

109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8797-2020 (O&M)
Date of Decision: 06.08.2020

Ashok Kumar

.. Petitioner

Vs.

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Arun Bansal, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

...

Manoj Bajaj, J. (Oral)
CM-7257-CWP-2020

Application is allowed, subject to all just exceptions. Annexure
P-19 is taken on record.

CWP-8797-2020

Through this writ petition, petitioner Ashok Kumar has challenged the orders dated 03.06.2020 and 12.06.2020, (Annexures P-16 and P-17) respectively, whereby certain recoveries have been ordered against him.

On 30.06.2020, the following order was passed by this Court:

“Learned counsel for the petitioner contends that the petitioner who is a Contractor was allotted the work by respondent No.3 and the said work was executed successfully. According to him, thereafter, the payment was made to the Contractor in December, 2019 and the said contract came to an end in all respects. He submits that through the impugned Annexures P-16 and P-17, a recovery has been ordered from the petitioner which is founded on a report given by third party, namely, M/s WAPCOS Ltd. Panchkula, appointed for conducting Techno Financial Audit. According to him, the impugned order has been passed without affording any opportunity of hearing to the

petitioner.

At this stage, Mr. Vikas Mohan Gupta, Addl.AG, Punjab appears on behalf of respondent Nos.1 to 3 and has pointed out that the agreement between the parties contain arbitration clause and the said clause has already invoked by the petitioner through his communication dated 08.05.2020.

Learned counsel for the petitioner is directed to place on record the communication dated 08.05.2020.

Adjourned to 06.07.2020.”

In compliance of the above, learned counsel for the petitioner has placed on record the communication (Annexure P-19) sent by the petitioner, whereby the arbitration clause has been invoked by him for adjudication of the dispute between the parties.

At this stage, Mr. Navdeep Chhabra, learned State counsel has also produced the communication dated 02.07.2020 issued by Principal Secretary to Government of Punjab, Department of Water Supply and Sanitation, whereby the recovery notices have been considered and it has been ordered that an opportunity of hearing be afforded to the affected contractors before ordering the recovery. The communication reads as under:

“The Punjab Water Supply and Sanitation Contractor Association (Regd.) Bhatinda-Faridkot-Sri Muktsar Sahib circle sought time and met me on 22.06.2020.

They raised the issue that based on the techno-financial audit conducted by WAPCOS, a Government of India company, of schemes executed by them, recovery notices are being issued to them even though bills of such schemes have already been finalized by the Department and in some cases payments have already been released. In other cases where some portion of final payment was pending, orders for imposing cuts and then releasing payment are being issued, without hearing the contractors.

Without going into the merits of the recovery orders being issued, in the interest of national justice, the CE (Central) is directed to provide an opportunity of hearing to the contractors before passing any final order. Copy of the proposed recovery/deduction to be imposed on the contractor, scheme wise, should be conveyed to them in writing and the

contractors be given an opportunity to file their reply. Reply be filed by the contractors in writing so that it forms a part of the official record. Thereafter, the CE(C) may pass the final order directing the amount payable/recoverable.

If the contractors are dis-satisfied with the final order passed by the CE(C) they can always apply for arbitration as per the terms and conditions of the contract.”

Learned counsel for the petitioner does not dispute this fact and, therefore, in view of the above, nothing survives for adjudication in this writ petition as the grievance of the petitioner stands redressed for the time being as the respondents have offered an opportunity of hearing to the contractor(s) and petitioner can also raise the question of validity of the impugned recovery notices in the said proceedings.

Disposed off.

06.08.2020
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No