from/ running Bill</i>	<i>Rs. 35,07,790/-</i>
(d) <i>2% Earnest Money retained by the respondents</i>	<i>Rs. 9,74,610/-</i>
(e) <i>Final Bill (Yet to be prepared by the respondents) (considering revised estimate upto date) *[Rs. 7,54,53,000 - Rs. 5,21,88,723]</i>	<i>* Rs. <u>2,32,64,277/-</u></i>
<u>Total amount due to be received from the respondents Rs. 4,90,94,964/-</u>	

10. 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.

11. 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.

12. 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.

13. 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.



14. Mr. N.D. Chullai, learned AAG assisted by Ms. R. Colney, learned GA appearing for the State respondents No. 1-4, in his response has submitted that admittedly, the work for reconstruction of Bridge No 165/5 (Balance Work) including Bridge No. 166/4 (within approach) is a project sanctioned by the Ministry of Road Transport and Highways (MoRTH), Government of India.

15. 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. The dispute involves interpretation of contractual clauses, disputed question of facts relating to quantities executed, variation beyond BOQ quantities, entitlement to escalation claims and delay in execution, such facts required to be proved through evidence and examination of contractual records, measurement books, bills and approval etc., the same which could not be proved or decided in a proceeding under Article 226 of the Constitution.

16. The next contention of the learned AAG is with regard to the fact that though, in the contract agreement, there is an arbitration clause that is, Clause 25.3 of the Contract 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.

17. It is also reiterated that as far as the completion of the contract work



is concerned, the period stipulated was 24 months from the date of the award, being 24.07.2008. Therefore, the completion date was 24.07.2010, however, the petitioner could complete the work only on 30.06.2013, a delay of more than 3 years being incurred. The present writ petition was filed only in the year 2022, almost 9 years from the date of completion of the work for which no explanation was ever furnished by the petitioner, as such, for the inordinate delay, the learned AAG submits that this petition is liable to be dismissed at the outset.

18. In support of the case of the State respondent, the learned AAG has referred to the following authorities: -

- i) Union of India & Ors. v. Puna Hinda, (2021) 10 SCC 690, para 18 and 24;**
- ii) Joshi Technologies International INC. v. Union of India and Ors. (2015) 7 SCC 728, para 57, 59, 69.2;**
- iii) State of Maharashtra v. Digambar, (1995) 4 SCC 683, para 14;**
- iv) Judgment and order dated 26.04.2024 in WP(C) No. 279 of 2021, Priyanchi R. Marak v. State of Meghalaya and Ors, para 37, 38, 39 and 40; and**
- v) Judgement and Order dated 14.06.2024 in W.A. No. 20 of 2024, Priyanchi R. Marak v. State of Meghalaya and Ors.**



19. Dr. N. Mozika, learned DSGI assisted by Ms. K. Gurung, learned counsel appearing for the respondent No. 5/MoRTH 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-à-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. 5. Finally, that there was delay and laches on the part of the petitioner in preferring this petition before this Court, therefore, the learned DSGI submits that the same ought to be dismissed on this ground too.

20. On the factual aspect of the matter, the learned DSGI has submitted that admittedly, the work for reconstruction of the RCC Bridge No. 166/5(Balance work) including Bridge No. 166/4 (within approach) was secured by the petitioner through the bidding process for the Tender Value of ₹ 4,87,30,500/- (Rupees Four Crore, Eighty-Seven Lakh, Thirty Thousand Five Hundred) with a timeline of 24 months for completion. The work was however completed only on 30.06.2013, after a delay of more than 3 years.

21. Again, the learned DSGI has further submitted that as per the



provisions of the Contract Agreement, payment for an amount of ₹ 4,47,37,169/- (Rupees Four Crore, Forty-seven Lakh, Thirty-Seven Thousand One Hundred Sixty-Nine) only was made to the petitioner through various Running Account Bills. An amount of ₹ 74,51,556/- (Rupees Seventy-Four Lakh, Fifty-One Thousand Five Hundred Fifty-Six) only was withheld from the 6th Running Account Bill after restricting the total quantity as per the Contract Agreement.

22. On the submission of the bills by the petitioner to the respondent No. 3 for price escalation amounting to ₹ 71,25,845/- (Rupees Seventy One Lakh, Twenty Five Thousand Eight Hundred Forty Five) and ₹ 67,70,887/- (Rupees Sixty Seven Lakh, Seventy Thousand Eight Hundred Eighty Seven) only, the learned DSGI has reiterated that as per the sanction letter dated 30.03.2007, there is no provision permitting price escalation, as such, the petitioner has no enforceable right to claim the same for the said amount raised in this regard.

23. The learned DSGI has maintained that the respondent MoRTH has sanctioned the project based on the DPR submitted by the implementing agencies. Thereafter, work is put to tender depending upon the civil construction cost of the project. In this regard, it is the responsibility of the respondents No. 2 and 3 to take advance action to ascertain the requirement of items of work to be executed for the project in order to obtain prior approval from the MoRTH. However, in this instant case, the bill for price escalation was not received by the MoRTH, which should have been done so by the respondent No. 3 who then



has to submit the bill to the respondent No. 4 after which the amount can be sanction provided it is within the tendered Bills of Quantities (BOQ). In the instant case, admittedly the quantity exceeded the BOQ for which an amount of ₹74,51,556/- (Seventy-Four Lakh, Fifty-One Thousand, Five Hundred Fifty-Six) only was withheld.

24. It is also the submission of the learned DSGI that under the contract, there is no provision for price escalation, as such, the amounts of ₹ 71,25,845/- (Rupees Seventy-One Lakh, Twenty-Five Thousand, Eight Hundred Forty-Five) only and ₹ 67,70,887/- (Rupees Sixty-Seven Lakh, Seventy Thousand, Eight Hundred Eighty-Seven) only claimed by the petitioner on account of price escalation cannot be sustained.

25. The learned DSGI went on to submit that the petitioner is now claiming an amount of ₹ 4,90,94,964/- (Rupees Four Crore, Ninety Lakh, Ninety-Four Thousand, Nine Hundred Sixty-Four) only against the total contract value of only ₹ 4,87,30,500/- (Rupees Four Crore, Eighty-Seven Lakh, Thirty Thousand Five Hundred) only, wherein, an amount of ₹ 4,47,37,169/- (Rupees Four Crore, Forty-Seven Lakh, Thirty-Seven Thousand, One Hundred Sixty-Nine) only has already been paid to the petitioner. 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.



26. This Court, on consideration of the submission made by the learned counsel for the parties herein, has also looked into the contents of the petitions as well as the counter-affidavit filed by the respondents No. 3 and 5 respectively, as also the rejoinder to the said counter-affidavit.

27. What is apparent is that there was a contract agreement executed between the petitioner and the relevant respondent authorities for reconstruction of RCC Bridge No. 166/5(Balance work) including Bridge No. 166/4(within approach), the value of the contract being ₹ 4,87,30,500/- (Rupees Four Crore, Eighty-Seven Lakh, Thirty Thousand Five Hundred) only. The petitioner has however stated at para 4 of this petition that the total bill amount raised and submitted to the respondent is ₹ 4,08,30,688/- (Rupees Four Crore, Eight Lakh, Thirty Thousand Six Hundred Eighty-Eight) only which was not disputed by the respondent department.

28. The petitioner has also made mentioned of several request to the Executive Engineer (Road) Baghmara NH Division, correspondence of which dates back to 25.02.2014 to 21.07.2020. The demand made in the prayer in this petition was for the said ₹4,08,30,688/- (Rupees Four Crore, Eight Lakh, Thirty Thousand Six Hundred Eighty-Eight) only.

29. As have been noticed hereinabove, the learned counsel for the petitioner in course of argument, have mentioned an amount of ₹ 4,38,47,396/- (Rupees Four Crore, Thirty-Eight Lakh, Forty-Seven Thousand Three Hundred



Ninety-Six) only, being the total amount of six Running Account Bills for which payment released was only ₹ 3,96,99,089/- (Rupees Three Crore, Ninety-Six Lakh, Ninety-Nine Thousand and Eighty Nine) only, since ₹ 34,62,097/- (Rupees Thirty Four Lakh, Sixty Two Thousand and Ninety Seven) only.

30. It is also the argument of the learned counsel that there are also two numbers of Price Escalation Bills which were submitted by the petitioner on 26.08.2014 amounting to ₹ 71,25,845/- (Rupees Seventy-One Lakh, Twenty-Five Thousand, Eight Hundred Forty-Five) only and ₹ 67,70,887/- (Rupees Sixty-Seven Lakh, Seventy Thousand, Eight Hundred Eighty-Seven) only, which have not yet been released by the respondent authorities.

31. The petitioner has also given a breakup of the amount that is due and payable to him (reflected at para 9 above), the total of which amounts to ₹ 4,90,94,964/- (Rupees Four Crore, Ninety Lakh, Ninety-Four Thousand Nine Hundred Sixty-Four) only.

32. The State respondent as well as the respondent MoRTH has refuted such claim and have contended that an amount of ₹ 4,47,37,169/- (Rupees Four Crore, Forty-Seven Lakh, Thirty-Seven Thousand One Hundred Sixty-Nine) only have already been paid to the petitioner and that there is no provision or contractual agreement as far as entitlement to price escalation is concerned.

33. This Court on perusal of the pleadings, particularly the averments



made in this petition, has noticed that the petitioner has advanced argument beyond the pleadings and has introduced facts which were not found in the petition. For example, the issue of price escalation and the entitlement of the petitioner thereon, amounting to ₹ 71,25,845/- (Rupees Seventy-One Lakh, Twenty-Five Thousand, Eighty Hundred Forty-Five) only and ₹ 67,70,887/- (Rupees Sixty-Seven Lakh, Seventy Thousand, Eight Hundred Eighty-Seven) only respectively have been brought out only in the rejoinder affidavit in response to the counter affidavit filed by the State respondents. Without any surrejoinder to the same, this Court could not take such assertion of the petitioner as a valid submission, since no plea could have been permitted in the rejoinder without the leave of the Court, considering the fact that the respondents are to be given an opportunity to rebut the same.

34. 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.”

35. 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. "

36. 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.”

37. 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 2022, 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.

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

Judge