

*Before K. Kannan, J*

**M/S DHARAM PAL CONTRACTORS HOT  
MIX PLANT, DANEWALA, SARDOOLGARH — *Petitioner***

*versus*

**STATE OF PUNJAB AND OTHERS — *Respondents***

**CWP No. 14621 of 2014**

November 5, 2014

*Constitution of India, 1950 — Art. 226 — Writ of Mandamus to release money for the works done — In all the writ petitions it is possible to package the relief not directly for payment of money but for mandamus to a public authority to perform a duty — Clause stating that amount would be released after Government releases the funds without any interest portrays a sorry state of affairs — Prerogative of the executive to manage its finances and run a government that is worthy of trust reposed by the elected representatives — Contractor who does the work as per specification, discharges a public duty — Directions given to State for disposal of pending claim.*

*Held, that the following directions, it is hoped, will also be considered by the State for due incorporation in their governance, so that the State's obligations are duly met and they leave less scope for complaints of unaddressed claims through writ petitions:-*

- (i) The contract itself shall contain a verification solemn affirmation of what the policy states viz., that appropriate sanctions have been obtained from the Finance Department for undertaking the expenditure;
- (ii) The value of the contract awarded and time before when it is due for completion shall be published at the site of construction;
- (iii) There shall be a timeline specified for verification of completion of work and the time before when the bills shall be cleared.....;
- (iv) The Nodal Officer shall be notified in the office which awards contract by name and designation and more specifically the contracting party shall be informed of the details alongside the contractual terms.....;

- (v) The department which awards the work shall also publish on a monthly basis in the notice board of the Head Office the pending bills in the order of completion of work and in the order when sanctions are obtained and amounts released.....;
- (vi) There shall be no jumping the queue in the list as published and any instance of payments out of line shall be considered as an actionable wrong and the Disbursing Officer shall be held accountable for such undue preference;
- (vii) There shall be an inbuilt mechanism of empowering the nodal officer himself to receive the claims of the contractors whenever the payments are not released.....;

(Para 15)

*Further held* that the State shall cause a publication of list of works completed and partially completed for the amounts that have been disclosed in the affidavit of the Secretary to the Government as payable, within 4 weeks from this judgment in the official website of the Finance Department.

(Para 16)

S.B. Kaushik, Advocate, *for the petitioner* in CWP No.14621 of 2014.

S.S. Behl, Advocate, *for the petitioner* in CWP No.17121 of 2014.

Rakesh Gupta, Advocate, *for the petitioner* CWP No.21470 of 2014.

Raman Sharma, Advocate, *for the petitioner* in CWP Nos.21451 and 21453 of 2014.

Raman Goklaney, Advocate, *for the petitioner* in CWP No.21408 of 2014.

Tajinder Pal Singh Makkar, Advocate, *for the petitioner* in CWP Nos.17746, 17759, 17760, 21420, 21425, 21436, 21438 to 21440, 21442, 21444, 21457, 21475 and 21476 of 2014.

Sushil Jain, Advocate, *for the petitioner* in CWP No.21088 of 2014.

Rajesh Kumar Girdhar, Advocate, *for the petitioner* in CWP Nos.17144, 17167,17186, 15181, 17225, 16878, 16927, 16945,

16946,17003, 17050, 17061, 17085, 17614, 17615,17887, 17275, 17316, 17321, 17421, 17500, 21687,21692, 21693, 21898 to 21904, 21907, 21928, 21937,21938, 21966, 21967, 21969 to 21975, 19695 to 19698,19721, 19722, 19724, 19730, 19731, 21404, 21481 of 2014.

Hemant Saini, Advocate, *for the petitioner* in CWP Nos.19691, 20811, 21728 of 2014.

Ajay Pal Singh, Advocate, *for the petitioner* in CWP No.21746 of 2014.

Surinder Garg, Advocate, *for the petitioner* in CWP No.9993 of 2014.

Vinod Gupta, Advocate, *for the petitioner* in CWP Nos.17845, 20906, 20912, 20921, 20923, 21403 of 2014.

Sherry K. Singla, Advocate, *for the petitioner* in CWP No.21696 of 2014.

Harsh Aggarwal, Advocate, *for the respondent* in CWP No.17421 and for MC,Jalandhar in CWP No.17500 of 2014.

Kumar Vishav Aggarwal, Advocate, *for respondent* No.4 in CWP No.17421 of 2014.

Kamal Narula, Advocate, *for the petitioner* in CWP No.18059 of 2014.

Vikas Cuccria, Advocate, *for the petitioner* in CWP Nos.17747, 18675, 19534, 19138, 19239, 19852 of 2014.

Rajeev Dev Sharma, Advocate, *for the petitioner* in CWP Nos.21283, 21912 of 2014.

Vikram Singh, Advocate, *for the petitioner* in CWP Nos.4635, 18267 of 2014.

Tushar Sharma, Advocate, *for respondent* No.2 in CWP No.4635 of 2014.

Suvir Kumar, Advocate, *for respondent* No.3 in CWP No.14621 of 2014.

R.S. Sekhon, Advocate, *for the petitioner* in CWP No.15408 of 2014.

Vivek Goyal, Advocate, *for the petitioner* in CWP Nos.17169, 17170, 17183, 16947 of 2014.

Ashok Kumar Sama, Advocate, *for the petitioner in CWP Nos.17190, 17191, 17632, 17670, 17253, 21616, 21623 of 2014.*

Parminder Singh Sekhon, Advocate, *for the petitioner in CWP Nos.21935, 21318 of 2014.*

P.K.S. Phoolka, Advocate, *for the petitioner in CWP Nos.16950, 16954, 16955, 21586, 20129, 20973, 21038, 21046 of 2014.*

Sandeep Kumar Bokolia, Advocate, *for the petitioner in CWP No.18151 of 2014.*

Puran Singh Rana, Advocate, *for the petitioner in CWP Nos.17816, 17836, 17957, 17978 of 2014.*

Manish Bansal, Advocate, *for the petitioner in CWP No.17505 of 2014.*

Sanjay Nagpal, Advocate, *for the petitioner in CWP No.17744 of 2014*

Ashok Kumar Bajaj, Advocate in CWP No.16054 of 2014.

Ashok Aggarwal, Advocate General, Punjab, with

Vandana Malhotra, Additional Advocate General, Punjab.

Tarun Vir Singh Lehal, Advocate, *for respondent No.3 in CWP No.17170 of 2014.*

Kanwal S. Walia, Advocate, *for respondent No.3 in CWP No.17169 of 2014.*

Vishwajit Bedi, Advocate, *for respondent No.3 in CWP No.16947 of 2014.*

Satwant Singh Rangi, Advocate, *for respondents 1 to 3 in CWP No.17836 of 2014 and for respondents 1 to 4 in CWP Nos.17957 and 17978 of 2014.*

Ashok Kumar Bajaj, Advocate, *for the respondent in CWP No.16054 of 2014.*

Ashish Aggarwal, Advocate, *for the petitioner in CWP No.22153 of 2014*

**K. KANNAN, J**

“All State activities depend first on the Treasury. Therefore, a king shall devote his best attention to it.” (Arthshastra 2.8.1,2)

**Non payments by State for works done, a vexed issue-Present endeavour**

(1) The batch of writ petitions is at the instance of various persons to whom contracts of public works have been awarded by the State and its functionaries. The petitioners contend that the works have been completed as envisaged, but the payments therefor, as provided by the terms of the contract, have not been made. The choice of public law remedy is resorted to on a plea that there is no disputed question of fact and they merely want their representations decided and the payments released. Instead of a suit for recovery of money, the writ petitions are couched in the form of a mandamus to release the money for the works done.

**II. Parties to the writ petitions**

(2) It shall be the first exercise to merely outline the classes of persons who are parties to the writ petitions, which have piled up in less than 2 months and if past experience is any indication, there is no let up possible unless we come by a greater fiscal discipline from public authorities in not allowing for expenditures to be incurred without sufficient resource allocations. The petitioners are private individuals or Cooperative Societies or Companies to whom the contracts have been awarded and the public authorities against whom demands are made are: Department of Irrigation in 79 petitions, 17 against the Local Bodies, 17 petitions against the Department of Water Supply and Sanitation, 11 petitions against PWD (B&R), 4 against the Punjab Mandi Board, 2 against the Council of Citrus and Agri-Juicing and 1 each against the Food Civil Supply & Consumer Affairs and Revenue & Rehabilitation Department. In some of the cases where notices had been ordered, replies have also been filed, and in many cases, notices have not been ordered, since the issue in the first place is (i) the efficacy of resort to a public law remedy for recovery of monies for the works done and for liability admitted and (ii) for consideration of the extent of judicial review that is possible to ensure that there is some system put in place so that the court is not vexed with a genre of litigation that involves no resolution of dispute by the court but the court is used as a conduit to transfer the contractors' representations to the Government to release the amounts due to them. Here in this kind of an exercise, the court's time and resources are spent which it could ill-afford. The high volume of institution of cases itself can never be a

subject of resentment. On the other hand, it must be seen as shot in the arm of institution that still evokes the confidence of public that their grievances will be redressed on the court's imprimatur. It is most desirable that such cases are worthy of court's effort that undertakes forensic skills of reasoning than merely deflecting all petitions to be duly considered by some other authority.

**III. Writ remedy for claims simpliciter for payment for works done as per contract: Examination of case law**

(3) The issue of employing remedy for recovery of monies through writ petitions should be seen in the context of whether there is any arbitrary or discriminatory act that could give rise to violation of Art 14 of the Constitution. A simple action for recovery of money under a contract against the government cannot normally lie. In *Hindustan Sugar Mills* versus *State of Rajasthan*<sup>1</sup>, there was a contractual term to reimburse the tax liability suffered by the private party for sale of cement effected to the government. On a review petition in proceedings that emanated through a writ petition, the Court allowed the amount to be paid by the State when it was not done. The question itself was not whether writ remedy was available in a direct way but the denial of entitlement was found as a justifying circumstance to intervene. In *Mahabir Auto Stores* versus *IOC*<sup>2</sup>, the issue put to test in a writ petition was the tenability of state action in stopping abruptly supplies of oil by IOC to a contracting party. The defence of impermissibility of writ petition was repulsed on a reasoning that the state action that was arbitrary was liable for interference under Art 14. The issue again was not directly a claim for recovery of money under a contract. If the state action was arbitrary, no matter the subject was a contractual obligation, it was still capable of redressal through a writ petition. In *Dwarkadas Marfatia and sons* versus *Port of Bombay*<sup>3</sup>, the court considered the effect of exemption of the state from the purview of rent control legislations but held all the same that an action for eviction by the state must be reasonable and not whimsical and stand the test of scrutiny under Art 14.

(4) In all these writ petitions, it is possible to package the relief not directly for payment of money but for a mandamus to a public authority to perform a duty, namely, of fulfillment of obligation under

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<sup>1</sup> (1980) 1 SCC 599 = AIR 1981 SC 1681

<sup>2</sup> (1990) 3 SCC 752

<sup>3</sup> (1989) 3 SCC 293

the respective contracts. In other words, the justification for a writ remedy could be stated to be that the State and its functionaries which have invited parties to do public works are committing a breach of its terms arbitrarily and their actions are violative of Article 14 of the Constitution. It could be therefore seen that the proposition has always been that the action which is arbitrary or discriminatory or unreasonable will be areas of consideration through a writ petition but enforcement of a contractual term through a writ petition for payment of money itself has not been favoured with. This point was directly confronted in *State of HP versus Raja Mahendra Pal*<sup>4</sup> and the Supreme Court ruled that contractual matters involving pricing and interest on delayed payments could not be brought in writ jurisdiction. In *Union of India versus Graphic Industries Co.*<sup>5</sup>, a mandamus issued by a DB of the High Court to pay about half a crore of rupees to a contracting party by the Railways on the recommendation of the Minister was reversed by the Supreme Court to hold the Court's assessment of unfairness of the conduct of Railways was merely made on the communication of the Minister to the General Manager of the Railways and not on any independent consideration of the conduct of Railways for non-payment and found that distinction to make all the difference to deny a mandamus for amount admitted to be liable to be paid by the supplies to the Eastern Railways.

(5) The issue of public law remedy for recovery of money under public contracts has been dealt with in the context of a claim for money for public works effected at great length by the High Court of Guahati in *Abdul Kasem Ali Ahmed versus State of Assam and others*<sup>6</sup> MANU/GH/0004/2007, dated 07.02.2007. The Court found that a writ petition for recovery of amount, even if admitted is not maintainable. The judgment has referred to all the relevant judgments of the Supreme Court on the subject and I find myself in respectful agreement with the entire reasoning contained in the judgment and the relevance of the Supreme Court judgments as applicable to the facts of this case. The judgment records various circumstances when, apart from a situation of enforcement of mere contractual obligation, if there is a constitutional issue of State action as affected by arbitrary or discriminatory conduct violative of Article 14, writ petition will lie. It is an illuminating judgment and I am in full agreement with the reasoning adopted

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<sup>4</sup> (1999) 4 SCC 43

<sup>5</sup> (1994) 5 SCC 398

<sup>6</sup> 2007(1) GLT 784

therein. As a proposition of law, therefore, I hold that a writ petition simpliciter to direct payment of money by way of enforcement of contractual obligation, whether admitted or not, cannot be filed.

**IV. Prevalent practice: Prayer for disposal of representation for demand for money, the course of action adopted is fraught with multiplication of proceedings, though seemingly innocuous**

(6) Parties invariably ask for a quick exit when the issue of maintainability is raised by stating that no adjudication is necessary, but they would be satisfied if the representation for payment of money is directed to be disposed of. Here then is the reason for the glut in influx of cases being filed in courts only to obtain benign directions for 'disposal of representation without going into merits of claims'. This exercise has not really yielded any fruit and it has only given place to further duplication of cases. At one level, there is a case of pick and choose for making payments that are at once invidious and tainted with nepotism. The unsatisfied claimants have to resort to court again with petitions for issue of contempt and in all such petitions, the court merely oversees dribbles of payments being made during various dates. If some substantial amounts are paid, the petitions are closed with direction to approach the authorities taking note of the undertaking given in court. When there are further breaches of such undertakings, since in many of the cases, the periods prescribed for taking action for contempt elapse, there have been fresh filing of petitions. This, in turn, gives rise to movement in circular fashion of the contractors escalating their supplications to petitions in court, later complain of contempt and begin afresh with actions in desperation for the original relief, and thereby bringing an unending saga of litigation.

**V. Issues that these cases just do not deal with**

(7) In some of the petitions, replies have been filed detailing payments made or denying liabilities. As stated already, there is no attempt through this order to determine the exact liability in each one of the cases. In making particular references to the replies, it is only to assure the contesting respondents that general directions are subject to any of the specific objections which are taken and would still require adjudication. In CWP No.17615 of 2014, the respondents have admitted portions of works entrusted as made after due scrutiny. There is a reference to clause 28 of notice inviting tender that the *payments shall be made on receipt of funds from the government and no interest will be entertained on delayed payments*(italics added). In CWP No.19138 of 2014, there is a contention that a portion of the amount of

liability has been released and bills have been presented for release of balance of amount to the treasury. In CWP No.16946 of 2014, there is an admission of liability for the amount raised through the bill. The payments will be released as and when requisite instructions from the Finance Department are received for passing the bill. In CWP No.17170 of 2014, CWP Nos.16947 and 17183 of 2014, it is contended that the entire amount as due has already been released and that a Committee was being constituted under the Chairmanship of Major General A.K. Bhatt for evolving procedure for consideration of claims and for disbursements and that the Government would issue necessary instructions after consideration of the report. In CWP No.17169 of 2014, the contention is that the entire amount as claimed has been paid and the petitioner has also issued a receipt therefore.

(8) Normally a matter of civil nature that requires an adjudication of disputes could be resorted to only by an institution of a suit, for, such adjudication would require consideration of rival contentions by sifting evidence brought by the respective parties on a consideration of the issues involved, such as, whether the work had been completed at all, whether it conforms to the specifications in the contract, the cause for the delay, the assessment of damages for such delay, the enforcement of any contractual terms for quantification of damages for delay or for non-performance, the justification for cancellation of contracts and circumstances when any portion or whole of the portion of the liability could be denied. If any of these cases were to address issues of disputed questions, it is made clear at the outset that there is no such exercise to resolve the dispute undertaken, for that would be best dealt with only through a civil suit only. None of these cases have also addressed the issue of whether works have been completed or not or whether there is any conduct of the contractor that disentitles him to the amount as claimed. Indeed, the order that is passed is no decree in the sense it contains no determination of any particular amounts which could be enforced against any of the respondents. On the other hand, the attempt is only to identify areas of governance that will fall within the court's purview of judicial superintendence and direct installation of certain systems in place so that what seems like features of recurring lapses on the part of the State or its functionaries giving rise to this genre of litigation do not raise their ugly heads. The directions have a singular objective of avoiding litigation on a fundamental precept that could appeal to commonsense that 'prevention is better than cure'.

**VI. Initial interim directions of the court that has yielded to State's response to tackle the issue of non-payment on the part of the State to satisfy its admitted liability**

(9) Everyone, more particularly the State ought to bear responsibility that avoidable cases masquerading as litigations without disputes, oxymora of sorts, are lined up in the firing line to be shot for quick disposals. As a preliminary exercise, to stave clear of contentious issues, this court had directed through the order dated 18.09.2014 in CWP No.17121 of 2014 that in respect of matters where the work was complete and where there had been due certifications that payments could also be made, the State shall make payments and report to the court. It was clarified in the same order that in respect of matters where, according to the State, work was not complete, the payments could still be made to the extent of work completed as proportionate amount of what was payable in so far as such course was possible under the terms of contract. To scuttle the vicious cycle that these cases were affected by, the court had directed a high level officer of the executive to prepare a viable and seamless manner of settling the claims of the contractors and the Finance Secretary was directed to give instructions to the respective departments, which had been cited as respondents in the writ petitions to prepare a scheme of disbursement that would be put in place without forcing the parties to come to court for payments.

(10) In response to the directions given, the Principal Secretary to the Government of Punjab, Department of Finance Ms. Vini Mahajan, has filed an affidavit in CWP No.17121 of 2014. It becomes essential to paraphrase the affidavit filed to bring home the extent of admission made regarding the liabilities and the proposals for bringing some financial discipline that would make possible addressing the claims of the contractors and relieve them of having to resort to courts for what they are entitled to.

- As per the information gathered from the Department of Irrigation, Water Supply and Sanitation, Animal Husbandry, School Education, Public Works Department (B&R) and Punjab Mandi Board, the total liability outstanding on the day when the affidavit is filed in court, namely, on 28.10.2014 comes to ₹587.90 crores. This is qualified as subject to the completion of work by the contractors satisfactorily as per the contracts in question.

- The State seeks for time by 6 months to clear the liability on the basis of first considering the oldest completed works and release payments in the order of completion of works.
- The Government has advised its departments to withhold fresh tendering/allotment of works other than substantially centrally/externally funded projects, till the pending liabilities have been fully cleared. The works would be allotted only after arranging necessary expenditure sanction from the Department of Finance. The instructions which are given in the light of the directions already given by this court has also been placed before court as Annexure R1. The instructions classify 4 different categories:
  - O One, in respect of completed works, directions have been given that the amount of ₹587.90 crores determined as the amount liable to be paid would be distributed in the order of preference from the date of submission of the bill in the treasury subject to certain safeguards. The details of the pending bills would be presented through a Nodal Officer of the Administrative Department appointed with the concurrence of the Finance Department.
  - O In respect of second category, namely, of ongoing works and works in progress, it will be determined by the respective departments through their Nodal Officers to decide to proceed with the work or abandon the same and the Finance Department would issue an expenditure sanction for the maximum amount which the department could incur. In respect of centrally sponsored/externally aided schemes, no expenditure would be incurred unless the requisite funds have been released to the Government.
  - O In respect of 3<sup>rd</sup> category, namely, the new works, no fresh tendering or allotments of work will be undertaken without the previous approval of the Finance Department. In the case of “deposit works”, unless the sponsoring organization has deposited minimum 25% of the estimated amount and have

agreed to deposit the balance amount in a time bound manner, the work shall not be started. In respect of works where tenders have also been received, work shall be allotted only after arranging necessary expenditure sanction. Even in respect of work of emergent/urgent nature, the expenditure sanction shall be accorded by the Finance Department only after clearing the liability towards completed works, partially completed works and ongoing works. The Finance Department will apprise the Nodal Officer of the Administrative Department soon after the work is allotted along with the details of contract price and the Department of Finance will be apprised of the details of payment towards running bills every month through their Nodal Officer.

- O In respect of 4<sup>th</sup> category, namely, of arbitration matters, the Nodal Officer of the Administrative Department will inform the Finance Department of matters concluded and pending before various courts and ensure that the payments are released in order of preference based on date of decision of the court and the policy guidelines are brought to the notice of the Heads of Departments under their administrative control for meticulous and strict compliance.

**VII. Court directions are restatement of undertaking by the state and hence binding and enforceable**

(11) Under normal circumstances, it should have been possible for me to pull the curtains down after taking on file the affidavit of the Principal Secretary of the Department of Finance. There have been assurances galore in the past and there have been mindless breaches. There is invariably a gaping hole in the cauldron held to collect the promises of the State and they drop by unattended, as forgotten undertakings, forcing the courts to issue directions yet again. It calls for serious action if the breaches are contumacious; if the non-fulfillment of the obligation is by wearing a cloak of authority and defying the other party to take any action that he may please; if the inertia is sought to be rationalized as on account of normal bureaucratic red-tape. The directions are in the rebound to the undertakings given by the State to make them binding and make them enforceable. Any contract that is

legally enforceable is an agreement between parties brought on consensus *ad idem*. It shall be impermissible for a court to re-write terms of contracts. Situations when any intervention would be possible would be occasions where a party complains of vitiating circumstances when a party could be relieved of the oppressive terms. It cannot still rewrite new terms which are exclusively prohibited. In this case, we have already examined that in the reply of one of the respondents, it is brought out that even after completion of works, the undertaking is that the amount will be paid as and when the government releases the amount and there shall be no liability for payment of any interest. It requires no forensic exercise to pronounce that it is grossly an unjust term or that which is open to a full-fledged abuse. If the government is sensitive to its obligations and the release of funds shall be a matter of course after appraisal of completion of works and compliance of specifications of work regarding quality, then a clause that the amount would be released after the Government releases the funds could cause no serious prejudice. However, if we have a State going on an affidavit that more ₹575/- crores are still due for works completed or partially completed where amounts are bound to be released, it only betrays a sorry state of affairs that makes delay as a normal component of State response and the excuse for non-payment as requiring to be coped with silently as karmic dispensation. This is surely an area that the government shall address itself for self-correction and not resort to as an usual clause in any contract. There must, on the other hand, be a case for identifying the persons responsible for causing delay for making payments.

(12) While the policy instructions are that no work will be entrusted without previous approval of the Finance Department, it is essential that the contract itself stipulates a timeline within which an admitted liability will be addressed. The learned Advocate General sets out several instances that cause delays resultant to revenue deficits. I have gathered information that Punjab's revenue deficit to GSDP ratio was 2.63% for 2011-12 against the target 1.8% as per Fiscal Responsibility and Budget Management Act, 2011. In 2010-11, its revenue deficit was 2.35% of GSDP. According to him, in the matter of budgeting, there is a certain projection of revenue inflows and when there is a change of policy or other compulsions requiring say, modification of some structure, there surely occurs a shortfall in revenue collection that makes for deficit of revenue, which has a cascading effect of not being able to meet the existing liabilities. It shall be the prerogative of the Executive to manage its finances and run a

government that is worthy of trust reposed by the elected representatives. Macro management of the economy is crucial for sustained development. Economists would concur that it cannot succeed unless adequate fiscal correction takes place at the State level by a disciplined spending commensurate with its resources. Punjab has been identified, by the 13<sup>th</sup> Finance Commission, as one of the three Special States (along with Kerala and West Bengal) to be granted an extended time period until financial year 2015 to meet fiscal consolidation targets. These States are characterized by high historical debt burden that has negatively impacted their current fiscal position, debt repayment capacity and future potential to raise further debt.

(13) The policies devised shall be driven through well oiled wheels of bureaucracy executing the works in a responsible way that brings cheer to all sections of the people alike, the beneficiaries of the policies and the sections of the people who work shoulder to shoulder turning out the works. There is certain populism, as the learned Advocate General himself was prepared to admit in undertaking certain projects without actually minding the existence or otherwise of adequate financial resources to cope with the liabilities. The court can give no direction about how it will manage the finance but it will be surely within the competence of a court to lay down what it shall do to incorporate in their contracts specifying fairly and in an equitable manner its own obligations to the public.

(14) A contractor who turns out works is not necessarily engaged in an act of charity. To the extent to which he does the work as per specification that guarantees quality, he discharges a public duty that serves the public through creation of facilities and infrastructure that will put to use. Beyond that, it is the responsibility of the State to reward the work with what it has already contracted to do. The Right to Information Act brings a new paradigm of disclosure without demand of every important detail that the public is entitled to know. Every contract that is completed by one party and when there is a failure by the State to pay what is obligated under the terms, there is clearly an illustration of hiding behind a cloak of intransigence; wearing an apparel that is impenetrable and the person that challenges a cold shouldered response could be dealt with to his detriment by black marking him. This could lead to abuse of power. Whenever any person is rewarded with payment, it could be in situation of rewarding such of those persons who are in handpicked by nepotism. Lack of details regarding the resources available with no definite timeline for meeting

the demand is a sure breeding ground for corruption. These require correctives and they are enumerated through the following directions.

### **VIII. Disposition**

(15) The decision in *Abdul Kasem Ali Ahmed* (supra) vide para 4 suggests drawing up and maintaining a register listing out the order of priority for release of payments. Slightly different formulations are suggested here. The following directions, it is hoped, will also be considered by the State for due incorporation in their governance, so that the State's obligations are duly met and they leave less scope for complaints of unaddressed claims through writ petitions:

- (i) The contract itself shall contain a verification solemn affirmation of what the policy states viz., that appropriate sanctions have been obtained from the Finance Department for undertaking the expenditure;
- (ii) The value of the contract awarded and time before when it is due for completion shall be published at the site of construction;
- (iii) There shall be a timeline specified for verification of completion of work and the time before when the bills shall be cleared. It cannot be left to employ general expressions like, amounts shall be released as and when government sanctions the same and that no claim of interest shall be possible for delayed payments. It will be grossly inequitable and oppressive to resort to such clauses and subvert the rights of parties;
- (iv) The Nodal Officer shall be notified in the office which awards contract by name and designation and more specifically the contracting party shall be informed of the details alongside the contractual terms. Any change in the office of the incumbent shall be duly notified so that any contractor has a clear knowledge of the person to whom his grievances shall be addressed.
- (v) The department which awards the work shall also publish on a monthly basis in the notice board of the Head Office the pending bills in the order of completion of work and in the order when sanctions are obtained and amounts released. The use of information technology for such publication shall be the ideal tool of choice;

- (vi) There shall be no jumping the queue in the list as published and any instance of payments out of line shall be considered as an actionable wrong and the Disbursing Officer shall be held accountable for such undue preference;
- (vii) There shall be an inbuilt mechanism of empowering the nodal officer himself to receive the claims of the contractors whenever the payments are not released or when there are any issues relating to certification of completion of works and forward the same to the appropriate authorities for redressals.

(16) By way of specific direction as relevant to these cases that number over 125 petitions, the State shall cause a publication of list of works completed and partially completed for the amounts that have been disclosed in the affidavit of the Secretary to the Government as payable, within 4 weeks from this judgment in the official website of the Finance Department and also in the respective departments from where the amounts are due. The disbursement of amounts as per the entitlements under the contract shall be made irrespective of the fact that whether the party has approached the court or not. The payments shall be made only in the order of priorities published and the details shall be periodically updated and simultaneously published. With these observations, all the writ petitions are disposed of.

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*A Aggr.*