

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

**C.M. No. 7742-CWP of 2020 in/and
C.W.P. No. 16208 of 2018 (O&M)
Date of Decision: 19.08.2020**

M/s. Vichitra Prestressed Concrete Udhyog Pvt. Ltd.,
New Delhi

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Rakesh Gupta, Advocate
for the applicant-petitioner.

Mr. Raman Sharma, Additional Advocate General, Haryana
for the respondents/State.

*[The aforesaid presence is being recorded through video conferencing since the
proceedings are being conducted in virtual court]*

JASWANT SINGH, J. (ORAL)

The petitioner is a private limited company and enlisted contractor specialized in laying pipe line for water supply.

By filing the present petition, the petitioner seeks quashing the impugned order dated 30.05.2018 (**Annexure P-22**) passed by respondent No. 3 (Superintending Engineer, Public Health Engineering Department, Palwal); order dated 08.05.2018 (**Annexure P-20**) passed by respondent No. 4 (Executive Engineer, Public Health Engineering Department, Palwal), whereby the penalty of 5% to 10% under Clause-2 of the Agreement, amounting to ₹ 2,51,87,300/- (Two Crore Fifty-One Lac Eighty-Seven Thousand Three Hundred only) has been imposed on the petitioner for delay in executing the allotted work for augmentation of drinking water supply scheme in quality affected 84 number villages of

Prithla & Palwal Block of District Palwal and Ballabhgarh Block of District Faridabad; **and further also** seeking quashing of the impugned order dated 26.06.2018 (**Annexure P-23**), prematurely terminating the contract of the petitioner, which was valid for a period of one year.

Upon notice, a reply on behalf of the respondents stands filed, and prayed for dismissal of the writ petition.

Now, an application bearing **CM No. 7742-CWP of 2020** (*duly supported by the affidavit dated 08.08.2020 of Sh. R.N. Aggarwal, Managing Director, M/s. Vichitra Prestressed Concrete Udhyog Pvt. Ltd., New Delhi*) has been filed by the applicant-petitioner, seeking disposing of the writ petition in terms of the Award dated 20.07.2020 passed by the Sole Arbitrator.

It is averred in the application that the petitioner filed the arbitration application as the premature termination in the contract was arbitrable, which was allowed by this Court vide order dated 17.05.2019 (**Annexure A-1**) and appointment of Hon'ble Mr. Justice (Retd.) A.K. Sikri, Former Judge of Hon'ble Supreme Court, Sole Arbitrator, was made.

The basic issue involved before the learned Sole Arbitrator regarding who is responsible for the slow progress of the work, the claim made by the claimant (petitioner) and the counter-claim made by the respondents for a sum of ₹ 2,51,87,300/- (Two Crore Fifty-One Lac Eighty-Seven Thousand Three Hundred only) on account of liquidated damages imposed on the petitioner due to slow progress of the work, was

so intricately linked that both had to be decided together. It is also averred that the learned Arbitrator vide Award dated 20.07.2020 **(Annexure A-2)** has given a categoric finding that the slow progress of work is because of the reasons attributable to the respondents inasmuch as the respondents did not have permissions from various departments to carry out the work, the respondents were neither in possession of the site, nor they actually handed over the site where the work was to be executed to the claimant-petitioner. After detailed discussion, learned Arbitrator has rejected the counter-claim of the respondents by holding that levy of liquidated damages by invoking Clause-2 of the contract agreement by the respondents was illegal.

In view of the Award dated 20.07.2020 **(A-2)**, learned counsel for the applicant-petitioner submits that the subject matter of the main writ petition has been gone and the finding, as given, has a bearing in the merits of the present case, therefore, the present writ petition has become infructuous.

Notice of the application.

Mr. Raman Sharma, Additional Advocate General, Haryana, accepts notice on behalf of all the respondents / State and has no objection in allowing the present application and the main writ petition is ordered to be dismissed as infructuous.

On the oral request of counsel for the parties, the date of hearing of the main case is preponed from 27.10.2020 (as mentioned in the application) to today and is taken up itself.

