

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**SPA No. 318 of 2014**

M/s Balram Singh

.....Appellant

Versus

Bharat Sanchar Nigam Ltd. and another

.....Respondents

Mr. B.P. Nautiyal, Senior Advocate assisted by Mr. Bhupesh Kandpal,  
Advocate for the appellant.

Mr. V.K. Kohli, Senior Advocate assisted by Mr. Kanti Ram Sharma, Advocate  
for the respondents.

**Hon'ble K.M. Joseph, C.J.**

**Hon'ble V.K. Bist, J.**

**Oral: Hon'ble K.M. Joseph (C.J.)**

Petitioner is the appellant. Petitioner approaches this  
Court seeking following reliefs:-

- (i) A writ order or direction in the nature of mandamus commanding the respondent authorities to release the dues of the petitioner pending against the respondent authorities for the work order as mentioned above i.e. for the work of underground cable laying construction work in Zone no. 3 of Dehradun SSA i.e. of area SDE Miya Wala, SDE Prem Nagar, SDE ONGC, SDE Laxmi Road.
- (ii) Any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- (iii) Award the cost of petition to the petitioner.

2. Briefly put, the case of the petitioner is as follows:

The petitioner was awarded a contract for a period of six months for a sum of Rs. 36 lacs. The agreement is executed on 05.04.2008 for maintenance and development work. It appears that he did extra work. He was actually paid Rs. 59,11,018/-. According to him, there is an extra work amounting Rs. 85,92,209/- as he had carried out work for the tune of Rs.

1,45,03,227/-. It is seeking a writ of mandamus to release the dues to the appellant that he has approached this Court. The learned Single Judge relegated him to file a civil suit.

We heard the learned Senior Counsel for the appellant Mr. B.P. Nautiyal and learned Senior Counsel appearing on behalf of the respondents Mr. V.K. Kohli.

Both the counsel sought to draw inspiration from the judgment of the Full Bench of Kerala High Court in *State of Kerala vs. T.V. Anil*, reported in *AIR 2002 Kerala 160*. The Full Bench, inter alia has held as follows:-

*“It cannot be said in absolute terms that a writ petition is not maintainable in contractual matters including where the contractors seek enforcement of the obligation on the part of the State to pay the bill amounts admitted by the State. All the activities of the State are in public interest and for public good. There is public law element in contracts where State is a party, and it naturally follows that there is public duty. And above all, any State action is liable to be tested on the touchstone of Art. 14 of the Constitution of India. Essentially, the only limitation of the High Court is the self-imposed restriction. A few relevant factors in exercising the self-imposed limitation under Art. 226 of the Constitution of India in the matter of payment of contractors bills are: (1) When there is no disputed question of fact requiring adjudication on detailed evidence. (2) When no alternate form is provided in the resolution of any disputes pertaining to a contract. (3)*

*When claim by one party is not contested by the other and the contest does not require adjudication requiring detailed enquiry into facts. In the instant case there is no such dispute on the factual position. The State admits its liability to pay the bill amounts”.*

On the one hand, learned Senior Counsel for the appellant would point out that since the matter was beyond the scope of the financial powers of the employer, the matter was referred to the Superior Authority. Superior Authority constituted a Committee. The Committee has recommended that the amount be paid. He would submit that the work was actually carried out and only for the reason that it was not within the financial powers of the employer, the amount could not be paid. In fact, learned Senior Counsel for the respondents would submit that there is disputed question and he drew our attention to the principles which have been enunciated by the Kerala High Court. He would contend that there is no admission and further-more there is an arbitration clause which provide for an alternative forum.

In fact, the perusal of the counter affidavit would also reveal that the appellant's claim is much over and above the amount specified in the contract and the same also being beyond the financial powers of Dehradun SSA, payment upto to the financial power of Dehradun SSA has already been made and his claim for rest of the amount exceeding the stipulated work has been referred to the higher authorities.

Having heard the learned counsel for the parties, we would think that in the facts of the present case, interest of justice requires, rather relegating the appellant either to civil court or for arbitration, as it stands, to direct the higher authority involved in this case of the respondents to take a decision in regard to the matter in accordance with law and to take further action on the basis of the said decision.

Accordingly, we partly allow the appeal and dispose of the petition by directing the higher authorities of the respondents to consider and take a decision on the matter, which is pending before it in accordance with law and further action will be necessarily be taken on the basis of the said decision. The decision will be taken as aforesaid, at the earliest.

**(V.K. Bist, J.)**

**(K.M. Joseph, C.J.)**

13.05.2015

Parul