



2025:CGHC:25557-DB

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WPC No. 3016 of 2025**

Jay Maa Construction Through Proprietor Radhe Lal Sahu S/o Mehattar Ram Sahu, Aged About 49 Years, R/o H.No.-443, Pipariya, Tahsil - Pipariya, District - Kabirdham (C.G.)

... Petitioner(s)**versus**

1. State of Chhattisgarh Through - The Secretary, Department of Mines And Minerals, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District - Raipur (C.G.)
2. The Director Directorate of Mines and Minerals, Indrawati Bhawan, Nawa Raipur, Atal Nagar, District - Raipur (C.G.)
3. The Collector (Mining Branch) Kawardha, District - Kabirdham (C.G.)
4. The Chief Municipal Officer Nagar Panchayat, Bodla, District - Kabirdham (C.G.)

... Respondent(s)

For Petitioner	:	Mr. Dharmesh Shrivastava, Advocate.
For Respondents/State	:	Mr. Prafull N. Bharat, Advocate General, assisted by Mr. Shashank Thakur, Deputy Advocate General.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

19.06.2025

1. Heard Mr. Dharmesh Shrivastava, learned counsel for the petitioner. Also heard Mr. Prafull N. Bharat, learned Advocate General, assisted by Mr. Shashank Thakur, learned Deputy Advocate General, appearing for the State.

2. The present writ petition has been filed by the petitioner with the following prayers:

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records in relates to the case of the petitioner from the possession of respondents for its kind perusal.

10.2 That, this Hon'ble Court may kindly be pleased to direct the respondents authorities particularly the respondent No. 4 to release the payment towards final bills of the petitioner against the work which have already been completed by them.

10.3 That, this Hon'ble Court may kindly be pleased to grant any other relief/relief's in favour of the petitioner, which the Hon'ble Court deemed fit & just in the facts and circumstances of the case, including awarding of the costs to the petitioner.”

3. Learned counsel for the petitioner submits that the petitioner is the citizen of India, and therefore, he is entitled to enjoy all the Constitutional Rights and Fundamental Rights enshrined in the Constitution of India. He further submits that the petitioner is government contractor, registered as Class-C Contractor under the office of Engineer-in-Chief, Public Works Department, Chhattisgarh and he has been given various work order by the Nagar Panchayat, Bodla, District Kabirdham (C.G.), as CC road, drains, building etc.

4. It is further contended by the learned counsel for the petitioner that the Clause 35 of the Agreement 'Form-A' of Nagar Palik Nigam/Nagar Palika Parishad/Nagar Panchayat, Public Works Department provides for the Clause of Royalty on Minor Minerals. The said Clause is quoted below for kind perusal and ready reference:-

“The contractor shall pay all quarries, royalty charges etc. If the contractor fails to produce the royalty clearance certificate from concerned department then the Commissioner/CMO shall deduct the royalty charges from his bills and keep in deposit head, which shall be refunded to the contractor on production of royalty clearance certificate from the concerned department. If he fails to produce the royalty clearance certificate within 30 days of submission of final bill, then royalty charges which was keep under deposit head by the Commissioner/CMO shall be deposited to the concerned department.

Any charges in the royalty rates of Minor Minerals notified by the State Government after the date of submission of final offer by the bidder/contractor then this increase/decrease in the rates shall be reimbursed/deducted on actual basis.”

Which clearly shows that the contractor shall pay all quarries, royalty charges etc. If the contractor fails to produce the royalty clearance certificate from the concerned department then the Municipal Commissioner shall deduct the royalty charges from his bills and keep in deposit head and if he fails to produce the royalty clearance certificate within 30 date of submission of final bill, then royalty charges which was keep under deposit head by the Municipal Corporation shall be deposited to the concerned department and the final bill payment shall be released.

5. Learned counsel for the petitioner would submit that the agreement speaks very clearly that the royalty charges on Mines and Minerals has to be paid and the procedure has been prescribed in the agreement itself. He further submits that after completion of the work given by the respondent No. 4 to the petitioner, bills were submitted, but the respondent No. 4 demanded for royalty clearance certificate. He further contended that the petitioner made representations before the respondent authorities particularly the respondent No. 4 that the royalty charges have already been deducted from their bills and remaining amount of the bill may be paid to the petitioner as per Clause 35 of the Agreement. He further stated that in an identical matter the Hon'ble High Court of Chhattisgarh has been pleased to pass an order dated 24.08.2018 passed in WPC No. 1818 of 2016 that subject to complying with the terms

and conditions of Clause 35 of the Agreement *i.e.* either to submit royalty clearance certificate or in case, there is no royalty certificate by deducting the royalty amount, other amount payable to the petitioner shall not be withheld.

6. It is further submitted by the learned counsel for the petitioner that in an another identical matter, this Hon'ble Court has been pleased to pass an order in WPS No. 1756 of 2022 whereby the petitioner was granted liberty to file fresh representation and respondents were directed to consider the same and in case no royalty clearance certificate is produced by the petitioner then the respondents No. 4 and 5 shall made deduction of the royalty amount and then release the remainder of the payment in favour of the petitioner. Thus, it is clear that inaction on the payment of bills only on the ground that royalty clearance certificate has not been submitted is bad, illegal, arbitrary and contrary to Clause 35 of the Agreement and it is violation of Article 14 & 21 of the Constitution of India. Hence, this petition.

7. On the other hand, learned Advocate General opposes the submissions made by the learned counsel for the petitioner and submits that the writ petition as framed and filed are not maintainable as the disputed question of facts cannot be adjudicated in writ petition under Article 226 of the Constitution of India.

8. We have learned counsel for the parties, perused the impugned order and other documents appended with writ petitions.

9. 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.

10. The Hon'ble Supreme Court in the case of **Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Others v. Sukamani Das (Smt.) & Another**, reported in (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 Hon'ble 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)

11. The aforesaid judgment has been relied/ reiterated by the Hon'ble Supreme Court in **S.P.S. Rathore v. State of Haryana & Others**, reported in **(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)

12. Similarly, the Hon'ble Supreme Court in **Shubhas Jain v. Rajeshwari Shivam**, reported in **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."

13. Subsequently, in **Union of India vs. Puna Hinda**, reported in **(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.”

14. Recently, the Hon'ble Supreme Court in the case of ***M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.***, reported in ***(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)

15. 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.

16. In the present cases, the relief of compensations 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 present writ petitions as there are disputed questions of fact involved.

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

18. Accordingly, the present writ petitions being devoid of merit are liable to be and are 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**