

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 8031 of 2020 (O&M)

Date of Decision: 16.06.2020

Bhangali Kalan Cooperative Labour and Construction Society Limited

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Additional Advocate
General, Punjab for the respondents.

Anil Kshetarpal, J.

The writ petitioner-Society has filed the present writ petition under Article 226 of the Constitution of India with the following substantive prayer:-

- “i) *for issuance of a writ in the nature of mandamus, directing the respondents to release the payment for the work already executed by the petitioner society which comprises of more than 90% of the total work;*
- ii) *further writ in the mandamus directing the respondents to allow the petitioner to complete the remaining unexecuted work, as on account of unprecedented situation arising due to Covid-19, as per the instructions of the government and the department work was*

temporarily stopped by the petitioner and now the respondents are not permitting the petitioner to complete the same;

iii) further writ in the nature of prohibition/mandamus restraining the respondents from unilaterally allotting the remaining work to any other agency and for directing the respondents to get the same executed from the petitioner;

iv) in the alternative appropriate directions may kindly be issued to respondent authorities to immediately look into the legal notice dated 16.05.2020 (P3) served to the respondents which is still pending consideration”.

In a nutshell, the case of the petitioner-Society is that it was allotted various civil works by the Department of Cooperation, Government of Haryana. Annexure P1 (Colly.) is the list of various works allotted to the petitioner-Society. In fact, Annexure P1 is the tabulated information prepared by the department giving out the rates quoted by various competitors and the petitioner-Society has been found to be the lowest tenderer. The petitioner-Society claimed that it has completed 90% of the work allotted. However, it could not complete the remaining work due to lock-down imposed in the wake of COVID-19 pandemic. Through the present writ petition, the petitioner broadly request to issue directions to the respondents to pay for the work already executed and permit the petitioner-Society to complete the remaining unexecuted work.

This Court has heard learned counsel for the petitioner at length

and with his able assistance, gone through the paper-book.

Learned counsel for the petitioner contends that the writ petition is maintainable as the respondents are liable to pay for the work which has been completed and the payment thereof is undisputed. He, in support thereof, relied upon a judgment passed by the Hon'ble Supreme Court in ***Food Corporation of India and Another v. SEIL Limited and Others (2008)3 SCC 440***. He further submitted that the petitioner-Society, before filing the writ petition, had issued a notice through its counsel but no reply thereof has been received as yet. He, hence, submitted that the respondents are not disputing the completion of 90% of the work.

This Court has considered the submissions, however, find no merit therein for following reasons:

1. The judgment passed in ***Food Corporation of India (supra)***, the Hon'ble Supreme Court was examining with the payment of sugar supplied by the manufacturers to the Government under a statutory provision. The sugar manufacturers, under an order issued under the Essential Commodities Act, 1955 (hereinafter referred to as "the Act"), were bound to supply certain quantity of sugar which is, in common parlance, known as "levy sugar". The Central Government had sanctioned the claim for release of payment to the sugar manufacturers in respect of the sugar supplied to the different agencies. In these circumstances, the Hon'ble Supreme Court held that once the liability to pay the amount is not in dispute and the payment is due on account of supply of

the sugar as per the statutory orders issued under the Act, therefore, the writ petition is maintainable. In view of the above, the judgment passed by the Hon'ble Supreme Court in ***Food Corporation of India (supra)***, does not help the petitioner.

2. The writ petitioner has failed to disclose as to when the various works were completed and the details of the bills/invoices, if any submitted, have also not been provided. The petitioner has also not annexed a copy of the tendered document enabling this Court to examine whether there was any agreement for referring the dispute to the Arbitral Tribunal or not.

3. As per clause (7) of the work order (Annexure P2), if the work has been executed to the satisfaction of the Engineer-in-charge, only then the payment shall be released. There is total lack of pleadings in this respect.

4. In the present case, the writ petitioner has also failed to produce any document to even remotely establish as to how much is the undisputed amount due.

5. The contracts between the writ petitioner and the respondents are civil contracts. The petitioner has even failed to produce the measurement book, duly verified by the officials of the respondents, so as to establish the percentage of work completed.

Second relief, prayed for, in the writ petition is to direct the

respondents to allow the petitioner to complete the unexecuted work. It will be noted here that in the writ petition, it has been pleaded that the respondents are not permitting the petitioner to complete the work allotted. There is a contract between the parties which is alleged to have been violated. For enforcement of the contract, appropriate remedy is not to file a writ petition under Article 226 of the Constitution. Therefore, the petitioner may, if so advised, may resort to the remedy available in law.

Keeping in view the aforesaid reasons, this Court is not inclined to interfere in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petitioner is, therefore, relegated to the alternative remedy.

Disposed of.

(Anil Kshetarpal)
Judge

June 16, 2020
“DK”

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