



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

234-1 CWP-15327-2022 (O&M)
M/S JUBILEE ENTERPRISES ... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ... Respondents

234-2 CWP-15744-2022 (O&M)
234-15 CWP-17718-2022 (O&M)

M/S VARINDER KUMAR CONTRACTOR ... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ... Respondents

234-3 CWP-15932-2022 (O&M)
234-4 CWP-15933-2022 (O&M)

M/S EKNOOR BUILDERS ... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ... Respondents

234-5 & 6 segregated from the bunch.

234-7 CWP-15943-2022 (O&M)

M/S TUNG BUILDERS PVT. LTD. ... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS ... Respondents

234-8 CWP-16080-2022 (O&M)

M/S SATISH AGGARWAL AND COMPANY ... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ... Respondents



CWP-15327-2022 (O&M) + 17 cases

-2-

234-9
234-10

CWP-16993-2022 (O&M)
CWP-17136-2022 (O&M)

M/S HARBHAJAN SINGH AND CO.

... Petitioner

V/S

STATE OF PUNJAB AND OTHERS

... Respondents

234-11

CWP-17139-2022 (O&M)

M/S RIKHI CONSTRUCTION CO.

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

105-2+234-12
105-1+234-14

CWP-17228-2022 (O&M)
CWP-17433-2022 (O&M)

M/S PARDUMAN SINGH AND CO. ENGINEERS AND CONTRACTORS

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

234-13

CWP-19088-2022 (O&M)

M/S OASIS PROJECTS LTD.

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

234-16

CWP-19362-2022 (O&M)

M/S VINOD KUMAR CONTRACTOR

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents



CWP-15327-2022 (O&M) + 17 cases

-3-

234-17

CWP-21493-2023

M/S CHECHI CONSTRUCTION CO.

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

234-18

CWP-1230-2024

NABHDEEP BANSAL AND OTHERS

... Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

AND

234-19

CWP-4242-2024

234-20

CWP-3967-2024

Date of Decision: 25.07.2024

M/S JASWANT RAI VERMA

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Amit Jhanji, Sr. Advocate with Mr. Navjot Singh, Mr. A.S. Shergill, Mr. Kishan Garg, Ms. Dhivya Jerath and Mr. Nandita Verma, Advocate for the petitioners in CWPs-15327, 16080, 17136, 15932, 15933, 17139, 15943 and 16993 of 2022 and CWP-1230-2024 and for the interveners in CM-14076-CWP-2023 and CM-14082-2023.

Mr. Akshay Bhan, Sr. Advocate with Mr. Akhilesh Barak and Mr. Sidhant Suri, Advocate for the petitioner in CWP-15744-2022.

Mr. Hemant Bassi, Mr. Sukhdeep Singh and Ms. Neelam Sharma, Advocates for the petitioners in CWPs-17228 and 17433 of 2022. Mr. Puneet Gupta and Mr. Amit Rana, Advocates for the intervenor applications filed in CWPs-17228 and 17433 of 2022.



Mr. R.K. Girdhar, Advocate for the petitioners in CWPs-3967 and 4242 of 2024.

Mr. Amandeep Singh Rai, Advocate for the petitioners in CWP-19362 of 2022 and CWP-21493-2023.

Ms. Niharika Sharma, AAG, Punjab, assisted by Mr. Rohit Jindal and Mr. Mandeep Singh, both XENs, Quality Control Cell.

Mr. Tushant Deep Garg, Advocate for respondent No.3 in CWPs-15327, 17433, 15943, 15932, 15933 and 17228 of 2022.

Ms. Priya Mishra, Advocate for Mr. Parambir Singh, Advocate for respondent No.5 in CWP-19088-2022.

Mr. Shourya Khanna, Advocate for respondent No.6 in CWP-15327-2022.

VINOD S. BHARDWAJ, J. (ORAL)

CM-11552-CWP-2024 IN CWP-17433-2022

CM-11577-CWP-2024 IN CWP-17228-2022

Allowed as prayed for subject to all just exceptions.

The letter dated 21.06.2022 (Annexure P-18) in both cases is ordered to be taken on record. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASES

Since common questions of facts and law arise in the present batch of 18 writ petitions, the same are being decided by a common judgment. For the facility of reference, the facts are, however, being extracted from CWP-15327-2022 titled as 'M/s Jubilee Enterprises Versus State of Punjab and others'.

Challenge in the said petition is to the letter dated 15.06.2022, whereby the respondents have classified the construction of road and repairs

***CWP-15327-2022 (O&M) + 17 cases*****-5-**

undertaken by the petitioner, in a rejected category. A further prayer has been sought for issuance of directions to the respondents to constitute a Third Committee (preferably an independent agency and not controlled by the State Government) to inspect and check the quality of the road in question.

Learned Sr. Counsel appearing on behalf of the petitioner(s) contend that the petitioners are contractors of the respondent-State Government and have successfully completed numerous projects on behalf of the respondent-State. On 09.09.2021, the petitioner was allotted the work of special repair of various link roads falling in M.C. Bhogpur in District Jalandhar under Special Repair Programme 2021-22 (Phase-IV) of Link Roads. In order to maintain the quality of the road, a system had been formed by the State Government whereby a third party is given the contract to periodically inspect the quality of the road and they are known as 'Independent Third Party Techno Financial Auditors'. In the present case, M/s WAPCOS Ltd. (a Government of India Undertaking) had been awarded the abovesaid work of the Independent Third Party Techno Financial Audit vide letter/intimation dated 17.08.2021. The said Independent Auditor was required to visit the spot periodically and collect various samples. A report was required to be prepared and forwarded to the State Government with respect to the work undertaken by the contractor and the quality thereof and to inform as to whether the execution of the work is as per the specifications prescribed in the DNIT or not. The learned Sr. Counsel further contends that two visits had already been made by the said Third Party and samples had been collected on 05.05.2022. The report was thereafter prepared and submitted on 10.05.2022 as



per which the work undertaken by the petitioners was found to be satisfactory in all respects and no compromise was found to have been made with regard to the quality of the road. He submits that as per the requirements prescribed, a fully equipped field laboratory is required to be set up by the contractor and the work of periodical assessment of the construction undertaken is done by the Third Party at the said lab alongwith the contents of bitumen being assessed on regular basis at the field lab set up by the contractor.

He points out that as per the policy of the State Government dated 22.12.2016, it was prescribed that the Quality Control Cell of Punjab PWD Department would mandatorily check all the road works except where World Bank Projects (OPRC) and where the National Project Managers (NPM), National Quality Monitors (NQM) and Third Party Auditors are already in place. Since a provision of a Third Party Audit had already been incorporated in the Work Allotment Orders –DNIT, the checking of the Quality Control Cell by the Punjab PWD Department in relation to the works executed by the petitioner(s) herein was impermissible in view of the policy decision of the Government of Punjab dated 22.12.2016 itself. A partial modification in the said policy was carried out by issuing a corrigendum dated 19.06.2017 wherein it was provided that even though the said works were excluded from the purview of the Quality Control Cell but random checking could be done only on the instructions of the PWD Minister/Secretary of the concerned department. He contends that notwithstanding that such random checking could be done only on the instructions of the PWD Minister/Secretary of the concerned department, the

***CWP-15327-2022 (O&M) + 17 cases*****-7-**

officials of the PWD B&R flouted their own instructions and without any specific directions of the PWD Minister/Secretary of the Department, they started inspection of the abovesaid works on 18.04.2022. The samples of the works were collected and the same were retained by the respondents for about two months and were got tested at their own laboratory without associating the petitioner(s) to join testing with them and without even informing them about the date and place of such testing. In the communication dated 15.06.2022, it was mentioned that the research lab has conveyed that the volume of bitumen is less than the necessary volume of 20.6% and as such the works undertaken by the petitioner has been listed in the rejected category.

He vehemently argued that the M/s WAPCOS –the Government of India undertaking had also collected the samples on 05.05.2022 (i.e. after the collection of samples by the respondent-Department on 18.04.2022) and it submitted its report on 10.05.2022 where the quality of the work executed by the petitioner had been termed as satisfactory and without compromising the prescribed standards.

He additionally argued that for appropriate testing of the works undertaken, the average weight of the sample should be approximately 4700 grams and even as per the Quality Control Cell of the Punjab PWD Department, the sample weighing 4700 grams approximately had been drawn. However, in the intimation/letter bearing No.288 dated 21.06.2022 sent by the Lab Executive Engineer where the samples were tested, the sample that was received by the Lab Executive Engineer was weighing less than 3000 grams. He thus argues that the



possibility of sample having been tampered with while in possession of the respondents for a period of more than two months, before sending the same for testing, cannot be ruled out. He also argues that the construction of a road comprises of three layers i.e. (i) tack coat (ii) premix carpet and (iii) sealed coat and all the three coats have different percentages of bitumen content and it is only after the entire sample is tested that the actual bitumen content can be derived. As the sample was weighing less than 3000 grams, hence, possibility of the testing results being inaccurate cannot be ruled out.

He further argues that the respondent-Government of Punjab has itself issued a letter dated 10.08.2016 wherein it has sub-divided the defective works in four categories vis. minor; major, serious and rejected. He refers to Annexure R-10 and the Note 8 thereof, which reads as under:

“If the defects are rectifiable, then recovery shall not be given effect to. The responsibility of getting defects rectified will rest with the Executive Engineer concerned.”

It is argued that in the event of any defect being noticed about the bitumen being below the required percentage, the contractor can at best be asked to remedy the said defect. By referring to the defect in the sample analysis conducted by the respondents, learned Sr. Counsel has laid much emphasis on the fact that the result of the laboratory testing relied upon by the respondents being a First Party Testing cannot be relied upon especially when they are in conflict with the Third Party Testing result, more so, when the samples drawn by the Third Party are later than the samples drawn by the respondents-First Party. He thus contends that the sampling may be got done from the Third Party, other than



the Government of Punjab, for fair analysis of the work undertaken by the petitioner.

Supplementing the arguments advance by Mr. Amit Jhanji, Sr. Advocate; Mr. Akshay Bhan, Sr. Advocate has drawn attention of the Court to the alleged decision taken in the meeting held by the Administrative Secretary in the presence of all the Chief Engineers on 04.11.2022 wherein it was informed that the Independent Third Party Techno Financial Auditors had not carried out technical audit as per the terms of the reference issued by the Department of Finance vide memo No.10/98/17-5FE4/1471593/1 dated 30.04.2019 and also that the alleged testing had not been undertaken by the Independent Third Party from an NABL accredited lab. Such a deliberation and reasons for the decision are inconsequential since the decision against the petitioners had already been taken on 15.06.2022, which was much prior to the review meeting held under the Chairmanship of Administrative Secretary. Hence, the respondents have applied their mind, as an afterthought, for finding reasons for the decision already taken instead of having taken a decision on the basis of objective material before them.

A reference is also made to the communication (Annexure R-4) bearing No.10/73/2022-ES1 (3)/3568 dated 30.12.2022, wherein it is prescribed that as per the notification of the PWD (B&R) dated 22.12.2016, the rural roads, where Third Party Auditors had been appointed, were kept out of the purview of the checkings done by the Quality Control Cell of the Punjab PWD Department, but reference was made to Clause 31.1 (b) of the Standard Bidding Document (General Conditions of the Contract) to justify the decision that the Engineer is



free to conduct surprise/random QC check at site anytime during the execution and after the completion of works but not later than the defect liability period. It is submitted that the aforesaid letter is also dated 30.12.2022 and is in a bid to find a justification behind the decision already taken, which precedes the abovesaid communication, by a period of nearly six months.

A reference was also made to the proceedings of the meeting held with the Director, Quality Control and Addl. Secretary, PWD, IB and RR for streamlining the process of sample testing, wherein the procedure for drawing of sample and sample handling has been agreed upon. The same is extracted as under: -

- “i) The Sample should be taken in duplicate and will be brought to the office of Director Quality Control.*
- ii) At the time of taking sample, it should be packed bearing the seals of the checking team and the incharge of the work from where the sample was collected.*
- iii) At the time of receipt of sample in the office, Director Quality Control will check whether seals of the samples are intact and the sample will be given new serial No. by Director Quality Control after removing the earlier Serial nos. and other identity marks and the relevant entry will be made in the register which will be kept personally by the Director Quality Control under lock and key*
- iv) One sample marked with secret number will be kept in the office of Director Quality Control and other sample will be sent to the Laboratory at Patiala or elsewhere for analysis. These will be sent to Lab in the lot of more than 10 samples.*



- v) *On receipt of reports, the actual source of the samples will be noted from the register and the analysis, report after examination, will be sent to the Director Quality Control.”*

He contends that as the sample size is in variance, hence, there is an apparent breach of Clause 2(i) and 2(ii) of the aforesaid decision taken in the meeting with the Director, Quality Control and the Addl. Secretary. He has also drawn attention of this Court to the reports by the Independent Third Party Techno Financial Auditors for the various works undertaken and has argued that the said report is exhaustive and relies upon not only the sample analysis but also with the ocular version of drawing of the samples alongwith the photographs as a proof of the methodology adopted by them not only in relation to drawing of samples but also in relation to the weights and the sampling procedure. It is argued that the respondents have nowhere mentioned in the impugned order dated 15.06.2022 about the independent sampling done and the analysis/test results thereof. The subsequent attempt by the respondents to dislodge and discredit the report of the Independent Third Party Techno Financial Auditors is only an attempt to justify their decision and is an afterthought which needs to be rejected.

On the other hand, learned State Counsel assisted by Mr. Rohit Jindal and Mr. Mandeep Singh, XENs, Quality Control Cell contends that the communication in question against which the petitioner(s) have approached this Court is only an intimation about the quality checking and is not a decision which is yet to be taken by the Government and that the petitioners have approached this Court in haste. The State is entitled to carry out a check of the



quality of the work executed and it is prime duty of the officers to ensure and maintain the prescribed standards. Reference is made to the Clause 31 of the Contract Agreement and Section 3 of the General Conditions of Contract, which are extracted as under:-

“Clause 31.1(a): For carrying out mandatory tests as prescribed in the specifications, the Contractor shall establish field laboratory at the location decided by Engineer. The field laboratory will have minimum of equipment's as specified in the contract Data. The contractor shall be solely responsible for:

- (i) Carrying out the mandatory tests prescribed in the specifications, and*
- (ii) For the correctness of the test results, whether performed in his laboratory or elsewhere.*
- (b) The Engineer will be free to conduct surprise, random or in situ checks any time during the execution and after the completion of the work but not later than the Defect Liability Period, so as to have cross check in quality of works/projects and compliance to specifications and standards at all stages of the work.*
- (c) Nothing in this clause shall reduce the overall responsibility of the contractor regarding quality and he shall remain liable for any defect in the execution of the project/works at all stages.*

Further, for a systematic and independent examination of specific activities to determine whether such activity and related results compiled with planned arrangements, following three stages of audits are in place:



- (a) *Third party Audit is an external audit conducted by an audit organization independent of customer supplier relationships and is free from any conflict of interest.*
- b) *Second party audit is an external audit performed by one organization working on its own behalf upon another (e.g. an audit carried out by a contractor on its material supplier)*
- (c) *First party audit is carried out by one organization on itself to measure its strength and weaknesses against its own procedure or methods. This audit is done by the field officers and officials of PWD, B&R Department.”*

She contends that the link roads were checked by the Quality Control Teams of the PWD (B&R), on behalf of the Engineer Incharge as per Clause 31.1(b) of the Contract Agreement and that there was no occasion for any specific approval/instructions to be sought from PWD Minister/Secretary for conducting these routine quality checkings by the Quality Control Cell. The random checking was undertaken to verify correctness of the test results and to cross-check the quality of the works done by obtaining the premix *bajri* samples from roadside and sending the samples to the Central Laboratory named Research Laboratory, Patiala under the PWD (B&R) Department for evaluation of the bitumen content. It is submitted that the Government Policy dated 22.12.2016 and the corrigendum dated 19.06.2017 are not applicable to the facts of the present case since drawing of the samples and their analysis has been undertaken by the respondents strictly within the confines of the tender document and by invoking Section 3 and Clause 31 of the General Conditions on Contract



(GCC). Hence, the reliance on impugned communication is misplaced and has no bearing on the powers of the respondents to draw samples.

She further contends that the Independent Third Party Techno Financial Auditors had not undertaken the sampling/the assessment as per the terms of reference. Even though the samples drawn by the Independent Third Party Techno Financial Auditors were required to be tested from an NABL accredited labs, however, the said Third Party indulged in carrying out the tests at the site laboratory or from the laboratories that were not NABL accredited. Hence, the results of the sample analysis and the reports furnished by the Independent Third Party Techno Financial Auditors are unworthy of acceptance as a certification of the work executed in accordance with the prescribed standards.

While advertng to the arguments as regards the difference in the weight as reported by the Lab Engineer, learned State Counsel contends that the argument is misplaced and is not based upon correct understanding of the procedure followed in drawing of the samples and the analysis thereof. She submits that the average weight of the samples collected and measured at checking site was 4733 grams. The sample drawn was sealed at the spot and is duly signed by the Engineer Incharge and by the other members present over there. Such sealed sample is then brought to the office and is sent to the Quality Control Cell in a different packing but keeping the sample and its seals intact. At the time when the sample is dispatched to the Research Lab, the weight of the sample so dispatched is not measured. The Research Lab thereafter slices a part



of the sample for its analysis, as is necessary for conducting the test and thereafter sums up the weight of the remaining sample as well as the residue. Thus, the reported weight of 3000 grams by the Research Lab is not the sample weight but it is a sum total of the left out sample plus the residue of the tested piece of sample. She further submits that after the collection of the sample and it having been sealed at the site, the same is brought to the office of the Chief Engineer, where the seal is opened by the Chief Engineer and the sample is put in another bag and is thereafter sent to the Research Lab for its analysis. On receipt of the aforesaid sample, the Research Lab grinds the sample for making a homogenous mixture and then divides the said homogenous mixture in equal parts for drawing a sample. The said drawn part is then assessed and analyzed.

A specific query was posed to the Executive Engineer, who is present in Court to assist the State Counsel, that as to how the gross weight of the left over sample plus the sample sent for analysis could be lower than the initial gross weight of the sample received. He was also posed with a question as to whether there is any loss of material during the process of grinding of the sample for making a homogenous mixture. He fairly replies that there is no possibility of loss in gross weight of the sample in the process of grinding and making of homogenous mixture thereof and that unless there is mishandling of the sample, the gross weight of the left over samples and the piece of sample used for analysis cannot be at variance.

While responding to the suggestion given by the learned Senior Counsel for the petitioner(s) that a fresh sample may be drawn and analysis



thereof be got conducted by any independent third party auditor, learned State Counsel submits that after a period of three months from the date of completion of the bitumen works, the samples thereof cannot be taken for a proper analysis and results. She submits that the aforesaid suggestion would be an exercise in futility as the results would be flawed and cannot be acceptable. She contends that in certain cases, the Independent Third Party Techno Financial Auditors were appointed later in point of time and as such there was no sampling or analysis undertaken by the Independent Third Party Techno Financial Auditors. The samples having been drawn prior in point of time by the respondents-Department, the conclusions/results thereof cannot be discarded or discredited. She further contends that even if the contention of the petitioners is to be accepted to the effect that the Independent Third Party Techno Financial Auditors report must be accepted (for the sake of arguments), yet the works executed by the petitioners have to be rejected on account of low and unacceptable bitumen content. The Independent Third Party Techno Financial Auditors had not carried out a bitumen extraction test. Consequently, the percentage of bitumen applied for construction of the road was never tested by the said Independent Third Party Techno Financial Auditors and its report shall have no bearing on the analysis undertaken by the respondent-Department.

Rebutting the arguments advanced by the learned State Counsel, learned Counsel for the petitioners refers to memo No.288 dated 21.06.2022 received from the office of Deputy Director, Research Lab, Punjab, PWD (B&R) wherein it has been communicated as under:-



“To

*Chief Engineer (Head Quarter)
Punjab Public Works Department,
(B&R) Br. Patiala.*

Memo No.288

Dated: 21.06.2022

Subject: Request from the contractors for re-checking of road from where samples have been derived during the last two months.

Information required by you vide E-mail dated 20.06.2022 is as under.

- 1. Chief Engineer Quality Control Cell Office Letter No. (110/QCC/03) 1104 dated 12.05.2022 vide 138 Number Unsealed Samples was sent to this office and asked to check the quantity of bitumen only. This report send to Chief Engineer, Quality Control Punjab PWD (B&R) SAS Nagar Mohali vide this office letter No. (31-QCC/2022-23) 234 dated 02.06.2022.*
- 2. The details of samples weight as per Annexure-1 are attached herewith.*
- 3. Samples checked in Ignition Oven to determine the quantity of bitumen (ASTM D 6307 & AASHTO 1308).*

*(Er. Randhir Singh)
Deputy Director,
Research Lab Punjab PWD (B&R)
Br. Patiala”*

He refers to Annexure-3 of the aforesaid letter according to which there was a difference in the PC weight of bitumen material taken from 25 CM X 40 cm by the checking team of the Quality Control Cell of the Punjab PWD Department, as recorded in the checking proforma available in the office reports



CWP-15327-2022 (O&M) + 17 cases

-18-

on being compared with the data of Research Lab, Patiala. As per the same, in certain illustrative cases, while the weight of PC as per Quality Control Checking proforma was recorded as 5153 grams, the calculated weight of samples as the Research Lab, Patiala was 3172 grams, thereby showing the difference of more than 1900 grams. Similarly, in another sample, the weight of PC as per Quality Control Checking proforma was shown as 5208 grams whereas the calculated weight as per the samples at the Research Lab was 3204 grams showing a deficit of more than 2000 grams. He submits that even though in large number of samples, there has been a substantial decrease in the calculated weight of the samples, however, in certain cases, there is increase in the weight. The detailed chart in relation to all such samples is as under:-

Annexure-3

According to the records, PC weight of bitumen material taken from 25cmx40cm by the checking teams of the quality control cell, as recorded in the checking proforma available in the office records, comparing with the data of Research Lab Patiala issued vide letter No.288 dated 21.06.2022, the Road wise Comparative Report is as follows:-

Sr. No.	Name of Road / Work with Case No. of Quality Control Cell	Item	RDs as per Quality Control Cell Checking Proforma (mtr.)	Weight of PC as per Quality Control Checking Proforma (Grams)	Code No.of Bitumen Sample sent to Reaserch Lab Patiala by Office of Quality Control Cell vide Letter No.1104/Q CC Dated 12.05.2022	Calculated Weight of Samples as per Deputy Director Research Lab Patiala, Letter No.288 dated 21.06.2022 (Grams)	Difference in Weight (In Grams)
1	2	3	4	5	6	7	8 (Col.7- Col.5)
1	S/R (premature damaged) of L/road Manser to Chanour falling in	PC	700	5153	55	3172	-1981
			1700	5208	51	3204	-2004



CWP-15327-2022 (O&M) + 17 cases

	Market Committee Mukerian (Compaction of Earth work to 1st coat, Tack Coat, Premix Carpet, Seal Coat and Misc. item etc. under Special Repair Programme 2021-22 Phase-IV, Gr.No.1 (110-QCC-2022)		2900	5171	28	3369	-1802
2	S/R of L/road Mukerian Hajipur road to Power Colony Hajipur upto Mandi Hajipur falling in Market Committee Mukerian (Compaction of Earth work to 1st coat, Tack Coat, Premix Carpet, Seal Coat and Misc. item etc. under Special Repair Programme 2021-22 Phase-IV, Gr.No.1 (111-QCC-2022)	PC	290	5700	57	3782	-1918
			1000	5790	130	2771	-3019
			1600	5730	56	2868	-2862
3	Const of new link road (2021-22) Bagholan Sheikhan road to Chottowal road falling in Assembly Constituency Urmar (Compaction of Earth Work to 1st Coat, Tack Coat, Premix carpet, Seal Coat and Misc. items etc. Gr.No.3 (107-QCC-2022)	PC	150	4735	3	2942	-1793
			450	4741	136	2630	-2111
			600	4814	37	3323	-1491
4	S/R of Olympln Marg (Old name Gt road to Jamsheer via Khusropur (JODR-33) in Distt-Jalandhar (96-QCC-2022)	BC	100	--	43	6003	--
			1100		22	5447	
			2100		17	6603	
5	Construction of new link road of various deras (Dalbir Singh, Hardev Singh, Tarlok Singh, Lakhwinder Singh, Gurmukh Singh,	PC	300	4855	117	4037	-818
			600	4618	87	4316	-302
			900	4878	86	4602	-276



CWP-15327-2022 (O&M) + 17 cases

	Late Joginder Singh) in Village Bhikheriwal in MC Kalanaur, Gr. No.1 Distt Gurdaspur (71-QCC-2022)						
6	Construction of new link road Dera Gian Singh & Gurnam Singh in Village Panwan in MC Kalanaur, Gr. No.3 Distt Gurdaspur (72-QCC-2022)	PC	150	4725	7	4288	-437
			400	5080	42	3416	-1664
			600	4415	41	3809	-606
7	Premature Damaged road repair programme 2021-22 Phase-IV, (PMB Funded) MC Kurali Distt. SAS Nagar Barodi to Gunomajra link road (With Plastic Waste) (99-QCC-2022)	PC	410	4908	122	4466	-442
			640	4968	30	2906	-2062
			1100	4896	138	2430	-2466
8	New Construction of link road falling under Construction Sub Division Sri Anandpur Sahib link road Khanpur Jhul Bhangal road to Mehandpur Swan length 2.25 kms (Gr. No.8) (35-QCC-2022)	PC	2100	4730	15	2354	-2376
			1100	4786	62	3941	-845
			100	4755	25	3661	-1094
9	Special Repair of Link Road Nanowal Khurd upto Nanowal Kalan including Todarpur Kakrfa road, Phase-IV, MC Khamano (86-QCC-2022)	PC	100	4844	10	5410	+566
			1300	4502	11	4851	+349
			3100	4918	9	4848	-70
10	S/R of various link roads G.T. road to Patarsi Kalan Phase-IV Gr. No.2 MC Sirhind (81-QCC-2022)	PC	1400	4975	85	3681	-1294
			2400	4414	84	4274	-140
			3400	4850	83	4232	-618
11	S/R of Prematurely Damaged link road Pakho-Tapa road to Maur Patiala in MC Tapa, Phase-IV, Gr.No.II (83-QCC-2022)	PC	400	4829	71	4222	-607
			900	4082	70	4457	+375
			1400	5296	105	4014	-1282
12	S/R of L/R Maur Nabha to Kothe Ichar Singh Wala in MC Tapa, Phase-IV (84-QCC-2022)	PC	400	5198	104	3866	-1332
			1600	4732	107	3838	-894
			2400	4364	66	4072	-292



CWP-15327-2022 (O&M) + 17 cases

-21-

13	Special Reapir programme (Phase-IV) for the year 2021-22 in MC Sri Chamkaur Sahib Asembly Constituency Sri Chamkaur Sahib (Sub Division No.1 Ropar) Distt.Ropar (Gr.No.5) Shamsapur Singhan to Gurdwara Sahib upto Kiri Di Kishu link road (93-QCC-2022)	PC	1450	4738	16	2367	-2371
			1050	5110	120	4205	-905
			425	4734	101	3642	-1092

Cont. Page-2

Supdt. Grade-I							
14	Link road Jattana to Kotla Surmukh Singh upto Behlolpur(94-QCC-2022)	PC	12500	5203	33	3044	-2159
			10500	4739	6	2976	-1763
			8260	4978	1	2993	-1985
			5500	4734	133	3181	-1553
			3500	4741	23	3157	-1584
15	S/R to L/R from Ittan Baddi to Sandhan in MC Bhogpur Phase-IV, Distt. Jalandhar (85-QCC-2022)	PC	100	4246	75	4145	-101
			1100	5088	97	4508	-580
			2100	4864	96	2754	-2110
16	Special Repair of Link Road Darouli to Bakreha in MC Patran, Phase-IV, Gr. No.2 (43-QCC-2022)	PC	600	4700	-	-	-
			1500	4780	-	-	-
			2100	4760	-	-	-
17	S/R L/R Kajawali Doomchheri with Phirni Doomchheri Link road (91-QCC-2022)	PC	700	4798	121	4567	-231
			2000	4726	100	3626	-1100
			4340	4757	65	5174	+417
18	S/R of Plan Road Chonkiman Swaddi Bhundari (Length 18.10 km) under Head 5054 RB-10 (68-QCC-2022)	DBM & BC	9500	-	40	3976	-
			11500	-	67	4761	-
			14400	-	73	4231	-
			9500	-	74	5970	-
			11500	-	68	4802	-
			14400	-	69	5635	-
19	S/R of L/R Jail Gate to Abulkhair in MC Gurdaspur Gr. No.2, Phase-IV, Distt. Gurdaspur (73-QCC-2022)	PC	2600	4560	39	3458	-1102
			4600	4795	94	4573	-222
			6700	4816	93	4438	-378
20	Widening & Stg of Sirhind Morinda From RD 19.10 to 24.20 in Distt.Ropar under Head 5054 RB-10	DBM	22900	-	64	7191	-
			22330	-	90	10762	-
			21740	-	89	6782	-



CWP-15327-2022 (O&M) + 17 cases

	(92-QCC-2022)						
21	Link Road Majari to Makhupur via Sahadra(Section Majari to Khurda) Distt. Nawanshaher (S.B.S. Nagar) (924/964)	PC	1100	5660	-	-	-
			2650	4470	-	-	-
			4210	4850	-	-	-
			6400	7370	-	-	-

(Neeti Sharma)
(Kashish Kathuria)
Sub-Divisional Engineer
Sub-Divisional Engineer

(Akashdeep Singh)
Sub-Divisional Engineer

(Raj Kumar Garg)
Sub-Divisional Engineer

(Suraj Mohan)
(Rohit Jindal)
Supdt. Grade-I
Executive Engineer QA

(Mandeep Singh)
Executive Engineer QA

(Anil Kumar)
Executive Engineer QA

R.P. Singh
Superintending Engineer
Quality Assurance”

Referring to the above, he submits that the possibility of samples being tampered with or having not been kept intact or protected properly is well established. Hence, the results of analysis on such samples, the sanctity whereof has already been compromised, cannot thus be accepted. They further contend that even though the respondents have taken a specific stand that no final decision has been taken and that the present petition is premature against the communication dated 15.06.2022 but the said stand is factually incorrect as the respondents have already taken a decision and have sent a communication bearing memo No.10/73/2022-ES1(3)/1571 dated 11.07.2022 whereby they have not only directed the recovery of full amount from the contractual agencies on account of the rejected work but have also passed an order of debarring the contractual agencies from further filling tenders in the department for two years without affording any opportunity of hearing. The operative part of the aforesaid communication is reproduced as under:-



“To

*Chief Engineer (Quality Assurance)
Public Works Department (Building and Road)
S.A.S. Nagar.*

Memo No. 10/73/2022-ES1(3)/1571

Dated, Chandigarh: 11-07-2022

**Subject: S/R of L/R from Ittan Badhi to Sandham in MC
Bhogpur, Phase-IV Distt- Jalandhar.**

*On the above subject in reference to your office letter
No. (85/QCC/22)/1299/QCC dated 15-06-2022.*

2. *In the subject cited matter as per the Government
instructions dated 10.08.2016 under the Rejected Category action
should be taken against the Involved contractor and information
about the action taken should be sent to the Government :-*

**(i) Recovery of full amount from Contractual Agency on
account of that rejected work.**

**(ii) Debarring the agency for further tendering in the
department for 2 years.**

3. *Along with this the draft of Chargesheets of accused
Officers / Officials in this matter under Rule 8 of Punjab Civil
Services (Punishment & Appeal) rules 1970 to be sent to the
Government within 7 days. If the draft of the Chargesheets are not
received in the stipulated time then the Government will take serious
notice.*

4. *This should be done on priority basis.*

*Sd/-
Superintendent”*

It is thus contended that a decision has already been taken by them
and that an argument to the contrary is incorrect. Further with regard to the that
contention of the respondents that the Independent Third Party Techno Financial
Auditors had not been appointed in certain cases, he refers to the Punjab Mandi



Board Letter bearing Memo No.XEN(QC-1) No.380-83 dated 17.08.2021 as per which M/s WAPCOS Ltd. had been appointed as the Independent Third Party Techno Financial Auditors. They further submit that the terms of reference and/or the scope of work *inter se* between the respondents-department and the Independent Third Party Techno Financial Auditors is a matter of their own understanding. The respondents cannot now turn back to contend that some part of the report cannot be accepted especially when they had themselves deputed the said Independent Third Party Techno Financial Auditors and cannot hold the petitioners liable for any alleged non-recording/non-reporting of any specific content. In any case, in the event of any clarification required, it was incumbent upon the respondents to have asked for a clarification from the Independent Third Party Techno Financial Auditor and not by resorting to conducting their own tests. They further submit that the said Independent Third Party Techno Financial Auditors itself is a nominee by the respondents and that every such sample drawn by them would itself fall within the scope of Clause 31.1(b), as such sampling is done at the behest of the Engineer Incharge.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The primary bone of contention which arises for scrutiny by this Court is as to whether the respondents could have carried out the sample testing and an analysis; and as to whether the results so drawn from the sampling done by them are *per se* admissible or not.



At this juncture, this Court feels that the question of the entitlement of the respondents-State to draw sample is not required to be gone into since the entire foundation of the action taken by the respondents is based upon the analysis of the samples drawn by them. Certain discrepancies have been noticed in the said sampling, which have a material bearing on the final outcome of the result and as such, the testing report cannot *per se* be accepted as laying foundation for initiation of proceedings. The same are stated as under:

- (i) That as per the procedure informed by the State Counsel on instructions from Mr. Rohit Jindal and Mr. Mandeep Singh, XENs, Quality Control Cell and by referring to the proceedings of the meeting held with the Director, Quality Control and Addl. Secretary of PWD, IB and RR, the sample was required to be taken in duplicate and it was to be packed bearing the seals of the checking team and the Incharge of the work from where the sample was collected. At the time of the receipt of sample in the office of Director, Quality Control Cell, the seals were required to be checked and had to be kept intact. The procedure adopted by the respondents instead is that the seals had been removed by the Director, Quality Control Cell and the sample was changed from the earlier packaging into a new packaging and sent to the Research Lab, Patiala. The abovesaid procedure seriously compromises the sanctity and the purity of the sample that had been so obtained. Besides, there is no reason or occasion as to why the Deputy Director is required to



reopen the seals that have already been affixed at the site especially when the object of removal of the identity mark is only for the purposes of maintaining secrecy which could be preserved by shifting the sample to another packaging material with separate identity mark and seal.

- (ii) The other aspect which weights upon this Court is in relation to the possibility of sample tampering which such possibility is immense considering that as per the report from the laboratory, there has been a substantial variation in almost all the samples that had been collected at the site and as sealed and sent to Research Lab. The variation is substantial and varies from 25% to 50% of the sample size, in a large number of cases and there has been increase in certain cases. Such a discrepancy in the sample size shows that the samples had not been properly sealed and stored and that the possibility of the samples having been tampered with or having been altered during the period of their storage with the Director, Quality Control and before the same were received in the office of the Research Lab cannot be ruled out. No explanation of any nature has come forth either in the affidavit filed by the respondents or during the course of the arguments as to how and under what circumstances, the samples were stored in the office of Director, Quality Control Cell.



- (iii) The Court needs to be satisfied that before any punitive action such as imposing a penalty of recovery of dues and also blacklisting on any person is imposed, the lapse for which he is alleged, must actually be established and should not be based merely on preponderance of probabilities or a possibility of the error/lacking of quality. The sampling, storage and analysis reflect a gross discrepancy, which such discrepancy cannot outrightly be ignored. The Court cannot thus shut its eyes to the abovesaid glaring aspect.
- (iv) Even though a last attempt was made by the respondent-State that the testing size was only 1500 grams and that the discrepancy in the weight of the sample would not have any material bearing on the final outcome, however the same cannot be accepted. The concern espoused before this Court is not that the testing was not done on a proper size of sample but the challenge is based on the purity and sanctity of the sample itself and that the said sanctity of sampling, storage and analysis having not been maintained, the final result is not beyond suspicion and cannot be accepted *per se* as sufficient proof of establishing a guilt against a persons who have executed and undertaken the works.
- (v) Whenever any punitive measure requires a sampling and testing, the foundation of any such penalty is required to be preserved and kept intact. The burden for the same lies on the agency intending to prosecute or impose penalty. The authorities cannot stress that their



word be accepted as proof of evidence especially when the circumstances show that the contractors were not associated in the process of storage and testing of samples. The burden hence lies on the respondents to explain the substantial variance in the sample sizes, which it has failed to discharge.

- (vi) A State act must reflect fair play in action and should not be indicative of a sovereign oppression. A contractor cannot be presumed in law to have executed a sub-standard work. The same is required to be established in a manner which is just, fair, transparent and can be upheld on the legal parameters. Where the State fails to instill confidence of the person aggrieved and to maintain sanctity of the sample drawn, an action based on defective and questionable storage deserves to fail.

Under the given circumstances, I am of the opinion that the initiation of proceedings by the respondents against the petitioners on the basis of samples drawn on 18.04.2022 is based on the analysis result as supplied by the Research Lab, PWD (B&R), Patiala which is vitiated in view of my observations recorded above. The proceedings are accordingly set aside and the petitions in hand stand allowed. The other aspects as regards the power of the State to draw samples is thus not required to be gone into any further at this stage.

All other misc. application(s), if any, also stand(s) disposed of accordingly.



ALL INTERVENER APPLICATIONS

Since main cases have been decided today itself, the respective counsel for the applicants-interveners do not wish to press their respective applications.

In view of the above, all intervener applications are hereby disposed of as not pressed.

Photocopy of this order be placed on the files of other connected cases.

JULY 25, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No