

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-28196-2017

Date of Decision: 12.12.2017

M/s Kanohar-BPCL JV, Rithani, Meerut

....Petitioner.

Versus

Union of India and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE AMIT RAWAL.**

PRESENT: Mr. Jagmohan Bansal, Advocate for the petitioner.

**AJAY KUMAR MITTAL, J.**

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 13.11.2017 (Annexure P-28) vide which respondent No.2 has rescinded the contract with the petitioner.

2. Respondent No.2 invited tenders for 'Design, Supply, Erection, Testing and Commissioning of 25 Kv, 50 Hz, single phase, AC, Electrification Works including OHE and TSS as composite Electrical Work.' In response thereto, the petitioner and other contractors submitted their respective bids. The petitioner being successful, was awarded contract vide Letter of Acceptance (LOA) dated 2.3.2017 (Annexure P-1). A meeting between the petitioner and respondent No.2 was conducted wherein various issues were discussed and as per the minutes of the meeting dated

13.4.2017 (Annexure P-2), the petitioner was directed to commence work from Tapri (Saharanpur) side. The petitioner submitted the agreed work programme on 20.4.2017 (Annexure P-3) in the prescribed Form-10. Vide letter dated 21.4.2017, the petitioner requested respondent No.2 to grant pegging plan from the Tapri side to commence the work which it received on 3.5.2017 for 142-145 and 145-150 Kms. Respondent No.2 vide letter dated 24.4.2017 (Annexure P-4) informed the petitioner regarding 'No Objection' for execution of design work through M/s TEE TSS Designers who vide letter dated 5.5.2017 (Annexure P-5) informed respondent No.2 that they had authorized Shri Vargese V.S., a design Engineer of M/s TEE TSS Designers to sign design related documents like LOP, CSD, SED etc. Further, vide letter dated 5.5.2017, the petitioner requested respondent No.2 to provide 132 KV side marking for Traction Sub-Station (TSS). The petitioner vide letter dated 6.5.2017 (Annexure P-6) submitted soil testing report of Over Head Electrification (OHE) work from Noli-Tapri-Ambala and requested for ESP and SIP drawing and vide letter dated 8.5.2017 (Annexure P-7) requested respondent No.2 to issue site map/location for construction of store depot. Vide letter dated 15.5.2017 (Annexure P-8), the petitioner submitted LOP and CSD drawing for Kms 142-145 and 145-150 for the approval of respondent No.2. The petitioner vide letters dated 8.6.2017 and 14.6.2017 (Annexure P-9 Colly) informed respondent No.2 that due to restriction on mining in UP, they were facing difficulty in sourcing of sand and ballast required for foundation casting and that all the vehicles were stopped by the District Magistrate, Saharanpur used for transportation of ballast and coarse sand. Even they also met District Magistrate on 9.6.2017 and 12.6.2017 for permission to transport ballast

and coarse sand. Various meetings were held from 13.6.2017 to 31.10.2017 between the petitioner and respondent No.2 and as per the minutes of the meetings (Annexures P-10 to P-14, respectively), respondent No.2 alleged slow progress of work even though it was noticed that SIP, location plan drawing were yet to be given by the Railways and point of entry for both TSS still was not given. The petitioner vide letters dated 16.6.2017, 23.8.2017 and 2.9.2017 (Annexures P-15 to P-17, respectively) informed respondent No.2 that the Railway had not provided drawings of location plans etc. Vide letter dated 6.9.2017 (Annexure P-18), the petitioner had placed order of fabricated and galvanized steel structure with M/s Rukmani Electrical and Components Ltd., Raipur and had already made payment of more than ₹ 1.1 crores. The petitioner also informed respondent No.2 vide letters dated 5.9.2017 and 18.9.2017 (Annexure P-19 Colly) regarding difficulties in sourcing of sand and ballast required for foundation casting at Noli to Tapri work. Respondent No.2 was also informed by the petitioner vide letter dated 3.10.2017 (Annexure P-20) regarding the stoppage of vehicles for transporting the ballast and coarse sand by the District Magistrate, Saharanpur. Respondent No.2 vide letter dated 12.10.2017 (Annexure P-21) supplied two copies of approval of proposed site plan of SP/SSP. In pursuance to the minutes of meeting dated 20.9.2017, the petitioner vide letter dated 26.10.2017 (Annexure P-22) submitted drawings of LOP and CSD drawings from Kms 59 to 66 (open route in Noli-Shamli Section), GAD for TSS Hind and TSS Baghpat and SED drawings for open route from Kms 89 to 150 even though ESP and SIP drawings were not supplied by Railway by the said date which was pre-requisite to submit drawings of LOP and CSD. Respondent No.2 vide letter dated 2.11.2017

(Annexure P-23) given seven days' notice to make good the progress failing which action would be taken to terminate the contract. Further, vide letter dated 7.11.2017 (Annexure P-24), the petitioner was informed that foundation progress was not satisfactory and the drawings submitted were not signed by the authorized signatory. The petitioner replied the letters (Annexures P-23 and P-24) vide letter dated 9.11.2017 (Annexure P-25). Respondent No.2 vide letter dated 10.11.2017 (Annexure P-26) informed the petitioner that they had not taken any action to enhance the progress of work and as they had failed to abide by the instructions, they are given 48 hours' notice to enhance the progress of work failing which the contract will stand rescinded. The said letter was replied by the petitioner vide letter dated 10.11.2017 (Annexure P-27). However, respondent No.2 vide order dated 13.11.2017 (Annexure P-28) rescinded the contract with the petitioner and debarred the petitioner and its partner from participating in the tender for executing the balance work. The petitioner filed reply dated 14.11.2017 (Annexure P-29) to the aforesaid order, Annexure P-28, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a letter dated 9.11.2017 (Annexure P-25) followed by the reply dated 14.11.2017 (Annexure P-29) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the letter dated 9.11.2017 (Annexure P-25) followed by the reply dated 14.11.2017 (Annexure P-29), in accordance with law by passing

a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of the certified copy of the order.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**December 12, 2017**  
gbs

**(AMIT RAWAL)**  
**JUDGE**

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|----------------------------------|---------------|
| <b>Whether Speaking/Reasoned</b> | <b>Yes/No</b> |
| <b>Whether Reportable</b>        | <b>Yes/No</b> |