

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7677-2020(O&M)

Date of decision:02.12.2020

Shre Ganesh Construction through partner Saurabh Garg and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Navjot Singh, Advocate, for the petitioners

Mr. Lavanya Paul, AAG, Punjab

Ms. Amandeep Kaur, Advocate for respondent no.11.

ANIL KSHETARPAL, J.

Normally in the commercial world, the resistance/reluctance to adopt a new and better technology is due to economic reasons. Once a new and improved technology is sought to be introduced to improve the working, both qualitatively and quantitatively, which requires fresh investment, the contractors do make attempts to stall such decisions. In the Government sector, otherwise also there is a lot of resistance/reluctance to introduce change for betterment due to various factors and reasons. This case clearly represents resistance from the contractors who are in the business of taking government contracts for carpeting or re-carpeting the roads.

The dispute in the present writ petition is that whether the court should come to rescue of the road contractors who wish to continue with the use of drum/continuous hot mix plants for bitumen work. On the other hand, the Govt. insists that all contracts including composite work in which the cost of bitumen work is more than Rs.5 crores, it is mandatory to establish batch type hot mix plant. The Govt. claims that such type of hot mix plants are advanced, ensures better hot mixing of the bitumen and concrete which adds to the life of the road apart from being qualitatively better.

From the reading of the petition, it is apparent that the contractors are litigating in the Courts for the last five years, opposing the requirement of batch type hot mix plants. The first writ petition was filed by the Contractors in 2015 which was disposed of on 14.11.2017 directing the State to afford an opportunity of hearing to the contractors. In that writ petition, the Court was informed that the decision had been taken at a joint meeting chaired by Secretary, Department of Public Works, Punjab. The second writ petition, i.e CWP-7327-2018 was filed by the contractors claiming that no decision has been communicated by the State. This writ petition was disposed of on the very first day of the hearing, directing the State to take a decision within a period of two weeks. Pursuant thereto, after granting an opportunity, the Government took a decision that all the contracts including composite work in which the cost of bitumen work is more than Rs.10 crores, it shall be necessary for the contractor to install/establish batch type hot mix plant or have supply therefrom. After a passage of 2 years approximately, the Government took a decision on 29.1.2020 that the requirement of batch

type hot mix plant would be applicable to all contracts valuing more than Rs.5 crores. Correctness of this decision taken by the Government has been assailed in the present writ petition.

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the paper book. It may be noted here that the written arguments have been filed by the petitioners as well as respondent-State. Oral arguments have also been heard at length.

Learned counsel for the petitioners has contended that there is no qualitative advantage in carpeting the roads with the asphalt prepared by usage of batch type hot mix plant; more than 1000 workers would be rendered jobless whereas 100 contractors would go out of competition as they do not have capacity to compete; the drum/continuous hot mix plants have lower operative expenses as compared to batch type hot mix plants; no defect in the quality of work of continuous hot mix plant has been pointed out; the Chief Engineer has no jurisdiction to take a policy decision and therefore, communication dated 29.1.2020 is liable to be set aside.

Pursuant to a notice of the writ petition, a detailed reply has been filed by the State, pointing out that the decision has been taken on the basis of recommendations of a committee consisting of all the Chief Engineers of PWD, B&R including the Chief Engineer, Quality Control; batch type hot mix plants are better than drum type hot mix plants; incorporates advanced technology and provides better quality of hot mix asphalt; less pollutant; the life of the carpeting executed with the asphalt prepared by batch type hot mix plant is longer when compared to the life

of the road carpeting laid by the asphalt prepared by Drum Type Hot Mix Plant; the order of the Chief Engineer is based on an order passed by the Principal Secretary of the Department dated 16.1.2020. It has further been asserted that now as many as 43 batch type hot mix plants have already been established in the State of Punjab. It has further been pointed out that Ministry of Road Transport & Highways introduced requirement of batch type hot mix plant for national highways in the year 2011. It has further been pointed out that Indian Road Congress in its code has enlisted advantages of hot mix plant.

In the rejoinder, learned counsel appearing for the petitioners has pointed out that in the case of national highways, setting up of batch type hot mix plant is necessary for contract of more than 25 crores. He, hence, submitted that the decision taken by the State is arbitrary. On the other hand, learned counsel appearing for the State of Punjab has pointed out that the national highways do not make any distinction between bitumen work and civil and other works. He has pointed out that in the State of Punjab requirement is that the value of bitumen work should be for more than Rs.5 crores in a composite contract.

This Court has carefully analysed the arguments of the learned counsel for the parties and perused the paper book. Before this Court proceeds to adjudicate upon the dispute it is important to note that this Court cannot claim that it has any technical expertise in the field. It has been noticed that large number of petitions are being filed in the Court for adjudication. The Judges of the Courts have a limited technical knowledge. The Courts are also not expected to be equipped

with wherewithal, required to adjudicate upon such complex technical issues. However, the Courts once called upon, have to decide the case on the basis of material produced before it. It is also important to note that the Court has limited power of judicial review in the policy matters. Unless it is established that the policy decision is absolutely arbitrary and illegal or results in violation of statutory provision, the Courts would be reluctant to interfere.

At the outset, it must be noticed that in the written submissions filed by the State, relevant part of IRC Code 90-2010 making comparison between the working of batch type hot mix plant and drum type hot mix plant has been reproduced which is extracted as under:-

<i>Sr. No.</i>	<i>Batch Type Hot Mix plant</i>	<i>Drum Type Hot Mix Plant</i>
I	IRC 90:2010 Clause 4.3 clearly states that the batch type hot mix plant is filled with secondary gradation control unit, thus, the aggregates received in pugmill are well graded. The aggregates and bitumen are measured in desired quantity and temperature of the aggregate per batch and mixed in pugmill. Thus, a homogenous mix is received in desired proportion.	IRC 90:2010 clause 5.4 clearly states that the plant does not have secondary gradation control unit i.e only graded material could be used to achieve desired mix quantity. There is no system to measure the temperature of the aggregates in drum mix plant.
II	IRC 90:2010 clause 4.1.13 described that the secondary pollution control device (bag house filter) of batch mix plant which states as: “It is a highly efficient filter arrangement capable to separate large mix particles upto 1 micron mix with 99 percent of efficiency.”	IRC 90:2010 clause 5.2.14 described about the secondary pollution control device of the continuous type hot mix plant which is fitted with wet scrubber type unit. It clearly states that it uses water to control pollution which generates slurry and adequate ponds are required to collect slurry. Furthermore, it can separate dust particles upto 5 micron size and eliminate certain amount of gases also with varying efficiency. This system requires large quantity of water.
III	The fine particles collected in the bag house filter can be reused	However, the fine particles at the outlet are mixed with water to form slurry and cause pollution, hence, cannot be reused.

<i>Sr. No.</i>	<i>Batch Type Hot Mix plant</i>	<i>Drum Type Hot Mix Plant</i>
IV	IRC 90:2010 clause 4.1.8 clearly states that the aggregates are withdrawn from hot bins in desired quantity through load cell and accumulated in weigh hopper. There is a sequence of collection of aggregates. This system allows the most efficient utilization of available volume in weigh hopper.	IRC 90:2010 clause 5.2.4 described the weighing system of conventional drum type batch mix plant has a load cell at the centre of slinger conveyor to measure the quantity of material being fed in the drum. There is no provision of weighing the aggregates separately.
V	IRC 90:2010 Clause 4.1.12 clearly states that automatic dryer control regulates the temperature of aggregates discharged from dryer automatically with a present range.	Clause 5.2.11 states that there is no system to measure the temperature of aggregates. However, an approximate method is adopted by measuring the exhaust gas temperature and aggregate temperature is approximately 12 C less than that of the exhaust gas temperature.
VI	There is automatic dryer control regulates the temperature of aggregates discharges from dryer automatically with a present range which reduces the moisture content of the aggregates to a great extent	IRC 90:2010 clause 10.1 states that one of the factor affecting the performance of hot mix plant is the presence of moisture content in aggregates. If the moisture content is very high say, 8-10% the aggregates shall not fall out of flights in uniform veil, thus there shall not be uniform and adequate heating of aggregates. Thus the increase in moisture content results in drop of production and increasing in fuel consumption also.
VII	Clause 4.1.12 of IRC 90-2010 clearly states that there is a lot of automation involved in batch type hot mix plant as such there are black chances of theft and manipulation.	However, hot mix plant has less automation involved. It uses a conventional way of controlling aspect of plants.

There is further reference to IS-Code of Indian Road Congress that the quality of hot mix prepared by continuous or drum type hot mix plant is not as homogenous as in the case of batch type hot mix plant. It has further been pointed that pollution control system in batch type hot mix plant is much better and there is significant reduction in the pollution.

Keeping in view the aforesaid facts, this Court does not find that the petitioners have made out a case for the exercise of jurisdiction under Article 226/227 of the Constitution of India.

Although, as noted above, the petitioners have pleaded that there is no qualitative advantage, however, Ministry of Road Transport and Highways, Govt. of India as well as NHAI have already introduced batch type hot mix plants for approximately one decade. Thus, in the government sector such technology is being consistently being used. Still further, it is for the Govt. and experts to decide as to whether there is some improvement in the quality or not. It is also prerogative of the Govt. to take a policy decision, of course, based on application of mind by the authorities. In this case, one can safely say that there is application of mind because since 2015 the matter has been pending in one Court or other. The committee of Chief Engineers has already given a report in this regard and the Principal Secretary of the Department has also approved the same. In these circumstances, the argument of the learned counsel for the petitioners that continuous hot mix plant has low operating expenses does not cut any ice. It is for the contractor to take a commercial decision. Still further, it is not for the Court to see as to whether there is any defect in the quality of work carried out with the mix produced by continuous hot mix plant. The question here is not of defect. The question here is whether the court should interfere in a decision which makes batch type hot mix plant mandatory. It has been pointed that with the passage of time a lot of batch type hot mix plants have come up and drum type hot mix plants can still be used for executing works for amount less than 5 crores for which a lot of work is available. This condition is also not applicable in the repair or urgent works.

In these circumstances, this Court does not find it

appropriate to interfere.

Dismissed.

02.12.2020

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)

JUDGE