



2026:DHC:5482



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

*Judgment reserved on: 18<sup>th</sup> May, 2026*  
*Judgment pronounced on: 9<sup>th</sup> July, 2026*

+ **W.P.(C) 6543/2020 & CM APPL. 59109/2024, CM APPL. 577/2025**

DELHI WASTE MANAGEMENT LIMITED .....Petitioner  
Through: Mr. Sandeep P. Agarwal, Senior  
Advocate with Mr. Rajesh Pathak, Ms.  
Tanya Chanda & Mr. Prathamvir  
Agarwal, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION .....Respondent  
Through: Mr. Sunil Goel, Mr. Himanshu Goel  
and Ms. Dimple Aggarwal,  
Advocates.

+ **W.P.(C) 7221/2020 & CM APPL. 59102/2024, CM APPL. 524/2025**

DELHI WASTE MANAGEMENT LIMITED .....Petitioner  
Through: Mr. Sandeep P. Agarwal, Senior  
Advocate with Mr. Rajesh Pathak, Ms.  
Tanya Chanda & Mr. Prathamvir  
Agarwal, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION .....Respondent  
Through: Mr. Arun Birbal, Advocate.

+ **W.P.(C) 7384/2020 & CM APPL. 59112/2024, CM APPL. 579/2025**

DELHI WASTE MANAGEMENT LIMITED .....Petitioner  
Through: Mr. Sandeep P. Agarwal, Senior  
Advocate with Mr. Rajesh Pathak, Ms.  
Tanya Chanda & Mr. Prathamvir  
Agarwal, Advocates.



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versus

SOUTH DELHI MUNICIPAL CORPORATION .....Respondent  
Through: Mr. Arun Birbal, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. The present writ petitions have been filed seeking directions to the respondent to release sums withheld from the bills of the petitioner towards service tax and labour cess, along with interest thereon.

2. Since all the present writ petitions involve common issues, all these petitions are being disposed of by way of a common judgment. However, for the sake of convenience, the facts of W.P.(C) 6543/2020 are being noted.

3. Brief facts relevant for deciding the present writ petitions are set out below:

i. The petitioner is engaged in the business of solid waste management, including collection, transport, processing and disposal of municipal waste.

ii. On 31<sup>st</sup> January, 2005, Municipal Corporation of Delhi ('MCD') entered into a Concession Agreement with the petitioner for collection, segregation, transportation and disposal of municipal solid waste in Central, South, Shahdara and City Zone of MCD. Through this agreement, the petitioner was entitled to participate in the tenders of MCD for the waste management services.



- iii. In February, 2012, MCD invited quotations for hiring LMVs/Auto Tippers ('LMVs') with driver and labour for lifting Municipal Solid Waste (MSW)/Malba/Drain Silt and their dumping at designated landfill sites.
- iv. The last date of submission of technical bids was 23<sup>rd</sup> February, 2012, which was extended to 27<sup>th</sup> February, 2012.
- v. After various rounds of negotiations, the petitioner quoted the price at Rs.1,934/- per day. Subsequently, the respondent issued work orders in favour of the petitioner for the three zones, being Central Zone, City Zone and South Zone.
- vi. Pursuant thereto, a work order dated 2<sup>nd</sup> June, 2012 was issued in favour of the petitioner for the City Zone for hiring 14 LMVs at an agreed rate of Rs.1,934/- per day for eight hours of working. Subsequently, an additional work order dated 30<sup>th</sup> September, 2013 was issued in favour of the petitioner. The aforesaid work orders were valid for a period of five years.
- vii. On 17<sup>th</sup> March, 2012, the Ministry of Finance issued Notification No.12/2012-Service Tax exempting specified services from levy of service tax. Clause 25 of the said notification exempted the payment of service tax upon service provided to a local authority for waste collection and disposal. Subsequently, Notification No.25/2012-Service Tax dated 20<sup>th</sup> June, 2012 was issued, which *inter alia* exempted services provided to government or local authorities in relation to solid waste management.
- viii. From June, 2012 till December, 2015, payments under the work orders were released by the respondent without deduction of any amount towards service tax.
- ix. On 28<sup>th</sup> September, 2015, the petitioner furnished an undertaking to the respondent along with a legal opinion of its Chartered Accountant stating that



the services rendered by the petitioner were exempt from service tax, while undertaking to honour any legitimate recovery if found payable in future.

x. Subsequently, objections were raised by the office of Chief Auditor *vide* letter dated 16<sup>th</sup> December, 2015 with regard to payments released to contractors in respect of service tax.

xi. Pursuant thereto, the respondent started withholding amounts from the bills of the petitioner towards service tax and labour cess.

xii. The petitioner addressed various representations disputing the aforesaid deductions and seeking release of the withheld amounts. However, the respondent failed to release the amounts withheld. According to the petitioner, the total amount deducted was Rs.52,20,381/-, out of which Rs.44,41,489/- was towards service tax and Rs.7,78,892/- was towards labour cess.

xiii. Aggrieved by the aforesaid, the petitioner has filed the present writ petitions.

4. The main ground of challenge raised by the petitioner is that deductions made by the respondent towards service tax and labour cess are contrary to law. In view of Notification No.12/2012 dated 17<sup>th</sup> March, 2012 and Notification No.25/2012-Service Tax dated 20<sup>th</sup> June, 2012, the services rendered by the petitioner in relation to solid waste management were exempt from payment of service tax. It is further contended that deductions towards labour cess are contrary to Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996.

5. In the counter affidavit filed on behalf of the respondent, a preliminary objection has been taken with regard to maintainability of the present writ petitions. It is stated that the present writ petitions seek enforcement of



contractual obligations and recovery of monetary claims and are therefore not maintainable under Article 226 of the Constitution of India. It is further stated that the petitioner has an efficacious alternative remedy of filing a civil suit.

6. The respondent also contends that the present writ petitions are liable to be dismissed on the ground of limitation, delay and laches.

7. On merits, the respondent contends that prior to issuance of the tender, a justification of rates was prepared by MCD wherein the base rate was worked out at Rs.1,593/- per day and, after adding 15% towards contractor's profit and overheads and 10.36% towards service tax, the rate was determined at Rs.1,968/- per day. This rate was modified to Rs.1,934/- after negotiations between the petitioner and the respondent.

8. It is submitted on behalf of the respondent that the perusal of work orders dated 2<sup>nd</sup> June, 2012 and 30<sup>th</sup> September, 2013 shows that the rate of Rs.1,934/- per day included the component of service tax. Therefore, if service tax was subsequently exempted/not paid, then the contract price would be reduced proportionately to the extent of the service tax component. The petitioner cannot claim the benefit of exemption from payment of service tax and simultaneously seek to recover the amount equivalent to the service tax component from the respondent. The respondent contends that permitting such a claim would result in unjust enrichment of the petitioner.

9. Insofar as labour cess is concerned, it is submitted that under the Building and Other Construction Workers' Welfare Cess Act, 1996, the petitioner was liable to pay the labour cess and the respondent was under a statutory obligation to deduct labour cess at the prescribed rate and deposit the same with the Labour Cess Department of the GNCTD. Accordingly, the respondent deducted and deposited the labour cess with the competent



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authority, and therefore, the petitioner has no right to seek its refund from the respondent.

10. Mr. Sandeep Agarwal, Senior Counsel appearing for the petitioner, submits that the work orders specifically provided that the agreed rate included service tax, labour cess and all other charges, and that variation in rates was permissible only on account of increase or decrease in fuel prices and minimum wages. Reliance is placed on the Resolution dated 6<sup>th</sup> August, 2012 to contend that the final agreed rate of Rs.1,934/- per vehicle per day could not have been varied under any circumstances other than those expressly contemplated under the contract.

11. Mr. Agarwal further submits that deductions towards service tax have already been held to be illegal by this Court in *Metro Waste Handling Pvt. Ltd. v. South Delhi Municipal Corporation*<sup>1</sup>. Reliance is also placed on the decision in *Hind Construction v. South Delhi Municipal Corporation*<sup>2</sup>.

12. On the issue of limitation, Mr. Agarwal submits that the amounts deducted by the respondent formed part of a running account and that the cause of action accrued only upon final settlement of accounts and the final payment under the contract. Reliance is placed upon *Bharath Skins Corporation v. Taneja Skins Company Pvt. Ltd.*<sup>3</sup> and *Veena Jain v. Sunil Sood*<sup>4</sup>.

13. On maintainability, reliance is placed on *ABL International Ltd. & Anr v. Export Credit Guarantee Corporation of India Ltd. & Ors*<sup>5</sup> to contend that

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<sup>1</sup> Judgment in W.P.(C) 12084/2016 dated 12<sup>th</sup> May, 2020

<sup>2</sup> Judgment in W.P.(C) 9445/2016 dated 7<sup>th</sup> August, 2024

<sup>3</sup> 2011 SCC OnLine Del 5523

<sup>4</sup> 2012 SCC OnLine Del 3834

<sup>5</sup> (2004) 3 SCC 553



a writ petition is maintainable even in contractual matters where the State or its instrumentality has acted in violation of Article 14 of the Constitution.

14. *Per contra*, Mr. Sunil Goel, counsel for the respondent submits that the present writ petitions are not maintainable as the same have been filed solely for recovery of contractual dues and the appropriate remedy available to the petitioner was to institute a civil suit for recovery. Reliance is placed on ***Punjab National Bank & Ors v. Atmanand Singh & Ors***<sup>6</sup>.

15. It is submitted that the judgment in ***Metro Waste Handling*** (supra), relied upon by the petitioner does not deal with the issue of limitation, delay or laches.

16. Mr. Goel submits that in the present case the recovery is not based on a running account payment. The recoveries were in respect of service tax and labour cess amounts which were included in the monthly bills of the petitioner. Hence, limitation has to be computed from the dates of deductions and not from the date of completion of work.

17. Reliance is also placed on ***Govt. of NCT of Delhi & Ors v. New Variety Tent House & Anr***<sup>7</sup> and ***Rosa Power Supply Co. Ltd. v. Union of India & Ors***<sup>8</sup> to contend that merely because relief was granted in another case does not entitle the petitioner to similar relief where the claim is otherwise barred by limitation and/or delay and laches.

18. I have heard counsel for the parties and examined the record.

19. The respondent has raised serious objections to the maintainability of the present writ petitions by submitting that since the petitioner has sought

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<sup>6</sup> (2020) 6 SCC 256

<sup>7</sup> 2012 SCC OnLine Del 1777

<sup>8</sup> 2014 SCC OnLine Del 4085



recovery of payments deducted by the respondent under a contract, the appropriate remedy would be to file a civil suit. It is further submitted that since the limitation period prescribed for filing of the suit has already expired, the petitioner has filed the present petitions. The writ petitions are also barred by delay and laches.

20. As per the averments made in W.P.(C) 6543/2020, the following deductions were made by the respondent:

- Rs. 14,96,669/- on 29<sup>th</sup> February, 2016, for the invoices raised for the period between June, 2012 to July, 2015,
- Rs. 3,27,569/- on 6<sup>th</sup> April, 2016, for the invoices raised for the period between August, 2015 to September, 2015,
- Rs. 5,86,495/- on 30<sup>th</sup> June, 2016, for the invoices raised for the period between October, 2015 to January, 2016,
- Rs. 7,78,355/- on 16<sup>th</sup> November, 2016, for the invoices raised for the period between February, 2016 to June, 2016,
- Rs. 3,07,134/- on 6<sup>th</sup> April, 2017, for the invoices raised for the period between July, 2016 to August, 2016,
- Rs.13,70,697/- on 16<sup>th</sup> January, 2019, for the invoices raised for the period of September, 2016 to September, 2017,
- Rs.3,06,392/- on 23<sup>rd</sup> May, 2019 for the invoices raised for the period of October, 2017 to March, 2018.

21. The said writ petition was filed by the petitioner on 14<sup>th</sup> September, 2020.

22. Counsel for the petitioner submits that the period of limitation would run from the date of completion of the contract, *i.e.*, 29<sup>th</sup> September, 2017, when the obligations under the work orders were completed. Reliance is placed



upon the order passed by the Supreme Court in *In Re: Cognizance for Extension of Limitation*<sup>9</sup>, whereby the Supreme Court has given benefit for the period from 15<sup>th</sup> March, 2020 to 14<sup>th</sup> March, 2021, on account of onset of COVID pandemic.

23. In terms of Article 113 of the Schedule to the Limitation Act, 1963, a limitation period of three (3) years has been prescribed for suits for which no period of limitation is provided elsewhere in the Schedule. In the present case, each deduction made by the respondent from the petitioner's bills gave rise to a distinct cause of action. If the petitioner contended that any such deduction was illegal, then the petitioner was required to institute a suit for recovery within the period of three years from the date of the deduction. Hence, this Court does not find any merit in the submission of the petitioner that limitation has to be computed from the date of the completion of the contract.

24. From a perusal of the above, it transpires that the MCD started making deductions from the invoices of the petitioner with effect from 29<sup>th</sup> February, 2016 and bulk of the deductions were made on/or before November, 2016. The benefit of the aforesaid order in *In Re: Cognizance for Extension of Limitation* (supra) could at best be available in respect of the last three deductions made on 6<sup>th</sup> April, 2017, 16<sup>th</sup> January, 2019 and 23<sup>rd</sup> May, 2019. The limitation period, in respect of the remaining deductions which constituted the bulk of recoveries, expired before the onset of COVID pandemic, and therefore, the petitioner would not be entitled to the benefit of the order passed in *In Re: Cognizance for Extension of Limitation* (supra).

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<sup>9</sup> Order in Suo Moto W.P(C) 3/2020 dated 8<sup>th</sup> March 2021



25. On behalf of the petitioner, it is submitted that since the amounts deducted by the respondent form part of a running account, the cause of action would accrue only upon final settlement of accounts and the final payment under the contract.

26. In my view, the aforesaid submission is completely misconceived. It is manifest from the statement of account filed on behalf of the petitioner along with the writ petition, that the petitioner was raising monthly invoices under the two (2) work orders which were being cleared by the respondent. There is nothing to substantiate that there was a running account operating between the parties. Therefore, the cause of action would accrue on the dates when the payments towards the service tax and labour cess were withheld by the respondent. The judgments in *Bharath Skins* (supra) and *Veena Jain* (supra) relied upon by the petitioner were in the context of cases where there was a running account between the parties. Hence, these judgments would not be of any assistance to the petitioner.

27. Having failed to avail the appropriate remedy in law within the prescribed period of limitation, the petitioner cannot circumvent the law of limitation by seeking recovery in proceedings under Article 226 of the Constitution.

28. In support of its submissions, the petitioner has placed reliance on the judgment of a co-ordinate bench of this Court in *Metro Waste Handling* (supra). In the said case, in similar circumstances, pursuant to an audit objection, the respondent deducted amounts towards service tax and labour cess from the payments due to the petitioner therein. The co-ordinate bench allowed the said writ petition and held that the deductions made by the respondent were unlawful. The judgment in *Metro Waste Handling* (supra)



was followed by another judgment of a co-ordinate bench in *Hind Construction* (supra).

29. Notably, the writ petitions in *Metro Waste Handling* (supra) and *Hind Construction* (supra) were filed in the year 2016. Therefore, the issue of limitation, delay and laches did not arise in the said cases. However, the present writ petitions were filed by the petitioner only after the aforesaid judgment in *Metro Waste Handling* (supra) was delivered on 12<sup>th</sup> May, 2020.

30. On behalf of the respondent, reliance is placed on the judgment of the division bench of this Court in *New Variety* (supra). In the said case, the appellant/Govt. of NCT of Delhi withheld payments from the three (3) bills raised by the respondent therein towards hire charges. The single judge allowed the writ petition filed by the respondents relying upon the judgment in another similar writ petition. The division bench reversed the judgment of the single judge on the ground of limitation. The division bench held that under Article 12 of the Schedule of the Limitation Act, 1963, the limitation would be three (3) years from the date when the hire charges become payable, *i.e.*, from the date of the bill. The relevant observations of the division bench are set out below:

*“10. Of the three bills, seeking direction for payment of which the writ petition was filed, two are dated 27<sup>th</sup> April, 1999 and the other, 23<sup>rd</sup> July, 1999. The same are for providing tin structures in government schools from 6<sup>th</sup> July, 1998 to 31<sup>st</sup> July, 1998, 1<sup>st</sup> August, 1998 to 30<sup>th</sup> April, 1999 and from 1<sup>st</sup> May, 1999 to 30<sup>th</sup> June, 1999 respectively. In the absence of anything to show otherwise, under Article 12 of the Schedule to the Limitation Act, 1963, the limitation for recovery of the said hire charges was three years from the date when the hire became payable *i.e.* from the date of the bill. The said period of three years expired with respect to the first two bills on 26<sup>th</sup> April, 2002 and for the third bill on 22<sup>nd</sup> July, 2002. There is nothing to show that the date of payment was agreed to be any other. The writ petition seeking mandamus was filed only on 28<sup>th</sup>*



September, 2007. There is nothing to show any acknowledgment of liability within the meaning of Section 18 of the Limitation Act.

11. We have thus wondered whether money claim, suit for which had become barred by time/limitation, can be allowed in writ jurisdiction. The answer obviously is no. The learned Single Judge has brushed aside the valid plea of the appellant of limitation by referring to the directions issued in the writ petition being W.P.(C) No.6644/2007 filed by one M/s Ramesh Kumar Brothers. We are however unable to agree with the said reasoning. **Firstly merely because the time barred claim of another has been allowed does not constitute a reason for allowing another time barred claim. More important, there is no 'decision' in the said order on the aspect of limitation.** Also, a reading of the order shows that the liability therein was unequivocally admitted and at least part of the amount claimed was the 'security amount'. It is not so in the present case.

12. The respondents had filed the writ petition agitating the claim stated to be at par with that of M/s Punjabi Tent House. However Punjabi Tent House had filed their petition in the year 2003 and the same was allowed on 05.08.2004. **The respondents waited for more than three years thereafter also, for filing their petition. Even if it is to be held that the claim of M/s Punjabi Tent House was also barred by limitation, wrong decision and more so on the point of law, as the plea of limitation in the present case is, cannot constitute a precedent for allowing other time barred claims.**"

[emphasis supplied]

31. The aforesaid judgment of the division bench in **New Variety** (supra) was followed by another division bench in **Rosa Power Supply** (supra). In the said writ petition also, the petitioner had raised a monetary claim and filed the said writ petition only after favourable orders were passed in another writ petition. Holding that the petitioner in the said case was a fence-sitter, the division bench dismissed the said writ petition.

32. The relevant paragraphs of the said judgment are set out below:

*"8. The matter in fact is not res integra. A Division Bench of this Court (of which one of us Rajiv Sahai Endlaw, J. was a member), in **Government of NCT of Delhi Vs. New Variety Tent House** 189 (2012) DLT 65 has held that money claim, suit for which has become barred by time/limitation, cannot be allowed in writ jurisdiction. Reliance was placed on *State of Madhya Pradesh Vs. Bhailal Bhai* AIR 1964 SC 1006 laying down that though the provisions of Limitation Act do not apply to the grant of relief*



*under Article 226 of the Constitution of India however the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 of the Constitution of India can be measured and on Tilokchand Motichand supra laying down that the extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation and that where the writ remedy under Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in writ jurisdiction. We find that the SLP being CC No.12686/2012 was dismissed in limine on 3rd August, 2012.*

*9. Reference in this regard may also be made with benefit to yet another judgment of the Division Bench of this Court in **Standing Conference of Public Enterprises Vs. BSES Rajdhani Power Ltd. 198 (2013) DLT 186** holding that since the suit for recovery of amount in question, had it been filed on the date the writ petition was filed, would have been barred by limitation, it would not be appropriate to direct payment of the aforesaid amount, in exercise of discretionary jurisdiction under Article 226 of the Constitution. Mention with benefit may also be made of *D.Cawasji & Co. Vs. State of Mysore (1975) 1 SCC 636.*”*

[emphasis supplied]

33. Applying the reasoning of the division bench in these two cases to the facts of the present case, it is evident that the petitioner herein was also a fence-sitter who waited for the decision in the case of **Metro Waste Handling** (supra) before filing the present writ petitions. The writ petitions were filed in a highly belated manner when the claims of the petitioner had become time barred. The issue of limitation in the present case goes to the root of the matter and cannot be brushed aside.

34. The division bench in **New Variety** (supra) also distinguished the judgment of the Supreme Court in **ABL International** (supra), which has been relied upon by the petitioner in the present case. In **ABL International** (supra), the Supreme Court was of the view that there was no oral evidence required



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and the dispute in the said case only related to interpretation of the clauses of the policy that was the subject matter of the petition.

35. In *Punjab National Bank* (supra), a judgment relied upon by the respondent, the Supreme Court held that when there are disputed questions of facts, requiring oral and documentary evidence, and also the relief sought is merely for ordering a refund of money, the High Court should refrain from entertaining such writ petitions and instead relegate the parties to the remedy of a civil suit. In the present case also, the dispute arises out of contractual dues and the relief claimed is purely for recovery of money. Therefore, in view of the law laid down by the Supreme Court, the present writ petitions would not be maintainable under Article 226 of the Constitution of India.

36. In view thereof, the present writ petitions seeking refund of contractual dues are held to be not maintainable and more particularly, taking into account that claims that are subject matter of the present writ petitions are barred by limitation, delay and laches.

37. Accordingly, the present writ petitions are dismissed as not maintainable.

**AMIT BANSAL  
(JUDGE)**

**JULY 9, 2026**

*at*