* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 9th September, 2026***
Judgment pronounced on: 18th November, 2026

\# **CNR No. DLHC012087892017**

\+ **W.P.(C) 3676/2017 with CM APPL. 16178/2017, CM APPL. 38319/2023 and CM APPL. 47390/2026**

M/S R.B. SAXENA AND SONS .....Petitioner

Through: Mr. Rajesh Vashisht and Mr. Piyush Kumar, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS .....Respondents

Through: Mr. Sanjay Vashishtha, Standing counsel for MCD with Mr. Siddhartha Goswami and Mr. Aditya Sachdeva, Advocates for MCD.

\# **CNR No. DLHC011979802018**

\+ **W.P.(C) 8294/2018 with CM APPL. 62590/2025**

JOGINDER SINGH WADHAWA .....Petitioner

Through: Mr. Vaibhav Agnihotri, Ms. Vagmi Singh, Mr. Chaitanya Malhotra, Mr. Jai Raj Maini and Ms. Yashi Pandey, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS .....Respondents

Through: Mr. Sanjay Vashishtha, Standing counsel for MCD with Mr. Siddhartha Goswami and Mr. Aditya Sachdeva,

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Advocates for MCD.

\# **CNR No. DLHC010214632019**

\+ **W.P.(C) 4824/2019**

M/S S G CONSTRUCTIONS .....Petitioner

Through: Ms. Chandrika Prasad Mishra, Mr. Ankit Pandey, Ms. Swati Surbhi, Ms. Prashasti Singh, Ms. Harshita Bhardwaj, and Ms. Priyanshi Kumari, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION AND ORS. .....Respondents

Through: Mr. Sanjay Vashishtha, Standing counsel for MCD with Mr. Siddhartha Goswami and Mr. Aditya Sachdeva, Advocates for MCD.

\# **CNR No. DLHC010216182019**

\+ **W.P.(C) 4849/2019**

KHAJAN SINGH .....Petitioner

Through: Ms. Chandrika Prasad Mishra, Mr. Ankit Pandey, Ms. Swati Surbhi, Ms. Prashasti Singh, Ms. Harshita Bhardwaj, and Ms. Priyanshi Kumari, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS .....Respondents

Through: Mr. Sanjay Vashishtha, Standing counsel for MCD with Mr. Siddhartha Goswami and Mr. Aditya Sachdeva, Advocates for MCD.

\# **CNR No. DLHC010325972021**

\+ **W.P.(C) 11919/2021 & CM APPL. 62325/2025**

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SAI INTERPRISES THROUGH ITS PROPRIETOR UMESH KUMAR .....Petitioner

Through: Mr. Vaibhav Agnihotri, Ms. Vagmi Singh, Mr. Chaitanya Malhotra, Mr. Jai Raj Maini and Ms. Yashi Pandey, Advocates.

versus

EAST DELHI MUNICIPAL CORPORATION & ANR. .....Respondents

Through: Mr. Sanjay Vashishtha, Standing counsel for MCD with Mr. Siddhartha Goswami and Mr. Aditya Sachdeva, Advocates for MCD.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present writ petitions have been filed seeking directions to the respondents to release amounts withheld and deducted from the bills of the petitioners towards 'Foul Condition' charges, along with interest thereon. The petitioners also seek quashing of the communications issued by the respondent, East Delhi Municipal Corporation ('EDMC'), whereby the recovery of the aforesaid amounts was communicated to the petitioners.

2. Since all the present writ petitions involve common issues arising out of the withholding and recovery of 'Foul Condition' charges payable under contracts awarded by EDMC, the petitions are being disposed of by way of a common judgment. However, for the sake of convenience, the facts of W.P.(C.) 8294/2018 are being noted.

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3. The petitioner is engaged in the business of providing vehicles with auto-tipping facilities for lifting Municipal Solid Waste ('MSW'), including garbage and drain silt and dumping the same at designated sites.

4. On 18th January, 2011, the Municipal Corporation of Delhi ('MCD') issued a communication concerning the rates payable for the deployment of labour under general and foul conditions. The rate per vehicle per day was fixed at Rs.668/- under 'General Purposes' and Rs.835/- under 'Foul Condition'. The rate for one *beldar* was Rs.238/- per day under 'General Purposes' and Rs.297/- per day under 'Foul Condition'.

5. On 22nd February, 2012, MCD issued Notice Inviting Tender ('NIT') for hiring vehicles for lifting municipal solid waste, garbage and drain silt.

6. The petitioner participated in the tender process and was one of the successful bidders. The petitioner was allocated work in the Shahdara (South) and Shahdara (North) Zones, involving the deployment of 70 auto-tipping vehicles.

7. Before the work order could be issued, in March, 2012, MCD was trifurcated into three separate municipal corporations, namely, North Delhi Municipal Corporation ('NDMC'), South Delhi Municipal Corporation ('SDMC') and East Delhi Municipal Corporation ('EDMC'). Consequently, the work allocated to the petitioner in the Shahdara Zones came under the jurisdiction of EDMC.

8. During the period from 2012 to 2014, EDMC issued five work orders in favour of the petitioner. However, the provision relating to the enhanced rate for *beldars* deployed under foul conditions was specifically not incorporated in the work orders issued by EDMC.

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9. From 2012 until February, 2016, EDMC released payments to the petitioner, including amounts calculated at the rate applicable to foul conditions.

10. With effect from March 2016, without any prior notice or intimation, the respondents began deducting 25% of the gross bill amount towards 'Foul Condition charges' while releasing the payments to the petitioner.

11. During 2016, the petitioner submitted representations seeking payment of the amounts deducted and incorporation of the provision relating to 'Foul Condition charges' in the work orders.

12. Upon receiving no response, Joginder Singh Wadhwa [petitioner in W.P.(C.) 8294/2018] filed a writ petition, W.P.(C.) 10376/2016, which was disposed of on 4th November, 2016, directing EDMC to decide his representation dated 24th September, 2016, within six weeks.

13. As no decision was taken, Joginder Singh Wadhwa filed another writ petition, W.P.(C.) 385/2017. During the pendency of the writ petition, the respondents passed an order rejecting the representation. Accordingly, on 16th January, 2017, the petition was disposed of with liberty to Joginder Singh Wadhwa to challenge the said decision.

14. Joginder Singh Wadhwa thereafter filed another writ petition, W.P.(C.) 1326/2017, which was disposed of on 15th February, 2017, permitting him to make a fresh representation to the respondents and directing the respondents to decide the same within four weeks.

15. On 22nd February, 2017, and 22nd May, 2017, Joginder Singh Wadhwa submitted further representations. Since his representations were not being decided, he instituted Cont. Cas. (C) No. 587/2017 against the respondents.

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16. By communication dated 21st August, 2017, EDMC rejected the representations, *inter alia*, on the ground of delay. The petitioners contend that the said communication did not address their grievance on merits.

17. The contempt petition was disposed of on 23rd August, 2017, with liberty to Joginder Singh Wadhwa to challenge the decision dated 21st August, 2017, in accordance with law.

18. By a common communication dated 12th February, 2018, EDMC informed the affected contractors, including all the petitioners herein, that excess payments had been made towards Foul Condition charges and that the excess amounts were being recovered from their bills. The communication enclosed statements setting out the amounts withheld from the petitioners' bills up to December 2017.

19. Aggrieved therefrom, Joginder Singh Wadhwa has approached this Court under Article 226 of the Constitution of India seeking the following reliefs:

> *"(i) A Writ of Certiorari or any other writ, order or direction calling for the records of the matter and peruse the same.;*
>
> *(ii) A Writ of Certiorari or any other writ, order or direction thereby quashing the impugned action of the respondents in making illegal, arbitrary, discriminatory and malafide deductions from the petitioner's payments under the garb of alleged recovery of 'Foul Condition' amount which was earlier paid to the petitioner for most genuine and correct reasons, as has been intimated to the petitioner vide letter dated 12.02.2018 together with detail of impugned deductions [ANNEXURE-P-18 (Colly)];*
>
> *(iii) A Writ of Certiorari or any other writ, order or direction thereby quashing and setting aside the communication/ letter dated 21.08.2017 (ANNEXURE-P-16) issued by the respondents whereby petitioner's most genuine and bonafide request to rectify an apparent and inadvertent*

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mistake occurred in the work orders issued by them has been rejected without assigning any plausible and justifiable reason;

(iv) A Writ of Mandamus or any other writ, order or direction thereby directing the respondents to rectify the mistakes occurred in the Work Orders issued by them to the petitioner and incorporate the 'Foul Condition' clause therein similar to the same existing in the work orders issued by the other Municipal Corporations of Delhi and thereafter, to pay the Foul Condition chargers to the petitioner, as was being paid earlier;

(v) A Writ of Mandamus or any other writ, order or direction thereby directing the respondents to refund/release the entire amount of the petitioner illegally and arbitrarily withheld/deducted by them on account of recovery of amount paid for 'Foul Condition' together with interest thereon;"

20. The petitioners in the other writ petitions have also filed petitions seeking similar reliefs.

21. A counter-affidavit has been filed on behalf of the respondents, contending that the contracts awarded to the petitioners contained specific terms for payment. There were excess payments made inadvertently, which were subsequently detected pursuant to audit and vigilance objections, following which such payments were discontinued and the excess amount was recovered.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

22. The principal contention of the petitioners is that the deductions and recoveries made by EDMC towards foul condition charges are arbitrary and contrary to the terms governing the contracts awarded to them.

23. It is submitted on behalf of the petitioners that the MCD had prescribed a rate of Rs.297/- per day for labour deployed under foul

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conditions, as against Rs.238/- per day for general conditions. The petitioners contend that the work undertaken by them involved lifting and transporting municipal solid waste, garbage and drain silt and, therefore, fell within the category of work performed under foul conditions.

24. The petitioners further submit that the respondents' own affidavits and internal records acknowledge that the work involved the lifting and transportation of municipal waste under foul conditions and that the rate of Rs.297/- was associated with such work. The respondent has merely characterised such payments as inadvertent excess payments pursuant to audit observations, without disputing the material factual assertions of the petitioners. Accordingly, it is submitted that no substantial dispute of fact survives for adjudication.

25. It is further submitted that the work orders were issued pursuant to the tender process initiated by the MCD and that the petitioners were paid foul condition charges for approximately three-and-a-half to four years. According to the petitioners, EDMC could not subsequently treat the payments made in accordance with the contractual arrangement as excess payments and recover the same unilaterally.

26. It is also contended that the deductions commenced without any prior notice or show-cause notice and without affording them an opportunity to explain their position, hence, the impugned action is arbitrary and violative of Article 14 of the Constitution of India.

27. The NDMC and SDMC, which emerged from the trifurcation of the MCD, continued to pay foul condition charges to contractors engaged in similar work. It is contended that the differential treatment meted out to contractors engaged by EDMC is discriminatory.

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28. On the objection of maintainability, the petitioners submit that the mere existence of a contractual relationship does not bar the exercise of writ jurisdiction under Article 226 of the Constitution of India, where the action complained of is arbitrary and has been taken by a statutory authority. Reliance is placed on the judgment of the Supreme Court in ***ABL International Ltd.*** **v.** ***Export Credit Guarantee Corporation of India***[1] and ***Union of India*** **v.** ***Tantia Construction***[2], and ***Kumari Shrilekha Vidyarthi*** **v.** ***State of U.P***[3].

29. With regard to limitation, the petitioners submit that the cause of action arose when EDMC commenced withholding the foul condition charges and, subsequently, when the recovery amount was communicated to the petitioners on 12th February, 2018. It is contended that even though deductions of 25% foul condition charges commenced only from March 2016, the communication to the petitioners from the respondents confirming withheld amounts was issued only on 12th February, 2018, and that is the earliest common cause of action crystallising the grievance for all petitioners.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

30. *Per contra*, the respondents oppose the writ petitions on the ground that the claims raised by the petitioners arise out of concluded contractual arrangements and are, therefore, not amenable to adjudication under Article 226 of the Constitution of India.

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[1] (2004) 3 SCC 553
[2] (2011) 5 SCC 697
[3] (1991) 1 SCC 212

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31. It is further submitted that the dispute involves the interpretation of the contractual terms, the applicability of the rates prescribed under the tender documents and the computation of the amounts allegedly payable or recoverable under the respective work orders. According to the respondents, such disputes ought to be agitated before the appropriate civil forum rather than in proceedings under Article 226 of the Constitution.

32. It is submitted that the work orders were issued between 2012 and 2014 and that the petitioners did not challenge their terms at the time of issuance. According to the respondents, the 'Foul Condition' clause was absent from the written terms of the work orders, unlike the work orders issued by the other municipal corporations.

33. The respondents contend that if the petitioners were aggrieved by the omission of a specific 'Foul Condition' clause from the work orders, the grievance ought to have been raised when the work orders were issued. The petitioners cannot, after the contracts have expired by efflux of time, seek a direction from this Court to incorporate a term into the contracts or to grant monetary relief on that basis.

34. The respondents further submit that the cause of action, at the latest, arose in March 2016, when deductions from the petitioners' bills commenced. The petitioners were aware of the deductions but did not approach this Court within a reasonable period.

35. It is contended that the representations submitted by the petitioners and the subsequent communications issued by EDMC do not give rise to a fresh cause of action. The petitioners cannot extend the period for approaching this Court by submitting successive representations and treating the rejection of each representation as a fresh starting point for limitation.

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Reliance is placed on ***Rabindra Nath Bose*** **v.** ***Union of India***[4], ***P.S. Sadasivaswamy*** **v.** ***State of Tamil Nadu***[5], and ***Karnataka Power Corporation Ltd.*** **v.** ***K. Thangappan***[6].

36. The respondents also submit that the intervening writ and contempt proceedings initiated by the petitioners did not determine the substantive dispute on merits and did not grant any stay against the deductions. It is contended that the liberty granted to the petitioners to pursue their remedies in accordance with law did not revive any claim that had otherwise become stale.

37. On the merits of the dispute, the respondents rely upon their stand that the payments made towards foul condition charges were in excess and were liable to be recovered pursuant to the observations made by the audit authorities. The respondents contend that the petitioners cannot rely solely upon the fact that payments were made in the past to claim a continuing entitlement to such payments.

ANALYSIS AND FINDINGS

38. I have carefully considered the submissions made on behalf of the parties and the examined the record of the writ petitions.

39. Firstly, I shall deal with the merits of the case.

40. MCD *vide* its communication dated 18th January, 2011 had declared the rates for hiring charges of vehicles with auto tipping facilities to carry out lifting of Municipal Solid Waste including garbage and drain silt from the narrow lanes and roads of each ward of MCD, in terms of which, the

[4] (1970) 1 SCC 84
[5] (1975) 1 SCC 152

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rates of vehicles per unit was fixed for Rs.668/- under ‘General Purposes’ and Rs.835/- under ‘Foul Condition’. The rate for ‘Foul Condition’ was 25% higher than the rate for ‘General Purposes’. The said communication also provided the differential rates payable in respect of a *beldar*, i.e. Rs. 238 for ‘General Purposes’ and Rs. 297/- for ‘Foul Condition’. The rate for ‘Foul Condition’ was 25% higher than the rate for ‘General Purposes’.

41. The tenders were issued by MCD in 2012 and the petitioners herein were the successful tenderers. Thereupon, in March 2012, MCD was trifurcated into three separate municipal corporations. The work allocated to the petitioners came under the jurisdiction of EDMC.

42. The petitioners, with effect from 2012, continued to receive work orders from the respondents. Based on the aforesaid, the respondents continued to pay the rates applicable to the Foul Condition Charges till February, 2016.

43. The grievance of the petitioners is that the respondents, with effect from March 2016, began to unilaterally and arbitrarily deduct amounts that were due to the petitioners on account of ‘Foul Condition’ Charges.

44. *Per Contra*, respondents contend that there were excess payments made inadvertently, which were subsequently detected pursuant to audit and vigilance observations.

45. Therefore, the issue to be decided in the present writ petition is whether the respondents were justified in making deductions from the bills of the petitioners, in respect of the amounts which had been paid towards the Foul Condition Charges.

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[6] (2006) 4 SCC 322

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46. The respondents, in their counter-affidavit, have clearly admitted that "***the NIT was floated by the respondents inviting bids to provide auto tippers with driver and helper for lifting and transport garbage i.e. working on foul condition***." It is further admitted that the rate of Rs.297/- was applicable for foul conditions. In fact, the respondents had duly paid to the petitioners at the aforesaid rate of Rs.297/- from the date of contract/ work order, till March, 2016.

47. It was only in March, 2016 that the respondents came to the conclusion that they had made excess payments to the petitioners on account of foul conditions and accordingly, stopped making the said payments and sought to recover the excess amounts paid to the petitioners. There is no justification or reasoning given by the respondents as to the basis of the conclusion that excess amounts were paid by them to the petitioners. The only justification for deducting the amounts is on account of audit/vigilance objections.

48. The respondents themselves recognized the difference in the rates to be paid to labourers/*beldars* working under general conditions and those working under foul conditions by providing that the labourers/*beldars* working under foul conditions would be entitled to 25% higher remuneration. In this regard, reference may be to the rates notified by MCD in its communication dated 18th January, 2011 (*Annexure P-1* to the W.P.(C) 8294/2018).

49. EDMC, in its communication dated 9th August, 2012 (*Annexure P-3* to the W.P.(C) 3676/2017) addressed to the petitioner in W.P.(C.) 3676/2017, invited the petitioner to submit a bid for the deployment of 70 additional LMVs in the Shahdara (South) and Shahdara (North) Zones, on

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the revised terms and conditions of the contract. The said communication also expressly recognized the differential rates applicable to *beldars* deployed under general and foul conditions. The relevant extracts from the said communication are set out below:

> *"Vehicles will be hired for a maximum period of 5 years from the date of issue of the work order, on daily basis or as required by the department and the escalation on the awarded rate due to increase/decrease in fuel and minimum wages, will be paid as follows by considering the rates of CNG @ 30/- per kg, petrol @ 63.70/- per lts. and* ***minimum wage rate @ 297/- per day (Rate of one beldar comes to Rs. 238/- and Rs. 297/- as on date for general purpose and foul condition respectively)."***
>
> [emphasis supplied]

50. This was reiterated in the subsequent communication of EDMC dated 19th February, 2014. *(Annexure P-4* to the W.P. (C) 3676/2017).

51. The EDMC in its subsequent notification dated 1st May, 2018 (*Annexure P-6* to the W.P. (C) 8294/2018) has also notified different rates for hiring charges for 'General Purposes' and 'Foul Condition'.

52. The objections of Vigilance Department of EDMC fail to provide any justification as to why the petitioners are not entitled to the benefit of the foul condition rates. In fact, in response to the subject audit report, the Executive Engineer of EDMC has specifically stated that there was no irregularity in the payments made to the Contractor on account of 'Foul Condition' charges. It was explained that the basic labour rate was Rs.238/- per day, to which an additional 25% was applicable for work under foul conditions. The response further noted that the Special Audit Party had failed to account for this additional component of extra 25% for working under the 'Foul Condition'. Thus, EDMC's own response to the audit objection recognized the distinction between the two rates and justified the

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inclusion of the additional component for foul condition work. (*Annexure P-21* to the W.P. (C) 8294/2018). It is not even the case of MCD in the counter-affidavit that the work performed by the petitioners did not relate to foul conditions.

53. Pertinently, the respondents did not even bother to issue a show cause notice to the petitioners before they began to unilaterally deduct amounts from the bills of the petitioners, with effect from March, 2016.

54. It is noteworthy that NDMC and SDMC, the other units that emerged pursuant to the split of MCD, did not make any such deductions in respect of the contractors hired for similar work.

55. On behalf of respondents, it has been contended that the work orders issued by the respondents did not provide for a differential rate in respect of foul conditions and therefore, the petitioners cannot claim parity in respect of work orders issued by NDMC and SDMC, which specifically provided for a differential higher rate for foul conditions.

56. In my view, the aforesaid submission is completely devoid of merits. The work orders were issued by different units of MCD, pursuant to the trifurcation. However, they were based on the same NIT, which was issued by a unified MCD. Different units of MCD arising out of the trifurcation cannot follow differential payment norms in respect of the same tender.

57. Therefore, in the opinion of this Court, not mentioning 'Foul Condition' clause in the work orders issued by EDMC was nothing but an inadvertent clerical mistake. The understanding of the petitioners as well as the respondents was clear that a higher rate had to be paid in respect of 'Foul Condition' work to be performed by the Contractors. This conclusion is also fortified by the fact that EDMC continued to make payments towards foul

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condition charges till February, 2016 and the payment was stopped only on account of audit/vigilance objection, which as noted above, was completely without any justification.

58. Therefore, in the opinion of this Court, the action of the respondents in deduction/recovery of the amounts from the payments due to the petitioners is clearly unjust and arbitrary and violative of Article 14 of the Constitution of India.

59. Now I shall deal with the plea of limitation taken by the respondents.

60. The filing dates of the present writ petitions are tabulated below:

Petitioner	**W.P. No.**	**Date of Filing**
Joginder Singh Wadhwa (*Lead Petition) (Prop. Of Ms. Manmohan Singh Wadhwa)*	W.P. (C) 8294/2018	31.07.2018
M/s R.B. Saxena & Sons	W.P. (C) 3676/2017	27.04.2017
M/s SG Constructions	W.P. (C) 4824/2019	03.05.2019
Khajan Singh	W.P. (C) 4849/2019	03.05.2019
Sailnterprise (Umesh Kumar)	W.P. (C) 11919/2021	11.10.2021

61. The petitioner in W.P.(C) 8294/2018 immediately went to Court by filing W.P.(C.) 10376/2016 and continued to file various writ petitions before this Court on the same cause of action.

62. Both W.P.(C) 8294/2018 and W.P.(C) 3676/2017 were filed within the period of limitation even if the period of limitation is counted from March, 2016, when first deduction/recovery was made by the respondents.

63. In so far as the petitioners in W.P.(C.) 4824/2019 and W.P.(C.) 4849/2019 are concerned, the earliest communication made to the petitioners from the respondents confirming the withheld amounts was issued only in February, 2018. Accordingly, the cause of action crystallized on 12th February, 2018, when the respondents quantified the alleged excess

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payments and raised a demand for their recovery. The petitioners could not have effectively challenged the quantified demand prior to its communication. Therefore, W.P.(C.) 4824/2019 and W.P.(C.) 4849/2019, which were filed in 2019, were within the period of limitation.

64. In so far as the 5th petition, W.P.(C) 11919/2021, is concerned, the petitioner therein is entitled to the benefit of limitation given by the Supreme Court *vide* order dated 10th January, 2022 in Suo Motu W.P. (C) No. 3/2020, titled ***Re: Cognizance for extension of limitation,*** wherein Supreme Court noted that the period between 15th March, 2020 to 28th February, 2022 would be excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of judicial or quasi-judicial proceedings.

65. Hence, none of the writ petitions are barred by limitation/delay or laches.

66. Now, I shall deal with the aspect of maintainability of the present petition.

67. The respondents have objected to the maintainability of the writ petitions on the ground that the writ petitions arise out of concluded contractual arrangements and involve disputed questions of facts and interpretation of contractual terms, which ought to be agitated before the appropriate civil forum rather than in proceedings under Article 226 of the Constitution.

68. The Supreme Court in ***Shrilekha Vidyarthi*** (supra) has held that in any sphere of activity, there cannot be any unfairness or unreasonableness in actions of the State.

69. The aforesaid judgement was followed by Supreme Court in ***ABL***

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International (supra), wherein it was held that merely because the dispute arises out of a contract or involves disputed questions of fact cannot be a ground to refuse to entertain a writ petition. It was further held that where the State or its instrumentality acts arbitrarily, the writ court is empowered to intervene. The relevant observations are set out below:

> *"27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a 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 fact 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."*

70. In ***Tantia Construction*** (supra), the Supreme Court, while dealing with a contractual dispute, held that an alternative remedy is not an absolute bar to invoke the writ jurisdiction of the High Court.

71. The relevant paragraphs of the aforesaid judgment are set out below:

> *"33. Apart from the above, even 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 various decisions cited by Mr Chakraborty would clearly indicate that the constitutional powers vested in the High Court or 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.***

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> *34. We endorse the view of the High Court that notwithstanding the provisions relating to the arbitration clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the writ petition and also on its merits."*
>
> [emphasis supplied]

72. In the light of the aforesaid decisions, the position in law is crystal clear that there is no absolute bar for a party to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India, even in respect of contractual matters. The State is required to act fairly, reasonably and without arbitrariness in all spheres of its activity, including in the sphere of contractual matters. Being a statutory body/local authority, the respondent falls within the definition of 'State' under Article 12 of the Constitution of India and therefore, its actions would be subject to Article 14 of the Constitution of India.

73. In the present case, as noted above, there are no disputed questions of fact which require adjudication on the basis of evidence. The respondents in their short affidavit have clearly admitted that the NIT was floated for 'Foul Condition' work and the bids were accepted on that basis. Accordingly, work orders were issued providing the rate of Rs.297/-. The petitions also do not require any interpretation of contractual provisions.

74. Applying the ratio of aforesaid judgements to facts of the present case, there is no doubt in my mind that the respondents have acted in a completely arbitrary, unreasonable and discriminatory manner and in complete violation of Article 14 of the Constitution of India. In these circumstances, there cannot be any bar to entertain the present writ petitions.

75. In view of the discussion above, all the writ petitions deserve to be

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allowed.

76. Consequently, the communications issued by the respondents seeking deduction/recovery of the amounts paid to the petitioners towards 'Foul Condition' charges are hereby set aside.

77. Resultantly, the respondents shall refund all amounts due to the petitioners that had been wrongfully deducted/recovered by them along with the interest @ rate of 8% per annum.

78. The pending applications stand disposed of.

AMIT BANSAL
(JUDGE)

NOVEMBER 18, 2026
at

Signature Not Verified
Digitally Signed
By:AANCHAL TAGGAR
Signing Date:18.11.2026
12:04:47