HIGH COURT OF CALCUTTA

Bench: The Hon'ble Justice Soumen Sen, Hon'ble Justice Uday Kumar

Date of Decision: 7th May, 2024

CIVIL APPELLATE JURISDICTION APPELLATE SIDE

MAT 639 of 2023 with CAN 2 of 2023

Bridge and Roof Company (India) Ltd. …APPELLANT(S)

Vs.

Kamal Biswas & Ors. …RESPONDENT(S)

Legislation:

Sections 2(p), 18, 33 C(1), 33 C(2), and 19 of the Industrial Dispute Act, 1947

Article 226 of the Constitution of India

Subject: Appeal challenging the High Court's direction to pay interest on delayed payment of arrears in accordance with the terms of a settlement agreement dated 30th March, 2019.

Headnotes:

Service Law - Employment Law – Dispute regarding payment of interest on arrears following a settlement – Appellant, Bridge and Roof Company (India) Ltd., challenges direction to pay interest to the respondent, a retired employee, for delay in payment of arrears pursuant to a settlement – Settlement between the company and its employees under the Industrial Dispute Act was dated 30th March, 2019 and covered the period from 1st January, 2017 to 31st December, 2026 – Payment of arrears delayed until 24th November, 2022 without interest despite financial capability demonstrated by the company through profit disclosures from 2016 to 2021 [Paras 1-6, 23-25].

Jurisdiction – Appellant argues writ petition not maintainable due to availability of alternative remedy under Section 33 C(2) of the Industrial Dispute Act, as monetary benefits are computable – High Court's jurisdiction under Article

226 questioned, with precedents suggesting exhaustion of statutory remedies before resorting to constitutional remedies [Paras 7-10, 17-20].

Decision – High Court upholds the decision granting interest on arrears, finding no supervening conditions justifying the delay – Settlement binding from the date of signing under Section 19 of the Industrial Dispute Act, ensuring employees receive dues immediately or within a reasonable period – Argument that COVID-19 impacted financial capability rejected based on financial disclosures showing sufficient profits during the relevant periods [Paras 21-27, 31, 35-36].

Referred Cases:

- Rohtas Industries Ltd. & Anr. V. Rohtas Industries Staff Union & Ors. 1976(2) SCC 82: AIR 1976 SC 425

- Radha Krishan Industries v. State of Himachal Pradesh & Ors. 2021 (6) SCC 771: 2021 SCC Online SC 334

- U.P. State Bridge Corporation Ltd. & Ors. V. U.P. Rajya Setu Nigam S. Karamchari Sangh 2004(4) SCC 268; AIR 2005 SC 4067; 2004 SCC OnLine SC 213

- M/s. Hindustan Cables Ltd. & Ors. V. Tapan Kumar Sarkar & Ors. 2016 SCC OnLine Cal 4385: 2016(4) Cal LT 220: 2016 (5) CHN 283 (Cal)

- Prem Singh Gill v. State of Punjab & Ors.5 1995 SCC OnLine P&H 813: PLR (1996) 112 PLH 82: (1995) 5 SLR 304(DB)

- S.J.S Business Enterprises (Pvt.) Ltd. Vs. State of Bihar & Ors.2004 (7) SCC 166

- Dwarka Nath v. Income Tax Officer, Special Circle, D ward, Kanpur & Anr. AIR 1966 SC 81

Representing Advocates:

For the appellant: Mr. Partha Sarathi Sengupta, Sr. Adv., Mr. Soumya Majumder, Adv., Mr. Samrat Dey Paul, Adv., Mr. Rohan Raj, Adv.
For the respondent No.1: Mr. Sabyasachi Chatterjee, Adv., Mr. Subhrajit Saha, Adv., Ms. Sanchita Bera, Adv., Mr. Dipankar Das, Adv.

Soumen Sen, J.:-

1. The direction to pay interest to the petitioner on account of delay in payment of arrears in terms of settlement dated 30th March, 2019 is the subject matter of challenge in this appeal.

2. Briefly stated, the writ petitioner was an employee of the appellant company on and from 4th September, 1990. He worked for almost 30 years before he retired from service on 31st May, 2019.

3. While he was in service, a bilateral memorandum of settlement under Section 2 (p) read with Section 18 of the Industrial Dispute Act, 1947 (in short, 'I.D Act') was entered into between the management of Bridge and Roof Company (India) Ltd., the appellant and all Unions comprising of the unionised employees of Bridge and Roof Company (India) Ltd. in respect of categories of employees who were on the role of the company as on 1st January, 2017 and also who have joined the company on or after 1st January, 2017. The Memorandum was given effect from 1st January, 2017 to 31st December, 2026 for a period of 10 years. The said settlement was duly signed on 31st March, 2019. The settlement was given retrospective effect from 1st January, 2017.

4. The petitioner on retirement however, did not receive the arrears salary payable in terms of the settlement until 24th November, 2022 when a cheque was made ready for payment. The petitioner filed the writ petition for computation of the retirement dues based on the memorandum of settlement dated 31st March, 2019 and to pay the amount as may be found due and payable on such computation with statutory composite interest on the said sum payable till the date of actual payment. In the writ petition it has been stated that the settlement, inter alia, contains a clause that while calculating the arrears under the head Perks and Allowances as applicable from 1st January, 2017 till the date of actual implementation of the settlement the value of existing benefits already provided/availed from 1st January, 2017 till the month preceding to the month of the said implementation shall be

recovered/adjusted from the payment of the respective staff, sub staff and workmen. The modalities of such recovery would be subsequently formulated prior to releasing the arrear payments.

5. The writ petitioner in paragraph 7 has given the financial condition of the appellant company from 2016 till 2021 to show its financial ability to pay the aforesaid sum. The writ petitioner has also stated that owing to the persistent hard-work of the employees and other stakeholders the respondent company could make such significant profit for the aforesaid financial years.

6. The grievance of the writ petitioner was that although a representation was made on 28th July, 2022 for release of arrears together with interest the company issued a cheque in his favour only on 24th November, 2022 for the principal amount without any interest. The learned Single Judge allowed interest at the rate of 6 per cent per annum from 1st April, 2019 till 24th November, 2022 (being the date on which the cheque was made ready and payable to the writ petitioner).

7. Mr. Partha Sarathi Sengupta, the learned Senior Advocate representing the appellant has submitted that the writ petition is not maintainable in view of an alternative remedy available under Section 33 C(2) of the Industrial Dispute Act, 1947. The petitioner is claiming a monetary benefit which is capable of being computed in terms of money and for that he is required to approach the labour court for implementation of the settlement and in the event the said amount is not paid recourse to Section 33 C(1) could have been resorted to as it provides the mechanism for recovery of such amount.

8. Mr. Sengupta submits that it is well settled that the Industrial Dispute Act is a comprehensive and self-contained code so far as it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein, per Justice V.R. Krishna Iyer, in Rohtas Industries Ltd. & Anr. v. Rohtas Industries Staff Union & Ors.,[1] in paragraph 29.

9. It is submitted that where an Act creates an obligation and prescribe enforcement of the performance in a specified manner recourse to such performance can only be through the enforcement mechanism provided in the statute and it cannot be by a writ petition. The Industrial Disputes Act

[1] 1976(2) SCC 82: AIR 1976 SC 425

obliges the writ petitioner to seek remedy of payment of interest before the labour court and not in any other forum.

10. It is submitted that it has been recently held in Radha Krishan Industries v. State of Himachal Pradesh & Ors.,[2] in paragraph 27 that when a right is created by a statute which itself prescribes the remedy or procedure for enforcing the right or liability resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

11. It is submitted that the settlement does not mention any specific date for implementation of the bipartite settlement or that in the event the benefits in terms of money are not received within a particular period the employee will be entitled to interest. This non payment of interest is an issue that is required to be decided by the labour court in terms of Section 33 C(2) of the Industrial Disputes Act, 1947.

12. Mr. Sengupta has also referred to the decision of the Hon'ble Supreme Court in U.P. State Bridge Corporation Ltd. & Ors. v. U.P. Rajya Setu Nigam S. Karamchari Sangh3 in paragraphs 11 and 12 to argue that the remedy available to the writ petitioner is to approach the Labour Court.

13. Mr. Sengupta relied upon the aforesaid decisions to demonstrate that when the dispute relates to the enforcement of a right or an obligation created under the Industrial Disputes Act, then the only remedy available to the claimant is to get adjudication under the said Act. Moreover where there are disputed questions of fact the constitutional court may not exercise its extraordinary jurisdiction as the other forum is more equipped to adjudicate all the issues.

14. Mr. Sengupta has also referred to the decision of the Hon'ble Division Bench in M/s. Hindustan Cables Ltd. & Ors. v. Tapan Kumar Sarkar & Ors.,4 in advancing his argument that in a similar situation the Hon'ble Division Bench has held that the issues raised by the writ petitioner can be adjudicated properly, more conveniently and much more efficaciously by the labour court and refused to allow the money claim in view of the remedy available under Section 33 C(2) of the Industrial Disputes Act, 1947.

[3] 2004(4) SCC 268; AIR 2005 SC 4067; 2004 SCC OnLine SC 213

[4] 2016 SCC OnLine Cal 4385: 2016(4) Cal LT 220: 2016 (5) CHN 283 (Cal)

[2] 2021 (6) SCC 771: 2021 SCC Online SC 334

15. Mr. Sengupta has also relied upon the Division Bench judgment of Punjab and Haryana High Court in Prem Singh Gill v. State of Pubjab & Ors.,5 to argue that for the payment of money the writ jurisdiction of the High Court should not be invoked.

16. Per contra, Mr. Sabyasachi Chatterjee, the learned Counsel appearing on behalf of the writ petitioner submits that there was no plausible explanation offered by the appellant in not releasing the salary and terminal benefits in terms of the settlement. It is submitted that settlement becomes enforceable on the date of singing of the settlement in terms of Section 19 of the I.D Act. The writ petitioner has rendered service for over 30 years. It is expected that on retirement he would receive all his service benefits. In view of delay he was unable to utilize the amount legally due and payable. The learned Single Judge on consideration of aforesaid factors has directed payment of interest.

17. The issues raised in this appeal are, firstly, the jurisdiction of the writ court to decide and secondly even if it is received, tried and adjudicated could any direction be passed with regard to payment of interest on arrears salary based on the bipartite settlement. The first issue in other words is in view of alternative remedy available under the Industrial Disputes Act, if the writ jurisdiction could have been involved.

5 The first issue was not argued before the learned Single Judge. It is trite law that the plea of exhaustion of alternative remedy should be raised and decided at the threshold. A point taken in the objection but not argued should be considered to be a waiver. The plea of alternative remedy 1995 SCC OnLine P&H 813: PLR (1996) 112 PLH 82: (1995) 5 SLR 304(DB) does not affect the jurisdiction of the Constitutional Court. All statutes owe their existence to constitution and are subservient to it.

19. In U.P. State Bridge Corporation Ltd (supra) this issue has been addressed in paragraphs 14 and 17. The existence of an adequate or suitable alternative remedy available to a litigant is merely a factor which a court entertaining an application under Article 226 will consider for exercising the discretion to issue a writ under Article 226. But the existence of such remedy does not impinge upon the jurisdiction of the High Court to deal with the matter itself if it is in a position to do so on the basis of the affidavits filed, per Ruma Pal J. in S.J.S Business Enterprises (Pvt.) Ltd. vs. State of Bihar & Ors.[3]

20. The bipartite settlement is not in dispute. The settlement is binding on the parties. In absence of any dates specified or mentioned for

[3] 2004 (7) SCC 166

coming into operation of the settlement in view of Section 19 of the Industrial Dispute Act, 1947 it shall be the date on which the memorandum of settlement is signed by the parties to the dispute. In the affidavit in opposition filed by the appellant in the writ proceeding, it has been accepted by the applicant that the settlement is binding on the parties and it has come into operation on the date on which the memorandum of settlement was signed by the parties to the dispute, that is to say, on and from 30th March, 2019 with retrospective effect form 1st January, 2017. In the affidavit in opposition at paragraph 5 the appellant stated that the writ petitioner should have made an application under Section 33 C(2) wherein on "appreciation of evidence" and "collection of materials" the said issue can be decided. It is in the nature of a money claim for a period exceeding 5 years and even otherwise a money suit in that regard would have been barred by limitation. The appellant became aware of the implementation of 2017 pay scale in February, 2019.

21. We need to examine the stand taken by the appellant in its affidavit in opposition in the writ proceeding. They are summarised below:-

a) In paragraph 6 of the affidavit in opposition it has been contended that the company suffered a huge setback since the financial year 2019-2020 because of the global pandemic caused by Covid-19. There have been virtually no operation of activities for about 2 years and during that period the appellant company could manage to pay full salaries to its employees without any curtailment or reduction of wages/salaries. This situation had eroded the financial position of the company further.

b) In paragraph 7 it has been stated that the board of directors in its meeting held on 23rd March, 2019 approved the recommendation of the Nomination and Remuneration Committee regarding implementation of perk, and allowances based on the revised pay scale at Board level and below Board level executive and non unionised supervisors on IDA Pattern with effect from 1st January, 2017 with necessary directives. Subsequent thereto a memorandum of settlement was executed by and between the management and the unionised workman on 30th March 2019 whereby the revised pay scale for unionised employees were implemented with effect from 1st January, 2017 subject to other conditions as laid down therein.

c) In Paragraph 10 it is stated that the writ petitioner superannuated on 31st May, 2019. During the financial year 2020-2021, ad-hoc payments aggregating to Rs.50,000/- had already been paid twice to permanent existing unionized employees along with employers' contribution to the provident fund on account of arrears.

d) The writ petitioner has received certain benefits during the interregnum period from 1st January, 2017 till the implementing date of the settlement. The settlement was implemented for existing workmen with effect from the month of March 2019. The company has to generate resources internally for the purpose of bearing all expenses including those arising out of pay revision of workmen and officers. The settlement for the workmen category of employees having been executed on 30th March, 2019; which delay is largely attributed to the workmen/union by reason of their non committal and adamant attitude; there was an arrear with effect from 1st January, 2017. The said payment obviously could not have been released simultaneously for all employees and officers due to unavailability of fund which had been further aggravated due to occurrence of lockdown to arrest spread of COVID 19.

e) In fact in 2022 the company started to explore all possibilities to disburse arrears of the eligible employees upto May 2022. By a Board Resolution dated 30th May, 2022, the liabilities to the tune of Rs. 69.14 crores on account of the workmen and non workmen category of employees in the company was taken note of. The company has commenced release of the arrears to the employees in a phase wise manner with special emphasis to the retired employees or to the family members of those employees who have expired, and as per availability of fund from time to time.

22. In short what is sought to be emphasised is that the financial position of the company did not permit generation of such huge reserves for the purpose of implementing pay revision from 1st January, 2017 to be disbursed in one go.

23. Curiously, in the affidavit the company did not disclose the audited balance-sheet or the annual performance reports which was necessary for them to disclose in view of the averment made in paragraph 7 of the writ petition which is reproduced below:

"That your petitioner submits that owing to the persistent hard work of the employees, and other stakeholders, the respondent company made profit in the year 2016-2017: 27.25 Crores (profit before tax), 2017-2018: 26.07 (Profit before tax), 2019-2020: 31.42 Crores (Profit after tax) and 2020-2021: 7.80 Crores (profit after tax). The same has been published in the official Annual Report which was uploaded in the official website of the website of the respondent company no.3. The petitioner submits that the respondent company made profits in the subsequent 4 financial years."

24. In course of hearing of the appeal on 4th March, 2024 the appellant was directed to file an affidavit disclosing the financial condition of the company for the year 2016-17 to 2023-24. Pursuant to the said direction the General Manager (HR) of the appellant has filed an affidavit. The relevant portion of the affidavit is reproduced below:

"4. I say that from the audited balance-sheet and Annual Reports, the financial position of the company with regard to profit and loss position would emerge in the manner as summarized below :

Year	Profit before tax (Rs. in Crore)	Profit after tax (Rs. in Crore)
2016-2017	30.08	18.25
2017-2018	26.07	16.57
2018-2019	51.42	33.33
2019-2020	50.92	31.42
2020-2021	12.66	7.80
2021-2022	30.29	21.28
2022-2023	56.65	40.90

5. I say that on the basis of the figures indicated under the heading of Profit After Tax (PAT), the company had to pay dividend to the administrative Ministry being the Ministry of Heavy Industries at the rate of 30% of PAT.

For the sake of convenience, I mention hereinbelow the total amount of dividend paid to the administrative Ministry for the years 20162017 to 2022-2023.

Year	Amount of dividend paid (Rs. In

	Crore)
2016-2017	1.37
2017-2018	4.91
2018-2019	4.84
2019-2020	10.01
2020-2021	9.45
2021-2022	2.30
2022-2023	6.43

6. I say that taking into consideration the amount of dividend compulsorily required to be paid to the administrative Ministry, the comparative profit figure in each of the years mentioned hereinabove would be as follows:-

Year	Profit after tax (Rs. In Crore)	Profit after dividend (Rs. In Crore)
2016-2017	18.25	16.88
2017-2018	16.57	11.66
2018-2019	33.33	28.49
2019-2020	31.42	21.41
2020-2021	7.80	(-) 1.65
2021-2022	21.28	18.98
2022-2023	40.90	34.47

7. I say that for each of the years, the company had utilized overdraft facilities from various banks which are tabulated herein below:-

Year	Overdraft amount (Rs. in Crore)
2016-2017	128.42
2017-2018	150.42

2018-2019	151.11
2019-2020	176.97
2020-2021	191.81
2021-2022	48.90
2022-2023	10.81

The average working capital required by the company for each year during 2016-2017 to 2022-2023 was Rs.3,000 crores."

25. Significantly when the amount was payable to the writ petitioner, that is, for the financial year 2019-2020 the appellant had earned profit of Rs.31.42 crores (profit after tax). The amount tendered on 24th November, 2022 was payable together with his retiral dues on the date of his retirement. Even if it is assumed for sake of argument that no time is agreed upon or specified for payment of the arrears in terms of the bipartite settlement it has to be paid within a reasonable time and period of three and half years cannot be considered to be a reasonable time for payment of such sum having regard to the financial condition of the appellant company.

26. The writ petitioner retired from service on 31st May, 2019. In terms of the settlement dated 31st March, 2019 the writ petitioner ought to have been paid his arrears salaries together with all terminal benefits immediately or within a reasonable time subject to the writ petition complying with all the formalities. The appellants do not say that anything was lacking from his side for which the delay was caused. The financial position disclosed during 2018-2019 and 2019-2020 does not show financial inability to pay the sums due to the writ petitioner towards arrears salary. The appellant in its communication dated March, 1, 2019 had promised to pay terminal dues on retirement. The said letter is reproduced below:

"GM(HR & LA)/STAFF SR. SELEC-I/RETIRE/100828/2019

Shri Kamal Biswas Date:01.03.2019
Bridge & Roof Co. (India) Ltd.
Kolkata Office

Dear Sir,

On attaining the age of superannuation, you will be released from the services of the Company on close of business on 31st May, 2019. The

following terminal dues are payable to you on the date of your retirement from the services of the Company i.e.31st May, 2019.

1. Salary up to and including 31st May, 2019.
2. Gratuity as per Rules.
3. Encashment of leave standing to your credit, if any, as on 31st May, 2019 as per LTS as applicable for which separate advice will be given.
4. Reimbursement of actual medical expenses if applicable, as per your entitlement.
5. With a copy of this letter we are advising Provident Fund Section to settle your Provident Fund Dues, if any, standing to your credit as on 31st May, 2019 under Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

We take the opportunity to wish you a Very Happy and peaceful retired life.

Yours faithfully,
For BRIDGE & ROOF CO. (INDIA) LTD.

(P.K. HANS)
GENERAL MANAGER (HR & LA)"

27. The appellant had the wherewithal and sufficient means to pay all the aforesaid sums on retirement. The process was initiated on 1st March, 2019. There was no supervening circumstances for releasing the arrears of salary from 1st January, 2017 till 31st May, 2019 on or after a representation was made on 22nd July, 2022. Mr. Sengupta during argument has relied upon the following clauses to oppose the prayer for interest:

"v). It is agreed that Union consequent upon this amicable settlement of issues covered by their Charter of demands, will not pursue legal proceedings (connected to such issues), if any, raised by them in the Courts of Law against the Company. 9. It is clarified that the above recommendations of the Committee have been framed on the basis of the discussions and negotiations with the different Unions. However, the applicability of the same shall be subject to approval of the Competent Authority, the Board of Directors of B & R, and the administrative Ministry. Further, this will be subjected to the directives in line with relevant Office

Memorandums and the directives issued by the competent authority from time to time in future."

28. The writ petitioner was the General Secretary of the Union and he signed the agreement with others knowing fully well the implication of the aforesaid clauses inasmuch as since no clause on account of arrears of interest has been stipulated and the settlement does not specifically provide for interest such claim is not permissible is the further argument of the learned Senior Counsel to deny the relief.

29. The aforesaid clauses in our considered opinion do not prevent an employee to claim interest for inordinate delay in payment of arrears salary. All modalities under the settlement for computation of arrears salary were to be formulated prior to releasing the arrear payments. The letter dated 1st March, 2019 read with the settlement dated 30th March, 2019 make it clear that on retirement, if not immediately, within a reasonable time such payments should be released. It is a service benefit accrued to an employee and payable in terms of the settlement. It cannot be at the whims of an employer.

30. In this regard we may refer to the following observation of the learned Single Judge:

"This Court is of the view that the petitioner should be entitled to interest from April 1, 2019 on account of the delay in payment of arrears of pay. The settlement was entered into on March 30, 2019. Despite the said settlement, there is a delay in disbursement of the arrears and the petitioner cannot be deprived of interest on his rightful claim of arrears. This Court is unable to accept the contention made on behalf of the employer that since no Clause on account of arrears of interest has been stipulated the settlement does not specifically provide for interest and the petitioner is not entitled to the same. A settlement was made on March 30, 2019 after considering the financial position of the company. The staff/workmen were entitled to arrears immediately upon the settlement. In the event the employer failed to keep its commitment with regard to payment of arrears, the employees would be entitled to interest by operation of law unless specifically debarred by the settlement. Also the argument with regard to the employer not being able to generate funds due to onset of Covid-19 in India, in March 2020 cannot be accepted as the assurance to pay the arrears to the employees was made on March

30, 2019 after considering the financial health of the company at that relevant point in time. The employer was under an obligation to act/pay immediately upon entering the terms of settlement. This view of the Court finds support in the fact that under Clause 7 of the agreement benefits like assistance towards Medical and hospitalization expenses, leave travel assistance, subsidy against interest on house building loan were all immediately withdrawn from April 1, 2019. In Clause 7(v) it was assured to the workmen that a total increase in 35% of the basic salary would be made from April 2019 onwards (LTA/LTC-15%, Medical bills and hospitalization 15%, fitness and other allowances – 5%). The employer cannot be permitted to stop the previous allowances/subsidies of the employees without complying with the corresponding obligations. The Employer/State has infringed the rights of the petitioners by failing to perform its part of the settlement."

31. The financial position as disclosed for the relevant years does not offer a justification to deny such benefits over three years and that too only after a representation was made on 22nd July, 2022. The arrears salary was released only on 24th November, 2022 without interest. The claim is sought to be resisted on the ground of payment of dividend to the Ministry of Heavy Industries at the cost of a workman. Although, it is claimed that such dividend is compulsorily payable no provision of law or rule has been disclosed. In any event, even after payment of dividend to the administrative Ministry the financial capacity was sufficient at the relevant time to pay the arrears salary soon after retirement or within a reasonable time. The payment cannot be deferred for an indefinite period of time. The settlement does not contemplate it either. It is a reasonable expectation of an employee that he would receive his terminal benefits immediately or soon thereafter within a reasonable period. He has to maintain himself and his family out of the funds to be received which he is entitled in law. It is, in effect a claim in the nature of money had and received upon retirement. It is the money he earned during employment and becomes his money receivable on retirement. He cannot be deprived of the benefit of his earnings and fruits of his labour. Delay of three and half years cannot be said to be reasonable.

32. The writ court is a court of equity. The matter in issue does not involve any complicated questions of law and fact or intensive or invasive enquiry to decipher and decide the issue involved in this proceeding.

33. In Dwarka Nath v. Income Tax Officer, Special Circle, D ward, Kanpur & Anr.,[4] the scope and ambit of jurisdiction of the High Court under Article 226 has been explained in the following:

"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs.

It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary from of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels."

34. The same principle is echoed in S.J.S Business Enterprises (Pvt.) Ltd. (supra). In the instant case affidavits have been exchanged and the issue is capable of being adjudicated on the basis of affidavit.

35. When all the relevant facts are on record we are inclined to observe that the learned Single Judge has rightly exercised the high prerogative writ jurisdiction to remedy the wrong. We must also record that the issue of alternative remedy was not argued before the learned Single Judge.

36. In view thereof, we affirm the order under appeal.

37. The appeal and the applications are dismissed.

[4] AIR 1966 SC 81

38. However, there shall be no order as to costs.