(1975) 05 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Appeal No. 586 of 1975

Niranjan Lal Dalmia APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 13-05-1975

Acts Referred:

Citation : AIR 1976 Delhi 154 : (1975) 2 ILR Delhi 548

Hon'ble Judges : Yogeshwar Dayal, J;V.S. Deshpande, J

Bench : Division Bench

Advocate : C.N. Murthy, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) What is the legal nature of the action or inaction of the government in refusing or failure to pay the price of the goods supplied to it by the petitioner? What if the Government does so because it says that it has a claim for damages against the seller of the goods which is neither admitted nor has yet been adjudicated upon? Is it only a breach of contract and as such to be the subject-matter of either arbitration or suit? Or is it illegal executive action by Government which can be quashed by a writ in the nature of mandamus? This is the core of controversy in the present case.

(2) The tender of the petitioner for the supply of 10,000 Nos. of tents 180 Ibs. MK-3 Vat OG. amounting to Rs. 4,30,000.00 to be supplied by November 30, 1968 was accepted by the Union of India (Respondents) on February 24, 1968. The period of delivery was extended by the respondents on certain conditions. On August 18, 1969 the respondents cancelled the contract of the petitioner alleging that the petitioner had failed to deliver the goods before November 30, 1963 which date was subsequently extended to February 15, 1969 and May 31, 1969. The petitioner was told that the extra expenditure incurred in the risk purchase necessitated by the petitioner''s failure to perform the contract would be intimated to the petitioner without prejudice to the rights of the respondents

as per the terms and conditions of the contract. On April 18, 1975 the respondents informed the petitioner that they were entitled to claim from him a sum of Rs. 32,250.00 towards general damages. On the petitioner''s failure to pay the same further action as per terms and conditions of the contract would be taken against him. What action the respondents would take as per terms and conditions of the contract has not yet been stated. Whether the respondents would make a claim against the petitioner in arbitration or by way of a civil suit is not yet known. It is only when some definite action is taken against the petitioner by the respondents to prove their claim for damages and to recover the same after adjudication that the petitioner can be said to have some cause of action against the respondents. Till then a writ petition like the present one filed by the petitioner would be premature.

(3) Shri C. N. Murty, counsel for the petitioner, however, prays that the letter of April 18, 1975 may be read in the context of a previous office order No. 46 dated February 12, 1975 issued by the respondents consequent on the decision of the Supreme Court in Union of India v. Raman Iron Foundry and Union of India (UOI) Vs. Raman Iron Foundry, , Clause 18 of the General Conditions of Contract which are attached to all contracts of the respondents stated that whenever any claim for the payment of a sum of money arises out of or under the contract against the contractor, the purchaser shall be entitled to recover such sum firstly by appropriating the security furnished by the contract. In the event of the security being insufficient, "the entire sum recoverable shall be recovered by appropriating any sum then due or which at any time thereafter may become due to the contractor under the contract or any other contract with the purchaser or the Government......... (and) if such sum even be not sufficient to cover the full amount recoverable, the contractor shall on demand pay to the purchaser the balance remaining due". It was argued for the Government before the Supreme Court in Raman Iron Foundry and Air Foam Industries case that clause 18 would apply even when a mere claim for payment of sum of money arises out of the contract against the contractor and that it was not necessary that a sum of money must be actually due and payable from the contractor to the purchaser. Rejecting the contention, it was held by the Supreme Court that the Government could exercise the right conferred by clause 18 only when the claim is for a sum which is presently due and payable by the contractor. The sum becomes due and payable only when it is either admitted by the contractor or has been adjudicated upon (in an arbitration or in a suit). Till then the Government cannot recover the said claim from money admittedly due from the Government to the contractor and cannot appropriate the said money towards the claim. The office order No. 46 of February 12, 1975 issued on the advice of the Ministry of Law, Therefore, direct the officers of the Directorate General of Supplies and Disposals that the demand for damages from the contractor should be made in the form which is Annexure I to the said circular. The demand of April 18, 1975 is in that form. Counsel for the petitioner argues that the Government have, Therefore, obviously decided to withhold the payment of Rs. 32,250.00 payable to the

petitioner by the Government to enable the Government to take necessary action to have the claim of the Government finally determined by an arbitrator or a court of law in terms of the contract. Counsel for the petitioner points out that the Supreme Court has held that the Government does not have a lien on the amount due from the Government to the petitioner and it cannot, Therefore, withhold the payment of the said amount to the petitioner.

(4) He, Therefore, prays that the demand of April 18,1975 and the office order No. 46 dated February 12, 1975 be both quashed on the ground that the said demand and the withholding of the money due from the Government to the petitioner are illegal and that the amount of money due to the petitioner from the Government is the property of the petitioner in the possession of the Government. The refusal of the Government to pay the amount to the petitioner is an infringement of the petitioner''s fundamental right to property guaranteed by Articles 19(l)(f) and 31(1) of the Constitution.

(5) The preliminary question which arises is whether the writ petition is at all maintainable. The relief asked for by the petitioner is the issue of a writ in the nature of mandamus. It is true that "the High Courts and the Supreme Court acting under the Constitution are not bound by certain technicalities relating to the issue of the writ which were attached to it in England. Nevertheless, the broad principles governing the issue of the writ in England would also govern the grant of relief by the High Courts under Article 226 and by the Supreme Court under Article 32."

(6) "THERE are two basic requirements for the issue of writ in the nature of mandamus. Firstly, the writ is issued for the performance of a public duty by a statutory or public authority. Secondly, the writ is issued as an extraordinary remedy in the absence of an equally convenient, beneficial or effective ordinary remedy. (11 Halsbury''s Laws of England 84-3rd Edition)". A public duty is to be performed in relation to the public generally. Such a duty is imposed normally by a statute or a statutory rule. It is to be contrasted with a private duty which arises primarily under a contract. The earmark of a contract is that duties arise there under only because of the agreement of the parties to be bound by the terms of the contract. Such terms are enforceable only by the parties to the contract but not by a third person much less by the public.

(7) The Government, under the Constitution, has a dual capacity. On the one hand, it is the State and a public authority having powers over the public and also owing duties to the public. These duties may be imposed on the Government either by the Constitution or by a statute. On the other hand, the Government is also a legal entity like a natural or an artificial person. Article 298 of the Constitution empowers it to carry on trade or business, acquire, hold and dispose of properties and enter into contracts for any purpose. The object of conferring such powers on the Government was to obviate any objection that the Constitution has not intended the Government to possess and exercise the normal powers and duties of any legal person.

(8) The executive power of the Government is of two kinds. On the one hand, is the executive power given by Article 73 of the Constitution extending to the matters with respect to which the Parliament has power to make laws. In exercise of the executive power given by Article 73, the Government can do various things under the Constitution without being specifically empowered by any statute. (Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab,). On the other hand is the executive power given by Article 298 to carry on trade or hold property and enter into contracts. The exercise of this executive power is confined only to giving the capacity to the Government to do these things. But the actual carrying of trading by the Government or the acquisition of property by it or the entering into contracts would be governed by the laws relating to such trade, property and contract. In carrying on these activities, the Government would be on the same level as any other person. When Government enters into contract with a private person, only the formalities attending such contract are prescribed by Article 299. Otherwise, the contract is governed by the Indian Contract Act and the Government as well as the other contracting party is bound by the terms and conditions of the contract. The duty of the Government to perform the contract is not a public duty imposed on it either by the Constitution or by any statute.

(9) In exercising a statutory power or executive power under Articles 73 and 77 of the Constitution, the Government would act as the State, i.e., the Government or a statutory authority. But in acting under a Contract the Government could be acting like a legal person or entity. "A party aggrieved by the exercise of a Constitutional or statutory power by the Government can bring a writ petition against the Government but a party aggrieved by the conduct of Government under a contract cannot do so. A person having a contractual right against the Government may either enforce such right by a suit for specific performance or may sue the Government for damages for breach of contract."

(10) Between which of these categories does the action complained of by the petitioner fall ? The claim made by the Government against a petitioner for damages for breach of contract is made expressly under the contract between the parties. The Government, Therefore, states in the impugned letter that it would take steps to recover the said claim from the petitioner in terms of the contract. Such steps would include resort to arbitration or to a suit for the determination of the amount of damages payable by the petitioner to the Government. The Government is, Therefore, acting according to the decision of the Supreme Court in Union of India v. Raman Iron Foundry, referred to above, holding that the money claimed by the Government as damages for breach of contract would not become due or payable to the Government until it is either admitted by the petitioner or until it is determined after arbitration or a suit by a court of law. If the petitioner has any grievance that the damages claimed by the Government are not due or are excessive then that grievance has to be urged by him either before the arbitrator or in a suit.

(11) The Government, however, says that pending the determination of its claim for damages, some amount admittedly due for payment to the petitioner either in this or some other contract between the parties would be withheld by the Government. It is made clear that the damages claimed from the petitioner were neither being appropriated nor recovered from other amounts admittedly payable by the Government to the petitioner.

(12) A distinction is thus made by the Government between merely refusing to pay to the petitioner money which is admittedly payable to the petitioner by the Government and recovery from the said money or adjusting against the said money or appropriating the said money towards the disputed claim of the Government for damages against the petitioner. The basis of the distinction is that while the Government does not have a positive right to recover the amount of damages claimed by it against the contractor from other money due to the contractor in the possession of the Government, at the same time the Government cannot be compelled by an injunction or a writ to pay to the contractor all money due to him and in the possession of the Government. According to the Supreme Court:-

"The appellant (Union of India) can still refuse to pay such amounts if it thinks it has a valid defense and if the appellant does so, the only remedy open to the respondent (contractor) would be to take measures in an appropriate forum for recovery of such amounts where it would be decided whether the appellant is liable to pay such amounts to the respondent or not."

The significant words are "if it thinks it has a valid defense". These words do not mean that it is for this Court to decide whether the Government has a valid defense against the payment of the money in its possession due and payable to the contractor.

Ex hypothesi. Government does not deny that the money is due and payable to the contractor. If the contractor were, however, to resort to arbitration or to a suit to recover the said amount from the Government, the Government can legitimately think that it would have a valid defense against the contractor. This defense would be made by the Government by proving that the Government has to recover from the contractor a certain amount of money by way of damages. Once the Government proves its claim to damages, then it would become entitled to retain an equivalent amount belonging to the petitioner but in the possession of the Government. No decree in favor of the Government has to be drawn up. For, the money is already in the possession of the Government. For the same reason the defense pleading the claim of the Government to recover damages from the contractor does not have to take the form of a set off or a counterclaim.

(13) It is only when the Government is required to reason to arbitration or to a suit that the limitation runs against the Government. When the Government is not required to resort to arbitration or to a suit or to plead a set off or a counter-

claim, no limitation runs against the Government. Such a defense to a claim by the contractor in the form of arbitration or suit can, Therefore, be raised by the Government without any bar of limitation (Hira Singh v. Union of India R.F.A. 130-D 1965 decided on April 18, 1975 by this Division Bench), (3). The question between the Government and the contractor is as to who should be driven to resort to arbitration or to a suit when the Government makes a claim for damages against the contractor and withholds payment of some other money admittedly due to the contractor and in the possession of the Government. The saying "possession is nine points in law" is opposite here. It helps the Government to sit pretty without worrying about limitation. As the contractor is not in possession of the money due to him and as the Government is informing the contractor that it is withholding the money, it is for the contractor to resort to arbitration or to file a suit for the recovery of the price of goods supplied by him to the Government and only thereafter the Government would be required to prove its claim for damages by way to defense seeking only the appropriation of the contractor''s money in its possession but not any decree against the contractor. The petitioner is fully aware of the situation. The petitioner has filed the writ petition instead of resorting to arbitration or to a suit only because in a writ petition the claim of the Government for damages for breach of contract would be out of place since it cannot be decided in a writ petition. But this Court cannot help the petitioner to bypass the ordinary remedies of arbitration and suit which are appropriate by entertaining the writ petition which, as will be shown later, cannot be maintained.

(14) Is this distinction a valid one? The following may be said in favor of the distinction. On the one hand, the mere non-payment of the price of goods or the withholding of the payment of the price of goods due from the Government to the contractor is only a breach of contract. For, under the contract for sale of goods, the Government was bound to pay to the contractor the price of the goods supplied by the contractor. The non-performance of the contractual obligation amounts to breach of the contract. The proposed action by the Government as per the impugned letter thus amounts only to a breach of contract on the part of the Government. The question which would arise for consideration is whether a writ petition can lie against the Government for the issue of a writ in the nature of mandamus ordering the Government not to continue the breach of contract or not to withhold the payment of the price of goods or to pay the price of goods to the petitioner.

(15) On the other hand, the recovery of the claim for damages made by the Government from the sum of money due to the contractor but in the possession of the Government or adjusting the said claim of the Government against the said sum of money may be capable of being viewed from two different points of view.

(A) On one view, the action of the Government is purported to be done under the contract or under the colour of the contract inas much as the Government was wrongly construing the meaning of the clause in the contract which enables the Government to recover the amount due from the contractor from the amount due to the contractor. The Government apparently though that the amount claimed by the Government from the contractor was amount due from the contractor. The misapprehension on the part of the Government has now been removed by the decision of the Supreme Court in Raman Iron Foundry and Air Foam Industries case, referred to above. It may perhaps be arguable from the side of the Government that the action of the Government in recovering the amount or in adjusting or appropriating the same should also be viewed as a breach of contract and a writ petition should not lie for setting aside such action. (B) Another equally or perhaps more probable view is that the action of the Government is do hors the contract. Since it is not covered by any condition of the contract and the contract does not give the Government any such power of recovering the amount for appropriation, the action of the Government should be regarded as an illegal exercise of the executive power of the Government against which a writ petition is maintainable. Such action is not a breach of contract inasmuch as it does not break any particular term or condition of the contract. This view found favor with a Full Bench of this Court in Messrs Mohan Meakin Breweries Ltd. v. Union of India and others, (Civil Writ 1336 of 1973 decided on May 9, 1975), (4).

(16) There is a further distinction between mere withholding of money and recovery of the claim of the Government from such money by adjustment or appropriation. Money admittedly due to the contractor but in the possession of the Government is from one point of view chose in action. Since it is not a chose in possession, it is only a claim arising from a contractor in favor of the seller of the goods against the Government. From another point of view, however, such money is a credit debt of money due to the creditor in the possession of the debtor. Since it is admittedly due to the creditor and is an ascertained sum, it is the property of the creditor in the hands of the debtor, as was observed by Hidayatullah, C. J., in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, . It is to be noted, however, that this was only an observation by the learned Chief Justice regarding the jural relationship between the creditor and the debtor as to the ownership of the former''s money in the hands of the latter. It was only because several statutes including the Constitution, as construed by the majority of the Supreme Court in H. H. Madhav Rao Scindia''s case, made the privy purses payable by the Government to the princes that the non-payment of the amounts could become the subject-matter of writ petition under Article 32 of the Constitution. The money then became payable under law and not under a contract. Had it been only a claim under a contract, writ petition could not perhaps be maintainable.

(17) Similarly, pension due under rule 5 of the Statutory Pension Rules could become the subject-matter of a writ petition because of the refusal of the Government to pay the pension under a wrong construction of another statutory rule, namely, 46 which was held to be inapplicable in Deokinandan Prasad Vs.

The State of Bihar and Others, . That money due under law is property had also been held by the Supreme Court in the earlier case of Madhaorao Phalke Vs. The State of Madhya Bharat, .

(18) Similarly, the arrears of pay and allowance admittedly payable to a Government servant was considered to be the property of the Government servant in Khem Chand v. Union of India, (1963)1 Supp. S.C.R. 229. The fact of non-payment of the pay and allowances under the Statutory Rule 12(4) was, however, held to be a reasonable restriction placed on the fundamental right guaranteed by Article 19(l)(f) of the Constitution. The action of the Government being under Statutory Rule and not being merely a breach of contract would be challenged by way of writ petition.

(19) The concept of "property" for the purposes of the fundamental rights guaranteed by Article 19(l)(f) and Article 31(1) of the Constitution has, however, been widened by the various Supreme Court decisions so as to enable deserving petitioners to claim relief for the infringement of their right to property. Price to be received for the property of the petitioner acquired by the Government was held to be the property of the petitioner in Jaiwant Singhji v. State of Bihar, (1962)1 Supp 2 S.C.R. 411, (9). Similarly, wages due to workmen but not claimed by them were regarded as the property of the workmen which could not be appropriated by the State without compensation in Bombay Dyeing and Manufacturing Company v. State of Bombay (1958) S.C.R. 1122(10).

(20) In the present case, Therefore, it may be assumed for the sake of argument that money due to the contractor in the hands of the Government is the property of the contractor in the sense in which the word "property" is used in Article 19(l)(f) and Article 31(1) of the Constitution. The question is whether the non-payment of the money or withholding the payment of the money by the Government contravenes any of these fundamental rights. The nature of the property is that under the terms of the contract the seller supplied the goods to the Government and the Government became bound to pay the price of the goods to the seller. The price is, thus, in the hands of the Government not because of any original wrongful act but because of the terms of the contract itself. The nature of the property is such that its ownership may be deemed to have passed to the seller but its possession is still with the Government. It is, Therefore, a chose in action and not a chose in possession. Let us consider the fundamental rights of the petitioner with regard to such property.

(21) Under Article 19(1)(f), the seller has the right to hold and dispose of such property. He is holding the ownership of the property which is in the possession of the Government. He can dispose of the property by transferring the chose in action according to law. These are the rights given to the petitioner by Article 19(l)(f). These rights are still available to him even though the Government has declared its intention to withhold the payment of the money to the petitioner pending the determination of the claim of the Government for damages against the petitioner. The right of the petitioner to the ownership of the money due to

him under the terms of the contract is neither denied nor taken away nor restricted nor destroyed by the action of the Government. This view of the contractual right was taken by the Supreme Court in Ananda Behera and Another Vs. The State of Orissa and Another, followed latter by the Supreme Court in Shantabai Vs. State of Bombay and Others, . Under Article 31(l)(12), the petitioner is entitled to see that he is not deprived of his property save by the authority of law. It cannot be contended that there is a deprivation of the property of the petitioner by any action on the part of the Government. The Government does not deny that the money in its hands belongs to the petitioner. It does not, Therefore, deprive the petitioner of the property in the money.

(22) It is arguable that if the Government attempts to recover the property of the petitioner without justification in satisfaction of wrong claim made by the Government against the petitioner, then the petitioner may be able to maintain a writ petition to get the action of the Government quashed. This seems to be the basis on which the writ petition was entertained under Article 32 of the Constitution by the Supreme Court in Binani Bros. (P) Ltd. Vs. Union of India (UOI) and Others, , though the question regarding the maintainability of the writ petition was neither raised nor decided in that case.

(23) In Marwar Tent Factory Vs. Union of India and Another, , a Division Bench of this Court quashed the action of the Government purporting to recover by adjustment or appropriation its claim for damages which was neither admitted by the contractor nor adjudicated by any court from the money of the contractor in the possession of the Government which was admittedly payable by the Government to the contractor. The Court accepted the contention of the petitioner that such action amounted to the deprivation of the property of the contractor otherwise than in accordance with law. This decision was expressly confined by the Division Bench to the adjustment or the appropriation of the contractor''s money by the Government with a view to recover its disputed claim for damages against the contractor. In paragraph 41 of the judgment, the Court considered the following arguments of the Government :-

"That at the worst there was a case where the purchaser simply withheld the money due to the contractor and, Therefore, there was no case for the issuance of a writ. If the dues are simply withheld for any reason, right or wrong, the learned counsel may be right and normally the writ court may not grant a writ directing payment. But this is not a case of mere withholding."

It would, Therefore, appear that the Court would not have entertained the writ petition if the impugned action of the Government had consisted merely in the withholding of the money admittedly payable to the contractor as distinguished from the recovery of the disputed claim of the Government from such money of the contractor. Even more apposite is the decision of another Division Bench of this Court in M/s. Air Foam Industries (P) Ltd. v. Union of India, Air 1974 D.L.T. 120 (15). The very basis of the writ petition there was the order of temporary injunction which had been passed by Avadh Behari, J. in favor of the petitioner restraining the Government from effecting recovery of the disputed claim for damages from the contractor''s money in its possession. The petitioner contended that a writ in the nature of mandamus should be issued to the Government directing it to act in accordance with the temporary injunction issued against it by Avadh Behari, J. The only way in which the negative temporary injunction could be enforced by way of a writ petition was to compel the Government to pay the money due to the contractor. To say that the Government should not withhold the money would means that the Government should pay the money to the contractor. The Division Bench, however, dismissed the writ petition in liming on the ground that the non-compliance of the contract, by the Government did not amount to any failure to perform a public or a statutory duty and that this Court cannot issue writ of mandamus merely to compel the payment of money due to the petitioner from the

(24) It is settled law that a contractual right cannot be enforced by a writ petition. The proper remedy is a suit for specific performance or damages for breach of contract or simply a suit for recovery of money due to the petitioner.

(25) This brings us to the second requirement for the issue of a writ in the nature of mandamus. Such a writ cannot be issued if an equally convenient, effective and beneficial remedy is available to the petitioner. In most claims for recovery of money, the primary remedy for the recovery of money is a suit. For, the defense to such a claim often involves disputed questions of fact. Further, the mere fact that the money is due from the Government does not mean that the Government is under an obligation to perform any public duty towards its creditors. It has been already pointed out above that the non-payment of the money due to the petitioner by the Government did not amount to the infringement of any fundamental right of the petitioner. It is, however, urged for the petitioner that the mere allegation by the petitioner that his fundamental right is infringed must compel the Court to entertain a writ petition and that the existence of the primary remedy of a suit is not a bar to the entertainment of a writ petition alleging infringement of a fundamental right. We are aware that certain eminent authors have stated that the presence of an adequate alternative remedy available to the writ petitioner would not be a bar to the grant of Judicial Review if the petitioner complains of a violation of fundamental rights. (H.M. Seervai-Constitution of India 637 (1967); D. D. Basu, 3 Commentary on the Constitution of India 378 (15 Edn.) ; A. T. Markose, Judicial Review of Administrative Action 489-492 (1966). A little reflection will show that such an absolute statement of law cannot bear scrutiny. The power given to the High Courts by Articles 226 and 227 is expressly made analogous to the power of the Court of Ring''s Bench in England to issue extraordinary writs and to exercise a judicial superintendence on the lower courts and tribunals. In respect of mandamus and certiorari to quash, these powers have been always discretionary. The reason is obvious. The primary forum of the petitioner was the subordinate court or the tribunal. The jurisdiction of the High Court was only supplementary. If the High Courts were to be compelled to entertain the petition because it is

based on a contravention of a fundamental right, then the balance of work between the subordinate courts and the tribunals on the one hand and the High Courts on the other hand would be completely upset. The Supreme Court decisions which have been relied upon by the learned authors were carefully examined by us but were found not to support the said proposition.

(26) One exception to the rule that the payment of money by the Government to the petitioner cannot be compelled by way of a writ petition may be mentioned here. When the action of the Government results in any illegal exaction of the recovery of a tax or some such compulsory payment from the petitioner in contravention of a statute and the action of the Government is challenged as being contrary to the statute, the Court may order refund of such illegal recovery to the petitioner while declaring the action of the Government illegal directly. The various decisions of the Supreme Court in this connection were reviewed in Suganmal Vs. State of Madhya Pradesh and Others, by the Constitution Bench. To these decisions may be added a decision of seven learned Judges'' Bench in State of Kerala v. Aluminium Industries Ltd. (1965) 16 S.T.C. 689, (17). But these decisions have no application when the money sought to be recovered by the petitioner is due under a contract and is withheld only in breach of a contract and not in contravention of any statute.

(27) There is clear distinction between a statutory obligation and a contractual obligation of the Government to pay money to a petitioner. Statute imposes a public duty while the duty imposed by a contract is owed by the Government not to the public but to the petitioner individually. A contravention of statute makes the action of the Government illegal. The breach of contract is not illegal in the same sense. Direct contravention of a statute is illegal but the breach of a contract may be wrongful. It is not contravention of any statute directly. A duty imposed by statute is different from a duty imposed by contract. Therefore, the breach of the first duty amounts to illegality while the breach of the second type of duty amounts to only a breach of contract.

We conclude, Therefore, as follows:-

(1)The respondents arc not under any public duty to pay to the petitioner the price of the goods purchased by them from the petitioner.

(2)The price of the goods is payable by the Government to the petitioner only under a contract.

(3)The non-payment of the price or withholding the payment thereof only amounts to a breach of contract.

(4)A writ petition would not be entertained to enforce the payment of money due from the Government to the petitioner because the non-payment of the money amounts at the most to a breach of contract.

(5) Absolutely no reason is given by the petitioner why the ordinary remedy of an arbitration or a civil suit should not be resorted to by him in recovering money

due to him from the Government.

(28) For the above reasons, the writ petition dismissed in liming.

