

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Present:
THE HON'BLE JUSTICE AJAY KUMAR GUPTA**

**IA NO.: CAN/1/2025, CAN/2/2025
In
WPA 19048 of 2019**

**CHAKVRIGU COOPERATIVE LABOUR CONTACT &
CONSTRUCTION SOCIETY LIMITED & ANR.
VS.
STATE OF WEST BENGAL & ORS.**

For the petitioners : Ms. Debapriya Mitra, Adv.

**For the State : Ms. Rashmi Bothra, Adv.,
Ms. Ashima Roychoudhury, Adv.**

Heard on : 16.09.2026

Judgment on : 16.09.2026

Uploaded on : 17.09.2026

(In court)

AJAY KUMAR GUPTA, J.:

CAN/1/2025 & CAN/2/2025

1. Affidavit-of-service, filed on behalf of the petitioners in Court today, is taken on record.

2. None appears on behalf of Respondent Nos. 3 and 4. Heard the learned counsels for the petitioners and the State respondent.
3. CAN/2/2025 is an application for condonation of delay of 51 days in filing the application for recalling of the order dated 14.01.2025 of this Court, thereby this Court dismissed the writ petition for default.
4. The averments made in paragraph 5 of the application in connection with the delay are explained satisfactorily and accepted. Accordingly, CAN/2/2025 is **allowed**, condoning the delay in filing the application for recalling of the order dated 14.01.2025.
5. CAN/1/2025 is an application for recalling of the order dated 14.01.2025. The cause shown by the petitioners for not attending the court on the date of dismissal is explained by the petitioners, and being satisfied the same is considered and allowed. The writ petition is restored to its original file and number. CAN/1/2025 is also **allowed**.

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6. The writ petition is taken up for hearing and disposal.
7. The Petitioners have filed this writ petition seeking, inter alia, direction upon the respondents and their men and agents and assigns in the nature of mandamus, to forthwith decide the dispute raised by the petitioners and release the sum of Rs.17,00,000/- with interest in favour of the petitioners, which the respondents have unlawfully

withheld and to act in accordance with law along with other consequential benefits.

8. Petitioner no. 1 is a registered Cooperative Society within the meaning of West Bengal Cooperative Society Act and petitioner no. 2 is the Secretary, represents the petitioner no. 1.
9. The facts, in a nutshell, are that a work order, for construction of a pucca Stall (with the provision of a two-storied foundation) at Khochabari Hat under Coochbehar Sadar Regulated Market Committee under R.K.V.Y. Scheme 2011-2012, was issued in favour of the petitioners in connection with a tender bearing N.I.T. No. 39/2011-2012 dated 31.01.2012 having a tender amount of Rs. 32,66,865/- as per the agreement dated 14.05.2012. The same was executed by and between the petitioners and the West Bengal State Marketing Board. The petitioners completed the work, but the amount of Rs. 17,00,000/- is still pending with the Respondent Nos. 3 and 4.
10. It is submitted on behalf of the petitioners that the work for construction of pucca stall was completed on 16.08.2016 and the remaining portion of electric work on 15.02.2018. A request was made to the authority to release the final payment in connection with the final bills, but payment has not yet been made.
11. It is contended that a sum of Rs. 16,00,000/- was released in favour of the petitioners for part completion of the work as a running advance bill at the initial stage. Thereafter, a sum of Rs. 6,78,345/- was also

released in favour of the petitioners, and the same was accepted, however, the remaining amount of Rs. 17,00,000/- has not been released by the Respondent Nos. 3 and 4, and they illegally withheld the same amount only on the contention that the work order was not completed within the stipulated time. Although an extension was granted in favour of the petitioners to complete the same, during the extension period the whole work was completed and the petitioner raised the final bill. The Petitioners pray for a direction upon the respondents to pay the remaining balance amount of Rs. 17,00,000/-, along with interest at the prevailing Bank rate from the date of completion of work till the date of actual disbursement in favour of the petitioners.

12. The learned Counsel appearing on behalf of the State, on the other hand, submits that they did not finish the work as per the terms and conditions and within the stipulated time frame. Further, the petitioner completed the work even after the extended period. Therefore, the authorities had decided to impose compensation on the tender amount and finally allowed a sum of Rs.6,78,345/- in favour of the petitioners after deducting compensation. The petitioners received the full and final amount of Rs. 6,78,345/- without any demur. Therefore, there is no balance due with the respondents; as such, the claim of the petitioners no longer survives. The learned Counsel further drew the attention of this Court to paragraph 5 of the affidavit-in-opposition

filed by the Respondent Nos. 3 and 4 to show the decision take by the authority.

13. Having heard the submissions advanced by the learned Counsels for the respective parties and having gone through the materials available on the record, this Court finds that it is an undisputed fact that the work has been completed beyond the stipulated time as mentioned in the agreement. The authority had extended the time for completion up to 16.08.2016; however, the electrical work was completed on 15.02.2018, which was beyond the extended period. In the affidavit-in-opposition, the Respondent Nos. 3 and 4 clearly stated why they have charged compensation at the rate of 0.0182% per day to the tender amount and paid the final balance amount of Rs. 6,78,345/-. The matter was placed in the 116th Board meeting, which was held on 31.05.2019. In the said meeting, the following decisions were taken:-

"a) Extension of time up to 16.08.2016 was allowed.

b) Compensation clause is to be imposed for the period beyond 16.08.2016 to 15.02.2018.

c) Percentage of compensation @ 0.0182% per day of the tendered amount has to be imposed, has also been approved.

I say that the petitioner has asked to show cause as to why he will not be required to pay compensation in terms of provisions of SBD under Clause 1 of General guide line and special terms and condition for the period beyond 16.08.2016 to 15.02.2018 vide this office memo no. 2544/EC dated 24.07.2019, however, the petitioner made no response to the said show-cause notice. An ultimatum has also been issued to the agency vide office memo no. 3505/EC dated 22.10.2019. Be that as it may, ultimately the 2nd RA bill that is only pending bill was paid to the petitioner for a sum of Rs.6,78,345/- and the petitioner has accepted the same. In view of such

acceptance of payment in full, the issue raised in the writ petition no longer survives”.

14. According to the Respondent Nos. 3 and 4, there are no dues pending with the respondent nos. 3 and 4 for the work done. Whereas, the case of the petitioner is that the work was completed within the extended period allowed by the concerned authority and therefore deduction of compensation does not arise in the present case.
15. Furthermore, the agreement for such work was executed between the parties specifically stating therein the arbitration clause. Clause 10 of the agreement reads as follows: -

"Clause 10. - Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever, in any way arising out of relating to the contract designs, specifications, estimates. Instructions, orders or these conditions or otherwise concerning the works, or the executions or failure to executions or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment thereof shall be referred to the sole arbitration of the Chief Executive Officer, West Bengal State Marketing Board or by an Arbitrator to be appointed by the Chief Executive Officer. The award of the arbitrator shall be final conclusive and binding on all parties to this contract.

The award shall be speaking one, i.e. the arbitrator shall recite facts and reasons arising in support of the award after discussing fully the claims and conditions of the parties.”

16. When there is an arbitration clause, the parties have an alternative remedy to approach for arbitration for their disputes whatsoever. This court is conscious that despite the availability of the alternative remedy. With reference to the decision of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others***¹, it is clearly established that the High Court may still exercise its writ jurisdiction on discretionary power when it is found (i) where the writ petitioner seeks enforcement of any of the fundamental rights; (ii) where there is violation of the principles of natural justice; (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and rule is challenged.
17. In addition, in the instant case, a disputed question of fact is involved regarding the manner of completion of tender work, which cannot be adjudicated in writ jurisdiction.
18. In the above backdrop, the instant writ petition fails. Consequently, WPA 19048 of 2019 is, thus, dismissed.
19. Needless to specify, the dismissal order shall not preclude the petitioners from invoking the arbitration clause for their relief(s), and if such approach is made and an arbitrator is appointed, the proceedings shall be taken to its logical conclusion without being influenced by any of the observations made in this Judgment.

¹ (1998) 8 SCC 1

20. Interim order, if any, stands vacated.
21. All parties are to act on the server copy of this order duly downloaded from the official website of the Calcutta High Court.
22. Urgent xerox certified copy, if applied for by the parties, same shall be supplied upon compliance of the necessary formalities.

(AJAY KUMAR GUPTA, J.)

