

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

CWP No. 15948 of 2018

Date of decision :26.04.2019

M/s Shree Sai Facilities & anr.

....Petitioners

V/s

Union of India & ors.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Gopal Soni, Advocate for the petitioner.

Mr. Lakhwinder Bir Singh, Advocate for the respondent.

RAJAN GUPTA J.

Petitioners have preferred this writ petition seeking a direction to respondents to release payment in view of outstanding amount of bills for the work executed by them alongwith labour charges and other dues. It has been urged on behalf of the petitioners that they had a contract with the Indian Railways for executing certain works of sanitation etc. They completed the entire assignment and engaged huge labour for the same. Payment was being released to them by the Railways as per entitlement. However, from February, 2018 onwards the trouble started. The respondents failed to make payment to the petitioners. According to learned counsel, the action of the respondents is wholly arbitrary. Learned State counsel has filed reply. He submitted that petitioners had failed to exhaust the remedy of Arbitration as laid-down in condition no. 63 pertaining to settlement of disputes, (Annexure P-8 herein). Besides, petition is bad for

non-joinder of parties as Ambala Division has not been impleaded as a party.

Payment of the petitioners had been withheld under conditions nos. 18 & 52-A of the Railway Standard Conditions of Contract, (Annexure P-8) as petitioners had failed to furnish the bank guarantee of equal amount to protect financial interests of the Railways. Reference has also been made to recent fraud by certain firms committed by submitting fake bills, payment whereof was released in alleged connivance with certain Railways officials. In respect of same, an FIR has been registered by the CBI.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It is evident that disputed questions of fact are involved in the case which cannot be adjudicated upon in writ jurisdiction. Petitioners have failed to avail the alternative remedy available to them particularly arbitration. During the course of hearing, an inquiry report was submitted by the Railways. This court does not intend to express any opinion thereon or on merits lest it should prejudice the case of either party. Writ petition is, however, dismissed with liberty to the petitioners to avail appropriate remedy as per law.

April 26, 2019

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No