



2025:CGHC:22969-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2569 of 2025

M/s. Roshan Gupta S/o Late Bhrigu Prasad Gupta, R/o H.No.-16,
Amatoli Road, Sitapur, Surguja, District - Surguja, Chhattisgarh, Aged
55 Years

... Petitioner

versus

1. State of Chhattisgarh Through its Secretary, Public Works Department, Mantralaya (New Secretariat), Atal Nagar, Nava Raipur, Chhattisgarh
2. The Chief Engineer, Public Works Department, Division Ambikapur, District - Ambikapur, Chhattisgarh
3. The Superintending Engineer, Public Works Department, Division Ambikapur, District - Ambikapur, Chhattisgarh
4. The Executive Engineer Public Works Department, Division Ambikapur, District - Ambikapur, Chhattisgarh

... Respondents

For Petitioner	: Mr. Suryapratap Yuddhveer Singh, Advocate.
For Respondents	: Mr. Shashank Thakur, Deputy Advocate General.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

11.06.2025

1. Heard Mr. Suryapratap Yuddhveer Singh, learned counsel for the petitioner. Also heard Mr. Shashank Thakur, learned Deputy Advocate General appearing for the Respondents/State.
2. By way of this petition, the petitioner has prayed for following reliefs:-

“10.1 This Hon’ble Court may please to kind enough in calling the entire records pertaining to the subject matter.

10.2 This Hon’ble Court may please be kind enough in directing the respondents to provide compensation of the work already executed by the petitioner with the commercial interest @ 18% per annum and the raw material which was damaged and later was stolen amounting of Rs. 8,800,000/- with commercial interest @ 18% per annum and appropriate compensation of the material subjected to theft with commercial interest @ 18% per annum. Also to pay damages and compensation for the unreasonable delay in issuing compensation and reissuing new tender without notifying the original tender winner without and probable cause which was later subjected to be awarded to a different contractor.

10.3 This Hon’ble Court may please be kind enough in granting the cost and any other relief to the petitioner”.

3. The petitioner has preferred this petition for getting compensation for the work already executed on the Government Medical Center, Sitapur, Dist: Sarguja, Chhattisgarh in relation to the Work Order and Work Agreement No.48/ DL/2015-16 for the construction work of "Twin F type Quarters" in Sitapur, District

Surguja, Chhattisgarh and the total cost of construction was Rs.22.62 lakhs (Twenty-two lakh sixty-two thousand) with the deadline to complete the project being six months including rainy season.

4. A tender was floated by the respondent department i.e.P.W.D Division Ambikapur, C.G and the petitioner bid was accepted by the department and the tender was accepted by the letter dated 24.06.2015 followed by work order Memo No. 3356 dated 04.07.2015. After bid was accepted, the petitioner requested the department to give layout of the construction site, so the work can be initiated, but due to delay in providing the layout the petitioner made several requests & ultimately the layout was provided on 09.09.2015. After obtaining the layout from the respondent department, the work was initiated & the petitioner moves his men power and dumped the construction material which was purchased by the petitioner and started the work, but due the disturbance caused by the third party, the letter was sent to the department on 10.10.2015 to inform the department about the disturbance/objection caused by the third party and the petitioner demanded for payment of the work already executed & to immediately resolve the problem regarding the construction site & to provide fresh layout of the work site, but the department did not take any action on the said letter.
5. By the letters dated 16.10.2015 and 19.10.2015, the petitioner

informed the respondent department that they received the stay order dated 12.10.2015 passed by learned Court of Tehsildar, Sitapur, District Sarguja to stay the ongoing construction work immediately, but no action or any reply was made by the respondent department. Thereafter, the petitioner made several communications to the department for releasing the payment of work already executed and to resolve the dispute, so that the work can be completed on time, but no action was taken by the respondent department. On 02.01.2016 the petitioner informed the respondent that the raw material stored at the construction site by the petitioner was being stolen and damaged by the troublemaker, by which the petitioner is suffering mental & financial loss, but still the respondent department did not take any step to resolve the petitioner grievance.

6. The petitioner has made several communications with the respondent department for payment of work already executed and also informed the department about the wastage of the raw material and also theft taking place on the construction site causing financial loss to the petitioner due to negligence of the respondent department. Furthermore, when the petitioner physically contacted the respondent department and raised queries regarding the dispute and unnecessary delay which were asked by the petitioner through several letters, then by the document dated 17.01.2024 he came to know that the work tender which was allotted to him was cancelled and a new tender

was issued and awarded to a someone else without informing or compensating the petitioner for the work already executed & for the raw material which was damaged & theft due to negligence of the department & clearly indicated fraud committed by the authorities. Hence, this petition.

7. Learned counsel for the petitioner submits that the action of the respondent department caused mental agony and financial hardship to the petitioner as the subject work was stayed by the order passed by learned Tahsildar on 12.10.2015 and the respondent department has not made any attempt in solving the hindrance or answer/reply to the petitioner's letter regarding the payments of the work already executed and the raw materials which are getting damaged due to delay caused by the respondent. The respondent department without any compensation or notification to the petitioner floated a new tender and awarded it to some other contractor, rather than the petitioner who was subject to be the priority in case of new tender for the construction of "Twin F type Quarters" in Sitapur District Sarguja, Chhattisgarh. He further submits that the respondents have no right to keep the subject matter hanging as the dispute hindrance is caused due to negligence on the part of the respondent department in providing the construction site which was in dispute as the land belongs to the third party. The contract between parties was never terminated, therefore, the respondent is duty bound to provide compensation of the work

already executed till date on the construction site by the petitioner with commercial interest @18% per annum and the raw material which was damaged amounting to Rs.8,80,000/- with commercial interest @18% per annum and also to pay damages & compensation for the unreasonable delay in issuing compensation and reissuing new tender and awarded to a different contractor without informing the petitioner which clearly indicated fraud committed by the authorities. As such, the writ petition deserves to be allowed. He relied upon the judgment of the Patna High Court in **Raghoji House of Distribution Versus State of Bihar** reported in **2022 SCC OnLine Pat 2368**

8. On the other hand, learned State counsel opposes the submissions made by the learned counsel for the petitioner and submits that the writ petition as framed and filed is not maintainable as the disputed question of facts cannot be adjudicated in writ petition under Article 226 of the Constitution of India.
9. We have learned counsel for the parties, perused the impugned order and other documents appended with writ appeal.
10. It is settled law that the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India when it raises disputed question of facts.
11. The Hon'ble Supreme Court in the case of **Chairman, Grid**

Corporation of Orissa Ltd. (GRIDCO) and others v. Sukamani Das (Smt.) and another, (1999) 7 SCC 298 was dealing with the question of whether the High Court had made an error in entertaining a writ petition filed seeking compensation for the death of a person due to electrocution, which had allegedly been caused due to the negligence of the authorities. The Supreme Court in the said case observed as under:

"6. In our opinion, the High Court committed an error in entertaining the writ petitions even though they were not fit cases for exercising power under Article 226 of the Constitution. The High Court went wrong in proceeding on the basis that as the deaths had taken place because of electrocution as a result of the deceased coming into contact with snapped live wires of the electric transmission lines of the appellants, that "admittedly/prima facie amounted to negligence on the part of the appellants". The High Court failed to appreciate that all these cases were actions in tort and negligence was required to be established firstly by the claimants. The mere fact that the wire of the electric transmission line belonging to Appellant 1 had snapped and the deceased had come in contact with it and had died was not by itself sufficient for awarding compensation. It also required to be examined whether the wire had snapped as a result of any negligence of the appellants and under which circumstances the deceased had come in contact with the wire. In view of the specific defences raised by the appellants in each of these cases they deserved an opportunity to prove that proper care

and precautions were taken in maintaining the transmission lines and yet the wires had snapped because of circumstances beyond their control or unauthorised intervention of third parties or that the deceased had not died in the manner stated by the petitioners. These questions could not have been decided properly on the basis of affidavits only. It is the settled legal position that where disputed questions of facts are involved a petition under Article 226 of the Constitution is not a proper remedy. The High Court has not and could not have held that the disputes in these cases were raised for the sake of raising them and that there was no substance therein. The High Court should have directed the writ petitioners to approach the civil court as it was done in OJC No. 5229 of 1995."

(emphasis supplied)

12. The aforesaid judgment has been relied/ reiterated by the Supreme Court in **S.P.S. Rathore v. State of Haryana and others, (2005) 10 SCC 1** wherein it observed as follows:

"16. In *Chairman, Grid Corpn. of Orissa Ltd. (Gridco) v. Sukamani Das* [(1999) 7 SCC 298] the question which arose for consideration was, can the High Court under Article 226 of the Constitution award compensation for death caused due to electrocution on account of negligence, when the liability was emphatically denied on the ground that the death had not occurred as a result of negligence, but because of an act of God or of acts of some other persons. The Court held that it is the

settled legal position that where disputed questions of facts are involved, a petition under Article 226 of the Constitution is not a proper remedy. Therefore, questions as to whether death occurred due to negligence or due to act of God or of some third person could not be decided properly on the basis of affidavits only, but should be decided by the civil court after appreciating the evidence adduced by the parties. In *T.N. Electricity Board v. Sumathi* [(2000) 4 SCC 543] it was held that when a disputed question of fact arises and there is clear denial of any tortious liability, remedy under Article 226 of the Constitution may not be proper. The Court carved out exception to this general rule by observing that, it should not be understood that in every case of tortious liability, recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21 is there, it cannot be said that there will be any bar to proceed under Article 226 of the Constitution." (emphasis supplied)

13. Similarly, the Hon'ble Supreme Court in **Shubhas Jain v. Rajeshwari Shivam, 2021 SCC OnLine SC 562** has held as under:

"26. It is well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts. It is not for the High Court to make a comparative assessment of conflicting technical reports and decide which one is acceptable."

14. Subsequently, in **Union of India Vs. Puna Hinda, (2021) 10**

SCC 690, the Hon'ble Supreme Court has observed:

"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."

15. Recently, the Hon'ble Supreme Court in the case of **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703**, while dealing with the issue of exercise of writ jurisdiction by a Court in matters arising out of a contract, has stated:

"82.7. The existence of an alternate remedy, is,

undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit." (emphasis supplied)

16. A reading of the aforesaid judgments makes it clear that it is well settled proposition of law that when there are disputed question of facts involved in a case, the High Court should not exercise its jurisdiction under Article 226 of the Constitution of India. It has been held that the remedy under Article 226 of the Constitution of India may not be proper.

17. From perusal of the pleadings, it appears that the petitioner has prayed for issuance of direction to the respondents to provide compensation of the work already executed by him with commercial interest @ 18% per annum and the raw material which was damaged and later was stolen amounting of Rs. 8,800,000/- with commercial interest @ 18% per annum and

appropriate compensation of the material subjected to theft with commercial interest @ 18% per annum. The petitioner has also prayed for damages and compensation for unreasonable delay in issuing compensation and reissuing new tender.

18. In the instant case, the relief of damages and compensation sought by the petitioner is contingent upon the resolution of the disputed question of facts raised, and these questions cannot be adjudicated under Article 226 of the Constitution of India. In view of the aforesaid, it would not be appropriate for this Court to entertain the instant writ petition as there are disputed questions of fact involved.

19. Considering the submissions advanced by learned counsel for the parties, further considering the disputed questions of law involved in this writ petition, the relief sought by the petitioner and in view of law laid down by the Supreme Court in the above-stated judgments (supra), we do not find any good ground to entertain this writ petition.

20. Accordingly, the writ petition being devoid of merit is liable to be and is hereby **dismissed**. However, liberty is reserved in favour of the petitioner to take recourse to other alternate remedies available to him under the law. No cost(s).

Sd/-

(Bibhu Datta Guru)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice