

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side**

Present :- Hon'ble Justice Amrita Sinha

WPO No. 1076 of 2021

Heritage Infra Solution Private Limited & Anr.

Vs.

The Kolkata Municipal Corporation & Ors.

For the writ petitioners :- Mr. Abhijit Chatterjee, Sr. Adv.
Mr. Rishav Dutt, Adv.
Mr. Soumalya Ganguli, Adv.

For the KMC :- Mr. Alok Kumar Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.

Hearing concluded on :- 07.11.2022

Judgment on :- 22.12.2022

Amrita Sinha, J.:-

The petitioner no. 1 is a private limited company (hereinafter referred to as 'the Company') registered under The Companies Act, 1956 and is the only authorized distributor of products manufactured by BROCK KEHRTECHNIK Gmb H 'BKG' for short; a German company which manufactures large mechanical road sweepers and accessories. The Company has been authorized by BKG to provide maintenance service of the products of BKG marketed by the Company in India.

The petitioner no. 2 claims to be the Director and authorized signatory of the Company.

The respondent Kolkata Municipal Corporation, hereinafter referred to as 'KMC' for the sake of brevity, invited bids for procurement of mechanical road sweepers (large) (Contract Package KEIP/ ICB/SWB4/2009-06). The bid offered by BKG was accepted by KMC and a contract was entered into by and between the parties on 31.10.2006. The notification of award of contract, the bid submission sheets and the price schedules submitted by the supplier, the

Special Conditions of Contract, the General Condition of Contract, the schedules of supply, break up of contract price, all formed part of the contract.

According to the contract, the supplier i.e the Company agreed to provide goods and related services and to remedy defects therein in conformity with the provisions of the contract. KMC, the purchaser agreed to pay the supplier in consideration of the goods and related services, the contract price or any other sum as may become payable under the contract at the time and in the manner prescribed by the contract.

KMC accepted the bid to supply mechanical road sweepers and related services which included CIF Kolkata/ Haldia price of the machines, consumable spares for the machines during the warranty period, inland transportation and insurance, training for twenty days and annual maintenance charges for four years after warranty period, including spare parts. The offer price did not include custom duty and local taxes as applicable on the machines, consumables and spare parts.

The warranty period as specified in the General Conditions of Contract is twelve months after the goods or any portion thereof has been delivered to and accepted at the final destination or for eighteen months after the date of shipment or loading in the country of origin, whichever period concludes earlier.

The contract was initially from 2006-2011 extended till 2012.

After expiry of the contract period fresh tender was floated by KMC for providing service for maintenance of the mechanical road sweepers for a period of one year. Petitioners claim that as per the request of KMC, the petitioners submitted quotation and thereafter submitted revised quotation which was accepted. Fresh contract was executed on yearly basis extended till 2016.

Petitioners claim to have supplied the machines and related service as per the contract and allege that KMC did not release the payment that was

due and payable to them. Representations filed by the petitioners seeking payment remain unheeded. Hence, the writ petition.

According to the petitioners, KMC all through delayed in making payment. KMC ought to have scrutinized the bills submitted by the petitioners in proper time and should have made payment promptly.

The price quoted by the Company did not include the price of the spare parts. The payment of the price of spare parts of the machines was to be made in terms of the actual price quoted in the bills. The petitioners are entitled to receive payment in respect of the spare parts supplied by the Company.

The petitioners' principal prayer is for issuance of a writ of Mandamus directing KMC and its agents to pay the sum of Rs. 2,87,63,815/- being a part of the total dues of the petitioners.

The petitioners rely upon the following precedents in support of their case.

1. Mahabir Auto Stores & Ors. Vs. Indian Oil Corporation & Ors.; (1990) 3 SCC 752 paragraphs 12 and 23 wherein the Court laid down that even the contractual rights of the citizens are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. Fairness in action should be perceptible, if not transparent.

2. M/s. Hindustan Sugar Mills Vs. State of Rajasthan & Ors.; (1980) 1 SCC 599 wherein the Court *inter alia* held that we are living in a democratic society governed by the rule of law and every government must do what is fair and just to the citizens, regardless of legal technicalities and the State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness and justice demand.

3. Hindustan Sugar Mills Vs. State of Rajasthan; (1978) 4 SCC 271 paragraph 18 wherein the Court *inter alia* held that the motto of every civilized State must be "let right be done".

4. Kumari Shrilekha Vidyarthi Vs. State of Uttar Pradesh & Ors.; AIR 1991 SC 537 paragraph 21 wherein the Court upheld the scope of judicial review in contracts to which State is a party. The State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of State action is also on public interest.

5. Md. Makshud & Ors. Vs. State of West Bengal; (2021) SCC Online (Cal) 2578 paragraph 19 wherein the Court dealt with the provision of Section 114, illustration (e) of the Evidence Act, 1872. The Court reiterated the settled opinion that an official act gives rise to a presumption of correctness.

6. Madras Port Trust Vs. Hymanshu International by its proprietor V. Venkatadri (dead) by L.R.s; (1979) 4 SCC 176 wherein the Court opined that technical plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

7. State of Telengana & Ors. Vs. D. Mahesh Kumar & Anr.; (2018) 15 SCC 703 paragraph 11 wherein the Court held that there is a presumption of correctness of official acts under Section 114 illustration (e) of the Evidence Act.

8. Union of India & Ors. Vs. Tantia Construction Pvt. Ltd.; (2011) 5 SCC 697 paragraph 33 wherein the Court held that on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The constitutional power vested in the High Courts or in the Supreme Court cannot be fettered by any alternative remedy available to the authorities.

Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

9. *Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Limited & Ors.; (2003) 2 SCC 107* paragraph 7 wherein the Court held that in an appropriate case, in spite of availability of alternative remedy the High Court may still exercise its 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 is challenged.

The Court noted that the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause and held that the appellants should have been allowed leave by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

10. *ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. & Ors.; (2004) 3 SCC 553* paragraphs 16, 23, 27 and 28 wherein the Court laid down the legal principles as to the maintainability of the writ petition: (a) in an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

The Court laid down that, the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such

action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

11. Hindustan Petroleum Corporation Ltd. & Ors. Vs. Super Highway Services & Anr.; (2010) 3 SCC 321 wherein the Court relied upon the principle of 'too late' to relegate the matter to the alternate forum to seek remedy.

12. M/s. Shiv Shankar Dal Mills & Ors. Vs. State of Haryana & Ors.; (1980) 2 SCC 437 wherein the Court held that there is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. It is not palatable to our jurisprudence to turn down the prayer of high prerogative writs, on the negative plea of alternative remedy, since the root principle of law married to justice, is *ubi jus ibi remedium*. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects.

13. Unreported judgment dated 3rd September, 2022 passed by a learned single Judge of the High Court of Karnataka in Writ Petition No. 46302 of 2018 (GM-RES); **Shri M Chiranjeevi Vs. The State of Karnataka & Ors.** wherein the Court held that a dispute which otherwise can be fairly adjudged on the basis of pleadings of the parties accompanied by the evidentiary material on record, cannot be relegated to adjudication elsewhere, more particularly when the respondents happen to be the governmental bodies under the definition State under Article 12. A contract to which State is a party, does not create an island completely immune from judicial review under Article 226 and 227.

KMC raises a preliminary objection with regard to the maintainability of the writ petition. According to the respondents, the petitioners are not entitled to the reliefs as prayed for.

The grievance of the petitioners arise out of a contract seeking monetary claim for which the writ petition will not lie as no public law element is involved.

The amount claimed by the petitioners is disputed and not admitted by the respondents. The calculation made by the petitioners has not been approved for payment by the competent authority.

The claim of the petitioners is time barred. The Court ought not to entertain the writ petition as the same will amount to revival of the stale claim of the petitioners. The writ petition has been filed to revive a time barred money claim as the petitioners will not be entitled to approach the civil forum for relief.

According to the contract, the annual maintenance charges were inclusive of the price of the spare parts and the price of the spare parts was not liable to be paid separately over and above the payment made by KMC.

As per the contract there is an in-house dispute redressal mechanism. The petitioners ought to have availed the said remedy instead of approaching the writ Court.

The petitioners have relied upon internal communications and file notes claiming that the money claim of the petitioners has been admitted. The said documents relied upon by the petitioners cannot be the basis to claim payment.

The Corporation has released the amount that was legally due and payable to the petitioners and it is not possible for the respondents to revive the time barred claim of the petitioners at such a delayed point of time.

Contractual obligation of the parties ought to be adjudicated upon taking proper evidence and the same cannot be decided on the basis of the papers/ documents available before this Court.

The alternative remedy available to the petitioners ought to have been invoked in proper time.

According to the calculation of KMC, the petitioners received excess payment to the tune of Rs. 2,68,86,177/- on account of annual maintenance charges during the contract period which was made inadvertently upon misconception of the agreed terms and KMC reserves the right to claim refund of the amount paid in excess of the legal dues of the petitioners along with interest.

The respondents rely upon the following decisions in support of their case.

1. A. V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani & Anr.; AIR 1961 SC 1506 paragraphs 11 and 15 wherein the Court held that if a petitioner has disabled himself from availing the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour.

A party, who by his own conduct, deprives himself of the remedy available to him, cannot have a better right to a writ than a party who has not so deprived himself. Where the obligation sought to be enforced by the writ is created by a statute and that statute itself provides the remedy for such breach, it should be duty of the Courts to see that the statutory provisions are observed and the statutory authorities are given the opportunity to decide the question which the statutes requires them to decide.

2. State of Uttar Pradesh & Ors. Vs. Bridge and Roof Company (India) Ltd.; (1996) 6 SCC 22 paragraphs 16, 17 and 21 wherein the Court inter alia held that any dispute relating to interpretation of the terms and conditions of a contract in the realm of private law cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may

be. Whether any amount is due to the respondent from the appellant government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition.

When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226.

3. *Transport and Dock Workers Union & Ors. Vs. Mumbai Port Trust & Anr.; (2011) 2 SCC 575* paragraphs 14, 31 and 35 wherein the Court was of the opinion that the High Court ought to have dismissed the writ petition on the ground of existence of an alternative remedy under the Industrial Disputes Act. The Court observed that some High Courts by adopting an over liberal approach are necessarily adding to their load of arrears instead of observing judicial discipline in following settled legal principles.

It was held that the Courts should not ordinarily interfere with policy matters and the Court must exercise restraint and not ordinarily interfere with management functions. The Court opined that judges must maintain judicial self-restraint while exercising the power of judicial review of administrative or legislative decisions.

4. *Dattaraj Nathuji Thaware Vs. State of Maharashtra & Ors.; (2005) 1 SCC 590* paragraph 16 wherein the Court noticed that official documents are annexed to the petitions without indicating as to how the petitioner came to possess the same. The Court held that whenever frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petition but also to impose exemplary costs.

5. *Calcutta Electric Supply Corporation Limited & Anr. Vs. Kalavanti Doshi Trust & Ors.; 2011(1) CHN (Cal) 182* wherein the Court held that the writ application ought not to have been entertained in view of the

fact that efficacious alternative remedy prescribed under law had become barred and there is no provision of even condonation of delay for preferring any appeal against the order of final assessment. A writ Court should not by invoking jurisdiction under Article 226 of the Constitution of India, revive a barred remedy.

6. *Food Corporation of India & Ors. Vs. Harmesh Chand; (2006)*

7 SCC 654 wherein the Court held that where serious disputed questions of facts are involved and no factual finding could be recorded without consideration of evidence adduced by the parties, the High Court ought not to have exercised its writ jurisdiction. The parties could have approached a civil court of competent jurisdiction to adjudicate the matter.

7. *Kerala State Electricity Board & Anr. Vs. Kurien E. Kalathil & Ors.; (2000) 6 SCC 293* paragraphs 10 and 11 wherein the Court held that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. If a term of a contract is violated, ordinarily the 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. Dispute 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 contract between the parties is in the realm of private law and not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. This 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 to the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

8. Pimpri Chinchwad Municipal Corporation & Ors. Vs. Gayatri Construction Company & Anr.; (2008) 8 SCC 172 paragraphs 11 and 17 wherein the Court held that the writ petition ought not to have been entertained when the same arises out of contractual matters.

9. Divisional Forest Officer Vs. Bishwanath Tea Company Limited; (1981) 3 SCC 238 paragraphs 5, 6, 9 and 10 where the Court was answering the question whether contractual obligation can be enforced by the writ jurisdiction. The Court held that ordinarily, where a breach of contract is complained of, a party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed, or the party may sue for damages. Such a suit would ordinarily be cognizable by the Civil Court. The High Court in its extraordinary jurisdiction would not entertain a petition either for specific performance of contract or for recovering damages. The Court further held that it is dangerous for the High Court to examine rights and obligations claimed under the contract without proper or adequate material or evidence to reach a conclusion, more so, when the petition raised disputed questions of facts which needed investigation.

10. Bareilly Development Authority & Anr. Vs. Ajai Pal Singh & Ors.; (1989) 2 SCC 116 paragraphs 17 to 23 wherein the Court held that where the contract entered into between the State is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple.

11. Godavari Sugar Mills Limited vs. State of Maharashtra & Ors.; (2011) 2 SCC 439 where the Court held that where the writ petition was of a public law character and is related to the public law functions on the part of the State Government and its officers, the writ will be maintainable.

12. State of Uttaranchal & Anr. Vs. Sunil Kumar Vaish & Ors.; (2011) 8 SCC 670 paragraphs 21 to 25 where the Court held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely

represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. The noting in the file or even a decision culminates into an order affecting right of the parties only when it is expressed in the name of the President or the Governor as the case may be. A noting or even a decision recorded in the file can always be reviewed/ reversed/ over-ruled or over-turned and the Court cannot take cognizance of the earlier noting or a decision for exercise of the power of the judicial review.

13. *Mafatlal Industries & Ors. Vs. Union of India & Ors.; (1997) 5 SCC 536* paragraph 108 wherein the Hon'ble Supreme Court laid down certain propositions with regard to the jurisdiction of the High Court under Article 226.

The respondents pray for dismissal of the writ petition.

I have heard the rival submissions made on behalf of both the parties and have perused the materials on record.

As an issue has been raised with regard to the maintainability of the writ petition the same is being decided first. If the petitioners can overcome the said hurdle, then the other points will be taken up for consideration.

The claim of the petitioners arises out of a contract entered between the parties in October, 2006 for supply of certain goods and for providing the related services. According to the contract, KMC being the purchaser of the goods was obliged to pay the supplier i.e. the Company, in consideration of the goods and related services, the contract price or such other sum as may become payable under the contract at the time and in the manner prescribed by the contract.

The General Conditions of Contract mention that the contract price shall be paid as specified in the Special Conditions of Contract.

The Special Conditions of Contract lays down the terms of payment for goods supplied and related services rendered to the purchaser. The same mentions that, the purchaser shall pay the supplier 50% of the contract price

of the goods after receiving the goods at the final destination within twenty eight days from the receipt of the invoice along with specific documents.

The balance amount including the cost of maintenance shall be paid after the receipt of the goods and on submission of a claim supported by the acceptance certificates issued by the purchaser within twenty eight days of the receipt of the claim. 100% of the payment of the annual maintenance of the equipment after the warranty period shall be paid within fifteen days before the start of annual maintenance of the equipment each year against bank guarantee of an equivalent amount.

The General Conditions of Contract mention that the supplier's request for payment shall be made to the purchaser in writing along with the specified documents and upon fulfillment of all the obligations stipulated in the contract. Payment shall be made promptly by the purchaser not later than sixty days after submission of an invoice or request for payment by the supplier and accepted by the purchaser.

The petitioners have averred in the writ petition that the petitioners supplied the goods and provided maintenance thereof initially for a period of five years from 2006 to 2011 and thereafter for a further extended period of one year till 24th July, 2012. During the aforesaid period from 2006 to July, 2012 the petitioners raised bills but KMC made ad hoc payments from time to time and did not clear the total dues of the petitioners. KMC arbitrarily withheld payments from the bills.

In March, 2014 KMC floated fresh tender for providing service for maintenance of mechanical road sweepers for a period of one year from 2014 to 2015. The petitioners participated in the tender process and the rate quoted by the petitioners was ultimately accepted by KMC. The annual maintenance contract was issued in favour of the petitioners and the same was extended. The contract period expired on 30th September, 2016.

During the period from 2013 to 2016, KMC again made ad hoc payments against the bills raised by the petitioners for the service provided and

for the spares supplied during the earlier period as well as for the current period.

According to the petitioners, a sum of Rs. 6,97,23,096/- is due and payable by KMC as on 30th September, 2016 which includes a sum of Rs. 1,00,00,000/- approximately on account of earlier dues for the period 2006 to 2012.

The petitioners in October, 2018 and thereafter in February, 2020 made a request before the competent authority of KMC to release the due amount. A further request was made on 1st September, 2021 for clearing the dues.

In the present writ petition, the petitioners restrict claim to a sum of Rs. 2,87,63,815/- only as, according to the petitioners, the aforesaid claim is an admitted amount, not disputed by KMC. The said admission is based upon certain notes in the official file of KMC which, however, were never formally forwarded to the petitioners.

The learned advocate representing KMC vehemently opposes the prayer of the petitioners. It has been submitted that the claim of the petitioners is time barred and the same ought not to be revived by the Court.

Admittedly, the claim of the petitioners flow from a contract. The petitioners seek price of the goods sold and delivered and also for the services rendered for maintenance of the goods. A specific time period is prescribed in the contract itself within which the payment is to be made by the purchaser i.e. KMC. In default to make payment within the time specified in the contract, the petitioners ought to have approached the appropriate forum on time. The time period to sue the purchaser for non-performance of the contractual obligation as laid down in the Limitation Act, 1963 is, three years from the date fixed for the performance.

The petitioners admit that the dues accumulated for the period 2006-2016. Documents reveal that the petitioners made request for payment in the year 2018 followed by reminders in February, 2020 and September, 2021. The petitioners claim that the bills were under process and the petitioners waited

for clearance of the same. Mere processing the bills and negotiating with the purchaser with request to clear the bills does not extend the period of limitation.

According to law, the period of limitation starts running as soon as the payment becomes due. As per the contract, payment became due on completion of sixty days after submission of the bills. 100 % of the payment on account of maintenance was payable within fifteen days before the start of annual maintenance.

The petitioners, for reasons best known, continued providing service and supplied goods to KMC without insisting upon payment to be made in accordance with the contract. The petitioners admit that ad hoc payments were made from time to time and the KMC never cleared the bills in proper time.

It seems that the petitioners did not have any issue with the act of KMC in releasing delayed ad hoc payments, not in accordance with the terms of the contract. No document has been annexed to show that the petitioners insisted on timely payment of the bills during the entire tenure of the contract. More than two years after the contract expired, request for payment was made.

It is not unusual that the petitioners refrained from raising any issue with regard to the delayed payment of the bills as the petitioners may have apprehended that if the bills were pressed, the contract may not be extended or may be terminated. It is only after the contract expired and time started running out for receiving payment, did the petitioners make formal request for releasing payment. Instead of carrying forward the claim, the petitioners again, for unknown reasons, waited for a further period of fifteen months to make the second request. By that time, the period for initiating proceeding for specific performance of the contract or for recovery of the dues, expired.

It is common knowledge that the statutory authorities hardly make payment in proper time, but can that be a reason to extend the period of limitation to revive a time barred claim?

Section 3 of the Limitation Act, 1963 clearly mentions that any suit instituted after the prescribed period shall be dismissed. The expression 'shall' gives a mandatory character to the intent of the statute. Limitation goes to the root of the issue and once the same is raised as defense by the respondents, the Court is bound to decide the same.

It has been contended by the petitioners that the claim is under a contract for supply of goods and for rendering services. Two claims arising from combination of the aforesaid two causes cannot be referable to the Articles in the schedule to the Limitation Act. The petitioners contend that there is no specific Article for such a claim and any suit or arbitration proceeding for such a claim would be governed by Article 113, being the residuary entry. Article 113 activates from the date the right to apply accrue. As the claim of the petitioners has not yet been rejected, the right to sue has not yet accrued and limitation has not started running.

The Court cannot accept the aforesaid contention of the petitioners. Assuming that the representation seeking payment is not rejected for a period of five, seven or ten years, can it be said that the period of limitation has not started running. The contract itself sets a time limit within which the payment ought to have been made. The period of limitation starts running immediately on completion of the time specified in the contract for payment. One is not required to wait for a formal order rejecting payment.

Assuming that there is no response from the respondent, then, doesn't the supplier have a remedy? Is the supplier required to wait for an indefinite period to get a negative response after which he can approach the proper forum for relief?

A person who is entitled to receive any payment ought not to wait for an indefinite period of time for receiving his dues. Legal remedy ought to be sought for at the very first instance and not after expiry of the prescribed time period within which action ought to have been taken. Not approaching the proper forum within the prescribed time limit may amount to conscious waiver of the

right to receive payment in accordance with the contract. The provision of the statute cannot be defeated or its operation be put on hold on account of negotiation in between the parties for arriving at a possible settlement of the due amount. The settlement or negotiation may proceed even during the pendency of a judicial proceeding. Judicial proceeding cannot and ought not to wait till failure of the talks of settlement.

The Court is bound to act in accordance with the statute and not ignore the provisions thereof. The respondent cannot be prevented from relying upon the statute merely because there are certain file notings and talks of negotiation in between the parties. It has been repeatedly reiterated by the Courts that issues under the Limitation Act shall be determined according to the true construction of the words used by the legislature and the doctrine of 'equity, justice and good conscience' cannot be applied to override and abrogate the expressed provisions of the Limitation Act.

It has been laid down that the High Court has no power by rules to add or to modify the provisions of the Limitation Act except when such power is conferred upon it by statutory authority. The Court is hardly left with any alternative but to dismiss a petition initiated for payment of claim filed beyond the prescribed period of limitation. KMC is entitled to take advantage of the statute of limitation.

From the discussions made hereinabove it is overwhelmingly clear that the petitioners filed the present writ petition for payment of the claim arising out of a contract which stood expired way back in 2016. Entertaining the prayer of the petitioners will give a fresh lease of life to a claim which has become time barred due to efflux of time.

Apart from the above, KMC has disputed the claim of the petitioners. A point has been raised that, inadvertently, certain payment has been made in excess to the petitioners and the Corporation is entitled to get refund of the same. Things would have been different had KMC admitted the dues of the petitioners and made payment despite the period of limitation being over.

In *Kalavanti Doshi Trust (supra)* the Court laid down that there is no scope of application of Section 5 of the Limitation Act by taking aid of Section 29(2) of the Limitation Act. On the date of presentation of the writ application, the remedy of the petitioners being totally barred, the writ Court should not by invoking jurisdiction under Article 226 of the Constitution of India revive a barred remedy.

The Hon'ble Supreme Court in the matter of *Madras Port Trust (supra)* held that it is high time the governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

The aforesaid order was passed while deciding an issue in connection with the *Madras Port Trust Act* where a specific period of limitation has been laid down. In the present case, the claim of the petitioners has to be decided on the general laws governing the field and not under any specific Act.

From the discussions made herein above, it is clear that the petitioners are not able to cross the hurdle of limitation. As the writ petition cannot be maintained for reviving a time barred claim, accordingly, the Court refrains from adjudicating any other issue raised by the petitioners. Discussing other issues at this stage will be purely academic. Had the petitioners approached the Court within the prescribed period of limitation, then there would have been a scope of deciding the writ petition on merits.

In the present set of facts the Court is prompted to make the following observations. There is no evidence that KMC made timely payments of the bills raised by the petitioners. It is an open secret that the State authorities, except on rare occasions, usually delay in releasing payment of the contractual dues.

The suppliers or the service providers who are usually businessmen, more often than not, write off the dues as bad debts. They choose not to do the running around the corridors of the Court but concentrate on other business. They, for valid reasons, prefer to invest their time and money for productive gain rather than for non-profitable purpose.

Does that give out a healthy picture of the manner in which the State authorities manage their business administration? Do the dues which become unrecoverable being time barred get wiped off? Is it not the solemn duty of the State to pay the creditors the amount that is legally due and payable to them? Does it not amount to going back on the promise that the State made at the time of entering into the contract? Does it not amount to duping the party to enter into contract with the mighty State and thereafter not pay the dues? Does it not amount to sending out a very negative message to the business community who may be interested to do business with the State? After all, the State has to rely upon its citizens to build and develop the country, and vice versa, the public look forward to the State for getting the best service. Refusal to pay or delay in making payment, the legitimate dues of the creditors, should never be in the mind of the State.

It is for no reason that several illegalities crop up in the tender process. The offer price shoots up as the tenderers have to balance their profit margin and quote the price by adding the money which may ultimately become unrecoverable. In cases where just price is quoted, the tenderer has to look out for other avenues to recover the dues. Illegal and unfair practice has to be adopted to release money from the coffers of the State. To continue with the business, the businessmen are compelled to adopt such methodology. The same promotes a circuitous avenue to recover money from other sources.

If the trend to not make timely payment catches up, then time is not far that the State will be branded as a poor pay master and businessmen will refuse to provide service to the State and its parastatals. The ultimate sufferer

will be the public who will be deprived of the services of reputed service providers.

There are instances galore where State authorities release payment even after the period of limitation expires. This Court reiterates that the 'State' authorities ought not to adopt technical pleas to defeat the legitimate claim of the claimants provided the claim is pressed within the prescribed period of limitation and there isn't undue delay or laches. The approach of the State should be an honest one. Extracting service without making payment amounts to exploitation, which cannot be supported in law. There may be reasons causing delay in making payment, but the claim ought not to be wiped away on technical grounds. It is the onus duty of the State to make payment to all who owes money from the State in lieu of the service provided.

The respondent authority can always check their records to verify whether payment has been made to the petitioners in accordance with the contract. If it transpires from records that any money is due and payable to the petitioners, then the Corporation can clear the dues despite the fact that the time within which the payment ought to have been made is over, as there is no bar in clearing time barred claim.

The writ petition is disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)

