

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

COCP No. 3834 of 2019
Date of decision: 19.12.2019

M/s Skylark Industries

.. Petitioner

v.

Sh. Sarvjit Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: R. K. Girdhar, Advocate for the petitioner.
Mr. Atul Nanda, Advocate General, Punjab with
Mr. Aditya Sharda, Assistant Advocate General, Punjab.

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AVNEESH JHINGAN, J. (Oral)

Considering that number of writ petitions and contempt petitions having been filed by the contractors for release of the payment of works already executed, it was deemed appropriate to address the larger issue.

The picture canvassed by this litigation is that generally the work is allotted on the basis of tender, the same is executed and thereafter payment is not released. The working mechanism adopted by the contractors is that a legal notice is served upon the department concerned and thereafter writ of mandamus is filed seeking direction to decide the legal notice.

There being no quibble on the proposition that generally in contractual matters, extra-ordinary jurisdiction under Article 226 of the

Constitution of India is not to be invoked but considering the fact that generally no dispute is raised by the department on facts, the writ petition is disposed of giving time-bound directions to the respondent-department to decide the legal notice and thereafter disburse the amount, if any found due. On its non-compliance, Sections 10 and 12 of the Contempt of Courts Act, 1971 are invoked by the contractors. By and large, on issuance of notice the payment is made.

At this stage, it would be worth while to mention that even while deciding the legal notice, with regard to disbursement of the amount, two types of stands are taken. In some cases, it is ordered by the department that the amount would be released immediately whereas in others, it is stated that the amount is due but would be disbursed as and when funds are available.

The position, mentioned above, is not only creating heart burning but is giving unbridled powers to the officials concerned dealing with the issue.

Today learned Advocate General, Punjab has addressed the issue. Mr. Anirudh Tewari, IAS, Principal Secretary, Finance, Government of Punjab is also present in Court. It has been candidly and fairly submitted that at present there is financial crunch in the State which the respondents are trying to deal with best of their abilities.

However, without adverting any further, it has been stated that there are approximately ₹626 crores of admitted liability towards the contractors pending as on date. The said amount includes approximately ₹59 crores liability of Department of Local Bodies. With regard to the liabilities of the Local Bodies, it is stated that since there is time difference

between receipt of the finances and its disbursing, the same is creating problem. It is submitted that priorities are being fixed to clear the liabilities. The Court has been apprised that in order to check that needful can be done in a systematic manner, it is stated that the following steps shall be taken:

- (i) That each of the department which is floating the tender and has admitted liabilities will upload the details of the admitted liabilities on its website within six weeks from today. Thereafter, a centralised website would be created which would be maintaining the priority of the admitted dues.
- (ii) It is assured that admitted liability for all the departments except Local Bodies as existing today would be clear by 31.3.2020 strictly according to the priority list maintained.
- (iii) For Local Bodies Department, it is assured that liabilities would be cleared by 30.4.2020.
- (iv) In order to ensure that legal notice or representation served if any on the department is dealt with in a time-bound manner, it is stated that the aggrieved person while making the representation may also send one copy to the Principal Secretary of the department concerned. The Government shall ensure that decision, in case there being no legal impediment to do so, would be taken within four weeks from its receipt and in case of failure, the Principal Secretary will fix the responsibility of the defaulting official for not doing the needful.
- (v) In order to put a break to further accumulation of the admitted liability, the Finance Secretary has suggested that for new project, no tender would be floated without approval from the

Finance Department and in case any of the department does so, responsibility of the head of the said department would be fixed.

(vi) It is further assured that in any of the matters in which legal notice is pending as on date, the same would be decided within four weeks from today.

There is no doubt that the State Government will leave no stone unturned to implement the above undertakings in letter and spirit.

Needless to add here that in case the contractors are aggrieved of the orders passed on their legal notice/representation, they would be at liberty to avail remedies in accordance with law.

At this stage, it is also pointed out that in the present case, payment of the admitted amount has already been made to the petitioner.

In view of the above, the contempt petition is disposed of. However, with the petitioner shall be at liberty to avail remedies in accordance with law.

(AVNEESH JHINGAN)
JUDGE

19.12.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No