2026:AHC:133866-DB

Reserved on 07.05.2026
Delivered on 06.07.2026
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 35283 of 2024

Netra Pal Singh
.....Petitioner(s)

Versus

State Of Up And 2 Others
.....Respondent(s)

Counsel for Petitioner(s)	:	Anurag Kumar Ojha, Siddharth Khare
Counsel for Respondent(s)	:	Ajit Singh, C.S.C., Santosh Kumar Srivastava

Court No. - 4

HON'BLE NEERAJ TIWARI, J.

HON'BLE SUDHANSHU CHAUHAN, J.

(Delivered by Hon'ble Sudhanshu Chauhan J.)

1. Heard Sri Siddharth Khare along with Sri Anurag Kumar Ojha, learned counsels for the petitioner, learned Standing Counsel for the State-respondent no.1 and Sri Santosh Kumar Srivastava, learned counsel appearing on behalf of the respondent nos. 2 and 3.

2. The petitioner has filed the present petition, being aggrieved by the order dated 28.09.2024 passed by respondent no. 2, Chief General Manager, UP Fisheries Development Corporation Limited, Lucknow, by means of which the agreement for Fisheries Lease has been cancelled and the security amount of Rs. 67,70,825/- forfeited, besides, the petitioner has also been called upon to deposit an amount of Rs.1,82,67,040/- within a period of 15 days, failing which, proceedings of recovery as arrears of land revenue shall be initiated, and the petitioner blacklisted. The petitioner is also aggrieved

3. The controversy shorn of facts is that the UP Fisheries Development Corporation Limited, Lucknow (hereinafter referred to as "the Corporation") had invited applications through e-tender for auction of fishing rights of Sharda Sagar Reservoir, Class I having a total area of 6,880 hectares situated in District Pilibhit for a tenure of 10 years, i.e., upto 30.06.2033. Under the e-tender, the petitioner was required to deposit 25% of the total amount as stipulated within a period of 24 hours from the selection of the bid, the petitioner, in this regard, had duly deposited an amount of Rs. 55,45,221/- on 14.07.2023. Subsequently, the petitioner had deposited the security amount of Rs. 67,70,825/- on 18.08.2023 in the shape of fixed deposit receipts. The petitioner had also deposited a stamp duty of Rs. 27,88,830/- for the purposes of execution of the agreement. Besides, the petitioner had also deposited an amount of Rs. 13,54,430/- with the respondents as contract fees.

4. Ultimately, an agreement dated 29.08.2023 was concluded between the parties for the fisheries lease in the Sharda Sagar Reservoir, Pilibhit. In this regard, an order dated 14.09.2023 was issued granting the contract for the year 2023-24 to the petitioner.

5. However, shortly after the petitioner reached the reservoir to carry out fishing, the employees of the petitioner were detained and the fishing boats seized by the forest authorities on the pretext that the area in which fishing was carried out belonged to Pilibhit Tiger Reserve and fishing was prohibited in the said area. The petitioner, on the basis of a reply to an application under the RTI Act, states that a total area of 683.88 hectare of the Sharda Sagar Reservoir fell in the core area of the Pilibhit Tiger Reserve. Besides there was also a prohibition on any activity within 200-500 m from the place where the water from the reservoir entered the Pilibhit Tiger Reserve, as it was also considered to be the core area. It is also contended that there are six villages comprising roughly 1,000 hectares in the Sharda Sagar Reservoir where there is no water at all, and villagers are carrying out agricultural activities, thus, the petitioner was also deprived from carrying

and Water Resources Department to demonstrate that the total area of the Sharda Sagar Reservoir is 5765 hectares whereas the fisheries lease in respect of an area of 6880 hectares had been granted, which was practically not possible.

7. It is in the above circumstances as the actual fishing area allotted to the petitioner fell much short of the area advertised that the petitioner could not deposit the amounts due under the agreement, and there were defaults on the part of the petitioner. In this regard, several notices were issued to the petitioner by the respondents and the petitioner in response thereto had ventilated his grievances.

8. However, as the petitioner failed to make payments in due accordance with the terms of the agreement, ultimately the respondent no. 2 vide the impugned order dated 28.09.2024 had terminated the agreement and forfeited the security deposit of Rs. 67,70,825/- and further had called upon the petitioner to deposit the remaining amount due being Rs. 1,82,67,040/- under the agreement and by means of another letter dated 07.10.2024, the bankers of the petitioner were called upon to release the bank guarantee/FDR in favour of the Corporation.

9. Thus, the crux of the contention of the petitioner is that the petitioner was never provided the total area of the reservoir in respect of which bids were invited, measuring 6,880 hectares. The respondent, while having failed to provide the required area, had committed a fundamental breach of the agreement. The petitioner in this regard has drawn the attention of this Court to the letter dated 30.07.2024 issued by the petitioner, wherein it was categorically submitted that the area of the reservoir, which should have been 6,880 hectares, was falling short by 1,798.88 hectares, in view of the fact that in the National Register of Large Dams, the area of Sharda Sahayak Reservoir was only 5,765 hectares and an area of 683.88 hectares fell in the core area of Pilibhit Tiger Reserve. Besides, the petitioner has also relied upon the reply to the application under the RTI Act dated 17.02.2024 issued

that the petitioner could not carry out the fishing, and as a consequence, there was delay in payment of installments under the agreement.

10. Per contra, it is contended on behalf of the respondent's no. 2 and 3 that the present writ petition itself is not maintainable, as the petitioner has an alternative remedy of resorting to arbitration by invoking the arbitration clause contained in the agreement. In this regard it is further submitted that the present controversy involves disputed questions of fact which cannot be decided in proceedings under Article 226 of the Constitution of India. It is further stated that the agreement was executed on," as-is-where-is basis", and it was specifically provided in the tender conditions that, before participating in the auction bid, the auction bidder should himself make a spot inspection of the reservoir. Besides, it is only a miniscule area of the Sharda Sahayak Reservoir, which is not fit for fishing, in comparison to the total area of the reservoir. Hence, it is contended that the impugned order dated 28.09.2024 and letter dated 07.10.2024 has been issued in due accordance with the terms of the agreement solely on account of defaults on the part of the petitioner in making payment of the installments as agreed upon by the parties.

11. We have perused the records of the case and find that no serious dispute has been raised by the respondents regarding the area allotted to the petitioner for the purposes of fishing having fallen short as compared to the area mentioned in the e-tender notice i.e 6,880 hectares. The respondents in their counter affidavit have only given an evasive reply as far as the contention of the petitioner that 683.88 hectares of the area of the reservoir fell in the core area of Pilibhit Tiger Reserve and in the National Register of Dams the total area of the said reservoir was only 57650 hectares. Thus, prima facie, it seems that the contention so raised by the petitioner has force.

12. Be that as it may, even if we take the contention of the petitioner to be correct that the petitioner was deprived of 1798.88 hectares of reservoir area for fishing, we cannot remain oblivious of the fact that the petitioner had

petitioner did not carry out any fishing whatsoever on account of the shortfall in the reservoir area. Thus, the income earned by the petitioner during this period of thirteen months shall also have to be taken into consideration while adjudicating the disputes so arisen between the parties. However, we are afraid that no figures in respect of the income earned by the petitioner during this while have been brought on record.

13. Moreover, not only is the question of the income earned by the petitioner while carrying out fishing under the agreement, but also the questions of the actual reservoir area made available to the petitioner for fishing and the effect thereof on the adjustments to be made in the installments payable, if any under the agreement are also disputed questions of fact. Further perusal of the impugned order dated 28.09.2024 reveals that an amount of Rs. 91,56,859/- was due from the petitioner in respect of the installments, an amount of Rs. 21,00,000/- was due towards the fish seeds and an amount of Rs.7, 42,420 was due as penal interest for the auction year 2023-24, while the remaining amount was due towards the auction year 2024-25. On the other hand, the petitioner states to have deposited Rs. 1,05,15,000/- upto 19.09.2024, other than the amounts that had been deposited by the petitioner at the time of execution of the agreement dated 29.08.2024. Hence, from the evidence that has been placed on record, it is also not clear as to what is the actual amount to be recovered from the petitioner by the respondents or in the alternative if, any amount is payable by the petitioner other than what has already been paid. Even the question as to whether the termination of the agreement is invalid or is valid and has been made in due accordance with the terms of the agreement is a question of fact.

14. We are afraid all the questions, as mentioned in the preceding paragraph, are disputed questions of fact, which require the parties to adduce evidence in support of their respective case and the same cannot be adjudicated in proceedings under Article 226 of the Constitution of India. We make it clear that these are only a few questions that have crept in our minds, and there would be many such questions, which would require adjudication by the

involving contractual disputes, the circumstances in which such a writ petition can be entertained had been elucidated by the Apex Court in the judgment in the case of ***Joshi Technologies International Inc. vs Union of India, (2015) 7 SCC 728*** and the same reads as follows:-

> "*69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion 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.*
>
> *70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarized as under:*

discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific p erformance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without *normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.*

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

statutory contract is awarded."

16. In the case of ***Union of India vs Puna Hinda, (2021)10 SCC 690***, the Apex Court has crystallized relatively narrow grounds in which writ petitions under Article 226 would be an appropriate remedy in a contractual dispute and has held as under :-

> "*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."*

17. On the other hand, the petitioner, while contending that the presence of the arbitration clause in the agreement is not an absolute bar regarding the maintainability of the present petition, the petitioner in support thereof has relied upon the judgment of the Apex Court in the case of ***Harbanslal Shania and another vs Indian Oil Corporation Ltd. and others, A.I.R. 2003 SC 2120.*** However, the perusal of the said judgment reveals that the controversy involved arose out of the termination of the dealership of the appellant, which was done in contravention of the principles of natural justice. Further there were no disputed facts involved, apparently, in the said case, which is not so in the present case. The Apex Court in the said case had held as under:-

of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged. See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others (1998) 8 SCC 11. <u>The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause.</u> In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

18. Thus, it is evident that there was a failure of principles of natural justice and violation of fundamental rights in the said case, while passing the termination order. However, in the present case, it is not at all so, as admittedly various notices were issued to the petitioner to pay the installments, failing which the agreement would stand terminated and the petitioner has also failed to demonstrate as to how it's fundamental rights have been violated. Hence, the petitioner would not be entitled to the benefit of the law, so relied upon by the petitioner. Moreover, the present controversy also involves disputed questions of fact as already held above.

19. Another contention of the petitioner, in reply to availing the remedy of alternative remedy in the shape of arbitration, is that the writ petition has been pending since long and the parties have already exchanged their pleadings, hence, it would not be in the interest of justice to relegate the parties to avail the alternative remedy at this stage and the petitioner would be subjected to undue hardship in the process.

20. In this regard, we rely upon the law laid down by the Apex Court in the case of ***State of UP & Anr. versus Ehsan and Anr., 2023 LiveLaw (SC) 887*** wherein amongst others the controversy that arose was in respect of the disputed question of possession and as to whether the parties should be

such a situation there must be a sincere effort to decide the matter on merits and not relegate the writ petitioner to the alternative remedy, unless there are compelling reasons for doing so. One such compelling reason may arise where there is a serious dispute between the parties on a question of fact and materials/evidence(s) available on record are insufficient/inconclusive to enable the Court to come to a definite conclusion.

36. In view of the above conclusion, the appeal is allowed. The impugned order passed by the High Court is set aside. The first respondent's writ petition is dismissed without prejudice to his right to institute a suit. Parties to bear their own costs"

21. Thus in view of the above circumstances, we hold that the present writ petition is not maintainable for the reason that an alternative and efficacious remedy by resorting to arbitration is available to the petitioner, and more so as the present controversy involves disputed questions of fact which can only be adjudicated after the parties have adduced their respective evidence.

22. Before we part, we are also conscious of the fact that this court, vide the order dated 12.12.2024, had stayed the orders dated 28.09.2024 and 07.10.2024, which are impugned in the present writ petition. Hence, we are of the view that an interim protection should be provided to the petitioner till the time the petitioner avails an appropriate remedy under the Arbitration and Conciliation Act, 1996.

23. Thus, for the reasons detailed above, the present petition is dismissed with the liberty to the petitioner to avail remedy under the Arbitration and Conciliation Act, 1996, within a period of six weeks from the date of this order and till then, the operation of the impugned order dated 28.09.2024 and the order dated 07.10.2024, morefully annexed as Annexure No. 1 and Annexure No. 2 to the present petition, shall remain stayed. It is also made clear that the interim protection so granted to the petitioner shall automatically stand vacated after a passage of six weeks from the date of this order.

on it's own merits.

25. No order as to costs.

July 6, 2026
Gaurav

(Sudhanshu Chauhan,J.) **(Neeraj Tiwari,J.)**