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2026:AHC:159554-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 3531 of 2019

Kalyan Health Care Products Pharmaceuticals Co-Operative Society Limited

…..Petitioner(s)

Versus

State of U P and 4 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Abhishek Sharma
Counsel for Respondent(s)	:	C.S.C., Rajiv Sharma

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Indrajeet Shukla, J.)

1. Heard Mr. Abhishek Sharma, learned counsel for the petitioner, Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel for the respondent nos. 1 to 4 and Mr. S.B. Singh, Advocate holding brief of Mr. Rajiv Sharma, learned counsel for the respondent no.5.

2. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked by the petitioner challenging the validity and correctness of the order dated 08.10.2018 passed by the 3rd respondent/Chief Medical Officer, Allahabad, whereby contractual dues in lieu of supply of Ayush Medicine have been

refused. There is a further, prayer for the issue of a writ of mandamus commanding the respondents to pay the bills for goods supplied by the petitioner, with interest at 18%.

3. Briefly stated, the facts are as follows:-

3.1 The petitioner claims to be a Cooperative Society registered under the provisions of the Cooperative Societies Act, 1965, holding a licence to manufacture AYUSH medicines. The petitioner received a supply order.

3.2 The supply order dated 21.12.2017 was received from the office of the 3rd respondent and in response to the same, the requisite Ayush Medicines were supplied. It is said that Goods and Service Tax (GST) to the extent of Rs.2,00,000/- was also paid by the petitioner. The pleaded case is that, there being no fault or deficiency in supply of medicines, the respondent-State authorities are not justified in refusing the claim for payment of bills of the petitioner.

3.3 In this factual matrix, the petitioner instituted Writ-C No.28503 of 2018 before this Court, which was disposed of vide order dated 24.08.2018 in terms of the following directions:-

> *"The limited relief pressed before us by the learned Counsel for the petitioner is for an appropriate direction to the respondent No.3/Chief Medical Officer, Allahabad to decide its pending representation, contained in Annexure No.6 to the petition, within a fixed time-frame.*
>
> *Considering the facts and circumstances of the case, we dispose of this petition with a direction to the respondent No.3 to decide the pending request of the petitioner, referred to above, in accordance with law, within a period of eight weeks, from the date of production of a certified copy of this order."*

3.4 In pursuance of the directions issued by this Court the 3rd respondent decided the petitioner's claim vide order dated 08.10.2018 refusing to pass the bills. The relevant excerpts of the order impugned are quoted below:-

"1. औषधियों के क्रय के लिये मिशन निदेशक राष्ट्रीय स्वास्थ्य मिशन द्वारा निर्धारित गाइड लाइन का अनुपालन नही किया गया ।

2. औषधियों के क्रय से पूर्व जिलाधिकारी की अध्यक्षता में न तो समिति का गठन किया गया और न ही क्रय से पूर्व समिति का अनुमोदन प्राप्त किया गया।

3. औषधियों को क्रय से पूर्व औषधियों के आकलन हेतु आयुष चिकित्सकों से मांग पत्र नहीं प्राप्त किया गया।

4. औषधियों के क्रय से पूर्व क्लासिकल व नान क्लासिकल मानकों का भी अनुपालन सुनिश्चित नहीं किया गया, सभी औषधियों एक ही पैथी की ली गयी।

5. औषधियों का क्रय न तो सी०जी०एच०एस० के दर अनुबन्ध से किया गया और न ही मिशन निदेशक द्वारा निर्धारित फर्मों से किया गया (संलग्नक -1)

6. अधोहस्ताक्षरी के द्वारा भी प्रकरण की जांच हेतु एक समिति का गठन कर जाँच कराई गयी। समिति ने भी अपनी जॉच आख्या में वित्तीय अनिमित्ता का उल्लेख किया है (संलग्नक समिति की रिपोर्ट-2 से 3)

7. अधोहस्ताक्षरी द्वारा समिति की रिपोर्ट के आधार पर एवं वित्तीय अनिमित्ताओं के कारण सम्बन्धित फर्म को औषधियों को वापस ले जाने हेतु बीजकों पर अंकित पते पर पत्राचार किया परन्तु पता गलत होने के कारण पत्र वापस कर दिया गया इससे भी फर्म की होने न होने की संदिग्धता प्रतीत होती है (संलग्नक समिति की रिपोर्ट-4 से5)

उपरोक्त कारणों से आपके द्वारा वर्ष 2017-18 में आपूर्ति की गयी औषधियों का भुगतान घोर वित्तीय अनिमित्ताओं के कारण नहीं किया जा सका एवं अभी भी भुगतान सम्भव नहीं है।"

SUBMISSIONS ADVANCED ON BEHALF OF THE PETITIONER

4. Learned counsel for the petitioner submitted that the impugned order does not contain any recital that the medicines supplied were sub-standard or that there was any deficiency. It also does not speak of any financial irregularity in the submission of bills or any inflated claim.

5. It has been strenuously urged that the 4th respondent/Chief Pharmacist/Store In-charge, C.M.O. Office, Allahabad, certified the

material supplied by the petitioner to be perfectly in order and further recommended release of payment to the petitioner.

6. The ground of denial of payment as reflected from the order impugned is founded on some inquiry report, which has not been supplied to the petitioner, violating the principles of natural justice.

7. Learned counsel for the petitioner further submitted that if there was any fault in observing the rules and regulations on part of the predecessor-in-office of respondent no.3, while placing the procurement order, the petitioner cannot be blamed in any manner on that account.

8. Counsel for the petitioner invited our attention to the recital carried in the order impugned with respect to the firm/petitioner being a non-existent identity inferable from the factum of service of a letter dispatched to the petitioner’s given address for return of medicines. It is ill founded, as a photostat copy of the envelope contained at page no.11 of the counter affidavit does not describe the complete address. Thus, the inference drawn by the third respondent that the petitioner-firm was non-existent is misplaced.

9. Learned counsel for the petitioner in order to buttress his submission that there was no deficiency/fault in the medicines supplied, strenuously urged that the averments in the counter affidavit are evasive.

10. Counsel for the petitioner, while assailing the order dated 08.10.2018, submitted that the inquiry report appended with the counter affidavit clearly reflects that nothing adverse has been pointed out against the petitioner in the supplying of medicines.

11. Further, to buttress the submissions advanced as aforesaid, learned counsel for the petitioner relied on the authority of the Supreme Court in **M/s Utkal Highways Engineers and Contractors Vs. Chief General Manager and others, 2025 SCC OnLine SC 1400,** emphasizing that non-payment of admitted dues may be considered as an arbitrary action on the part of the respondents and for the recovery of such dues a writ petition may lie. Moreover, dismissing a writ petition on the ground of the availability of an alternative remedy after 10 years, particularly when parties have exchanged their pleadings, is not the correct course of law, unless there are disputed questions of fact, which by their nature cannot be adjudicated upon without formally recording evidence.

12. Reliance has also been placed on a Bench decision of this Court in **Kanika Construction Vs. State of U.P. and 3 others, Writ-C No.27869 of 2021** decided on 06.01.2022 wherein it has been held that a writ petition would be maintainable to enforce a monetary claim if there is no dispute relating to the amount of money due and payable to petitioner.

13. Concluding the arguments, learned counsel for the petitioner drew our attention to the fact that the instant writ petition is pending for the last 7 years and the pleadings have been exchanged; as such, the claim for payment in relation to medicines supplied be entertained, and mandamus be issued accordingly.

SUBMISSION OF COUNSEL FOR THE RESPONDENTS

14. Learned counsel for the State submitted that Chief Medical Officer constituted a committee of three members to enquire about the claim of the petitioner for payment due on account of supply of medicines, who submitted a report that the financial irregularities

and serious financial irregularities were committed in placing the procurement order, setting the norms of procurement at naught, by the then Chief Medical Officer and the then Additional Chief Medical Officer.

15. It is further urged that the then Additional Chief Medical Officer (Store), Prayagraj sent a letter dated 26.06.2018 addressed to the petitioner, saying there that the medicines had been found sub-standard. A reminder dated 11.07.2018 to the same effect was also sent, but such communications were returned by the office of the Postal Department with the remark that the aforesaid firm/accommodation/factory/shop has not been found at the given address. Mere absence of mentioning the name of street on which petitioner’s firm is alleged to be situated cannot be construed as an incomplete address. More so, the denial of the money claim is based on a three-member committee report; thus, no fault can be found with the order impugned.

16. Our attention has been drawn to the letter dated 17.07.2017 written by the Mission Director, Rashtriya Swasthya Mission, U.P., Lucknow along with a list of Central Government/State Government Pharmacies/Cooperatives Manufacturing ASU & H Medicines. The list of pharmaceutical suppliers appended with the letter dated 17.07.2017 does not include the petitioner’s name.

17. For ready reference, the list of Central Government/State Government Pharmacies/Cooperatives Manufacturing ASU & H Medicines appended with the letter dated 17.07.2017 is extracted as under:-

> *“1. Indian Medicines Pharmaceutical Corporation Lid, Govt. of India Enterprise*

2. Oushadhi- The Pharmaceutical Corporation (I.M.) Kerala Ltd. - State Pharmacy

3. TAMPCOL, Tamil Nadu (Ayurveda/Siddha Medicine)-State Pharmacy

4. IMCOPS, Government of Tamil Nadu (Siddha Medicines)

5. M.P. Minor Forest Products Cooperative Federation Madhya Pradesh- State Pharmacy

6. Cooperative Drug Factory, Chilyanaula, Ranikhet, Uttarakhand

7. Uttarakhand State Medicines and Pharmaceutical Ltd. -Subsidiary of CDF

8. Kerala Government Pharamacy (Homoeopathic).”

18. The further submission is that there are serious financial irregularities/bungling noticed by the inquiry committee comprising three members, which coupled with the fact of absence of petitioner’s name in the list brought on record by virtue of Annexure No.CA-6, i.e. letter dated 17.07.2017, disentitles the petitioner from claiming payment of their under the contract.

19. The learned State counsel has drawn our attention to the pleadings contained in paragraph no.13 of the counter affidavit to the effect that it has not utilised the medicines supplied, as these were found sub-standard and against the procurement policy so that public money may not go to waste and health of the public at large, suffer.

20. In his concluding submissions, the learned State counsel has opposed the entertainability of this writ petition stating that the instant writ petition may not be entertained for a money claim since various disputed questions of fact are to be thrashed out before deciding the respective claims of parties.

21. In their rejoinder, the learned counsel for the petitioner drew our attention to the registration certificates of the empaneled pharmaceutical manufacturers contained at page no.20 of the counter affidavit have expired, whereas the same was subsisting in

favour of the petitioner. Therefore the then Chief Medical Officer allowed the supply to be made by the petitioner.

QUESTIONS/ISSUES INVOLVED

22. This Court in the instant case is faced with the question, whether the relief claimed is, in fact, a disguised suit for recovery of money and execution of contract though couched as a writ petition, for which remedy lies under the private law as the medicines supplied and non-payment of bills being a disputed question of fact would amount to adjudicating a money claim by embarking upon rival claims ?

ANALYSIS AND REASONING

23. Having heard learned counsel for the parties, this Court finds that the money claim set up by the petitioner has been refused by the 3rd respondent, stating various grounds, including financial irregularities practiced in the process of procurement, and that too against the policy.

24. The reasons assigned in the order impugned raise various disputed questions of fact, including non-compliance of the procurement policy. Even the name of the petitioner does not find place in the list appended with the circular dated 17.07.2017, as evident from the record (page no. 20 of the counter affidavit), a fact, which has not been denied by the petitioner.

25. The identity of the firm/petitioner itself has been disputed by respondents, and in our writ jurisdiction under Article 226 of the Constitution of India we are not equipped to undertake an inquiry into the matter by commenting upon the fact whether non-mentioning of the petitioner’s street in the small town of Bagpat

could be said to be such a fatal lapse that resulted in non-service of the letter by which the medicines were sought to be returned.

26. Turning to the next question that it was the Chief Pharmacist/4th respondent, who certified the quality and quantity of medicine received, we find that no such letter has been brought on record by which we could draw an inference in the petitioner’s favour. Even if it is assumed that there was certification, the question if the said respondent was competent to certify the quantity and quality of the medicine supplied. The non-compliance of procurement policy can still not be adjudicated, as it has multiple facets of disputed questions of facts. The fault/deficiency/quality in supply of medicine are contractual rights and obligations for which the private law remedies are best suited.

27. As regards the submission of the learned counsel for the petitioner that non-mentioning of the petitioner-firm in the empanelled list for procurement, if registration in favour of empanelled pharmaceutical manufacturers expired, then they might too have been dis-entitled to undertake supply to the respondents, but that would not ipso facto create any right in favour of petitioner-firm. Even if the registration certificate of other firms had expired (about which there is no material before this Court), this Court cannot extend the scope of our writ jurisdiction and conduct a roving enquiry on such matter, which can be decided through private law remedies, involving pleadings and evidence.

28. The authority cited by learned counsel for the petitioner in **M/s Utkal Highways Engineers (supra),** we are afraid is inapplicable as it relates to non-payment of admitted dues. ‘Non-payment’ of admitted dues bears twin conditions, i.e. not only the quantum of amount should be admitted, but the contractual

obligation and rights should not be disputed to the extent the amount has been admitted.

29. We do not find either in the counter affidavit or in the order impugned. There is no admission by the State respondents regarding the dues or their quantum.

30. In the case of **M/s Alaska Tech through its Partner Sanjeet Singh and another Vs. State of U.P. through Principal Secretary Urban Development and others (Misc. Bench No.3861 of 2014)** decided on 08.05.2014, this Court has held:-

> *"At the outset, a preliminary objection was raised by the learned Standing Counsel appearing on behalf of the respondents to the maintainability of this petition under Article 226 of the Constitution.*
>
> *We are of the view that, in a matter of this nature which pertains to alleged non-payment of dues under a contract for supply of goods, it would neither be prudent nor judicious for this Court, in exercise of its jurisdiction under Article 226 of the Constitution, to grant relief, which is in substance, is a prayer for a money decree. These matters, it must be emphasized, are not those relating to statutory contracts but are purely non-statutory contracts. Whether work has been satisfactorily performed, whether the rates which had been quoted are in accordance with the terms of the contract, whether the goods were of a quality as mandated, and above all, whether the claim is within limitation or otherwise, are issues which cannot appropriately be adjudicated upon under Article 226 of the Constitution.*
>
> *Increasingly, in cases like the one in hand, instead of taking recourse to the jurisdiction of the ordinary civil court under Section 9 of the Code of Civil Procedure Code, 1908, recourse is taken to the writ jurisdiction under Article 226. That is not permissible. The jurisdiction of the Civil Court is intended to provide the ordinary civil remedy for the adjudication of such claims. As a matter of fact, we also indicated to the learned counsel that even within the purview of the Civil Procedure Code, provisions such as those under Order 37 of the C.P.C. contain an adequate safeguard by laying down a summary remedy or procedure which can be availed of in cases where under a written contract, money is due and payable. Under Order 37, the defendant has to make out a triable defence before being granted even leave to defend the suit.*
>
> *Hence, in the present case, we see no reason or justification to entertain the petition under Article 226 of the Constitution."*

(emphasis by us)

31. It has been the consistent view of this Court as well as the Supreme Court that no interference can be made made under Article 226 of the Constitution of India, where a disputed question of fact is raised. The High Court in exercise of jurisdiction under Article 226

of the Constitution of India, would ordinarily not adjudicate a matter where the foundational facts are disputed. (see **Subhashree Das @ Mili Panda & Others vs State Of Orissa, 2012 (9) SCC 729).**

32. In the case of **Hindustan Petroleum Corporation Limited and another Vs. Dolly Das, 1999 (4) SCC 450,** the Supreme Court has held:-

> *"In the absence of Constitutional or statutory rights being involved a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid contractual liability arising thereto. In the absence of any statutory right Article 226 cannot be availed to claim any money in respect of breach of contract or tort or otherwise..."*

33. An analogous issue arose before Division Bench of this Court in the case of **M/s Amit Traders and another Vs. State of U.P. and another (Writ-C No.34449 of 2019)**, decided on 24.10.2019. The Division Bench has held that a mandamus sought by petitioner is nothing but the grant of a money decree in the extraordinary equitable jurisdiction under Article 226 of the Constitution of India, which cannot be granted. The relevant paragraphs of said judgement are extracted as under:-

> *"5. In **Kerala State Electricity Board and another Vs. Kurien E. Kalathil and others 2000 (6) SCC 293**, Court said that interpretation and implementation of a clause in a contract cannot be subject-matter of a writ petition. Whether a contract envisages actual payment or not is a question of construction of contract. If a term of contract is violated, ordinarily remedy is not the writ petition under Article 226. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Disputes arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies have power to contract or deal with property like private parties. Such activities may not raise any issue of public law. When it is not shown that contract is statutory and parties are within the realm of their authority, contract between the parties is in the realm of private law. The disputes relating to interpretation of terms and conditions of such contract cannot be agitated in a petition under Article 226 of the Constitution. The Court further said:*

> *"That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition."*

> *6. Following the above authorities, a Division Bench of this Court in* ***M/S Prabhu Construction Company through its Proprietor Vs. State of U.P. and another (Writ C No. 25075 of 2014)*** *decided on 05.05.2014 said as under:*
>
> > *"In the present case, there is nothing on the record which may persuade us to hold that the contract is a statutory contract. The remedy of the contractor, if he is aggrieved by non-payment, would be to either file an ordinary civil suit or if there is an arbitration agreement between the parties, to invoke the terms of the agreement."*
>
> *9. The same view has been reiterated in* ***M/S Goyal Stationary Mart through its Proprietor State of U.P. (Misc. Bench No. 10971 of 2015)*** *decided on 27.11.2015,* ***Budh Gramin Sansthan Vs. State of U.P. 2014 (7) ADJ 29, Kaka Advertising Agency Vs. U.P. Technical University and others 2014 (11) ADJ 227, M/s A.K. Constructions Vs. State of U.P. and others (Misc. Bench No. 1909 of 2014)*** *decided on 07.03.2014,* ***Major Travels through Proprietor Vs. State of U.P. and others (Misc. Bench No. 3472 of 2014)*** *decided on 25.04.2014 and* ***Uttaranchal Paper Converters and Publishers through Proprietor Vs. State of U.P. and others (Misc. Bench No. 3898 of 2015)*** *decided on 13.05.2014.*
>
> *10. The question as to whether in writ jurisdiction under Article 226 of Constitution this Court should entertain writ petitions seeking a mandamus for payment of contractual amount like a decree for recovery of money, repeatedly it has been held that such writ petition should not be entertained and parties must be relegated to avail remedies in common law.*
>
> *11. Following the above authorities, a Division Bench of this Court presided by me has also taken same view in* ***Writ Petition (Writ-C) No. 42697 of 2002 (M/S Jai Goswami Electric Works Alld. Vs. Union Of India through' D.R.M. and Others)*** *decided on 19.05.2016.*

34. We are conscious of the fact, that every writ petition seeking payment of contractual dues cannot be thrown out and can very well be entertained against the State and its instrumentalities if the amount of money due under contract is admitted and no inquiry is required to ascertain the facts. But, where facts are so disputed that these cannot be decided without leading evidences by rival parties, this Court must lay its hands off while exercising our writ jurisdiction.

35. We ourselves have entertained Writ-C No.6580 of 2022 following the guidelines and principles of the Supreme Court rendered in **ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others (2004) 3 SCC 553** but there the dues were admitted and not being paid only on the ground that the officers, who were responsible for embezzlement of the farmer's money in lieu of supply of paddy had not refunded the money and the money could not be recovered from them. But, the facts in the instant case are altogether different.

36. It is trite law that facts are required to be proved by evidence employing examination and cross-examination of witnesses. These cannot be determined on the basis of affidavits of rival parties. The aforesaid principle is fortified by the observation of the Supreme Court in **Sanjay Kumar Jha Vs. Prakash Chandra Chaudhary and others, (2019) 2 SCC 499.** The relevant excerpt is reproduced below:-

> *"13. It is well settled that in proceedings under Article 226 of the Constitution of India the High Court does not adjudicate upon affidavit, disputed questions of fact."*

CONCLUSION

37. The money claim set up by the petitioner requires adjudication of various disputed questions of fact, such as observance/defiance of procurement policy, utilisation of goods, refund/failure to refund medicine supplied, whether the goods supplied were sub-standard and the issue of limitation; all these are disputed questions of fact involved in this *lis*.

38. Since adjudication of the petitioner's entitlement would necessarily require oral and documentary evidence these cannot be substituted by pleadings/affidavits alone, concerning procurement,

quality of medicines, utilisation, alleged financial irregularities and contractual obligations.

39. In the present case, for the reasons stated above, we are of opinion that it would be inappropriate for this Court to determine the contentious disputed questions of fact that arise for our consideration in these writ proceedings. Thus, we decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India. The instant writ petition fails and is, accordingly, **dismissed.**

40. Parties shall bear their own costs.

41. However, we clarify that this order will not in any manner preclude the petitioner from seeking these remedies before the Civil Court or any other statutory forum, including arbitration etc.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

Date: 31.07. 2026
S.P.