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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-16564-2013

Date of decision : 18.01.2017

M/s Marshal Construction Company

... Petitioner

Versus

Haryana Urban Development Authority and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

Mr. Ajay Nara, Advocate
for the respondent(s).

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 02.12.2011 (Annexure P-6), whereby the respondent(s)-HUDA had imposed the penalty of ₹ 30,00,699/- on 02.12.2011.

Mr. Vivek Khatri, learned counsel appearing on behalf of the petitioners submits that the Department had called for the tender for Special repair of Roads in Sector 2 (P) Rohtak "Supply and lying of 75 mm thick BUSG for patch work providing and laying of 50 mm thick BM, 25mm thick premix carpet and all other works contingent thereto. The petitioner on 21.12.2010 applied for the aforementioned contract. The same was

though allotted, but owing to imposition of certain conditions, resultantly, no agreement was signed. The factum of agreement having not been signed, much less, furnishing of performance guarantee stands admitted in paragraph 14 of the written statement. The same reads as under:-

"14. That the contents of para No.14 of the writ petition are totally wrong and hence denied. Merely because the contract agreement was not signed does not mean that the petitioner can be escaped from his liability. The tender of the petitioner was accepted by the answering respondents and the intimation was sent to the petitioner and the petitioner was aware of the fact. But despite this, the petitioner avoided not only the execution of the necessary documents but also avoided the completion of work which resulted in huge loss to the answering respondent and hence the petitioner is liable to pay the same to the answering respondent even if no agreement has been executed."

thus, vide impugned order, HUDA authorities could not impose the penalty at the risk and cost in the absence of any contract. Even if, the contract had been signed, the remedy would have been under arbitration and even no opportunity of hearing was given, thus, urges this Court for setting aside the impugned order under challenge.

Mr. Ajay Nara, learned counsel appearing on behalf of the respondent(s) submits that the tender of the petitioner was accepted by answering respondent(s) and the intimation was sent to the petitioner, who was aware of this fact. The petitioner avoided not only the execution of the necessary documents, but also completion of work which resulted into huge loss, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book of the view that the letter (Annexure P-5) communicated by the Department to the petitioner indicated that the contract agreement was not signed. For the sake of brevity, the relevant portion of the same reads as under:-

"You are requested to contact the Sub Divisional Engineer, HUDA, Sub Divn. No.III Rohtak for taking the nishan and start the work immediately. The contract agreement showing the detailed terms and conditions of the work is under preparation in this office. You are, therefore, requested to sign the same within 15 days from the issue of this communication positively. It may be noted that no payment will be made to you until the agreement is signed by you.

The receipt of this communication may please be acknowledged."

On juxtaposition of the written statement and as well as the contents of the letter, it is evident that the petitioner did not sign the contract agreement, thus, in my view, it does not lie in the mouth of the HUDA to initiate the recovery proceedings in the absence of the contract. At the best, the suit for damages under Section 73 of the Contract Act would have been filed by leading cogent and direct evidence, but not in the manner and mode as indicated above. Even the impugned order under challenge is at the back of the petitioner. Since, there is no contract, the imposition of penalty of ₹ 30,00,699/- cannot be said to be legal and justified. It is a fit case of the petitioner for interference and within the scope of "Judicial Review".

For the foregoing reasons, the impugned order dated

02.12.2011 (Annexure P-6) is hereby set aside and resultantly, the writ petition is allowed.

18.01.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No