

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

CWP-26722-2019 (O&M)

Date of decision : 21.07.2020

M/s Kher Constructions

...Petitioner

Versus

State of Union Territory, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anuj Raura, Advocate for the petitioner.

Mr. Anil Mehta, APP, UT Chandigarh.

ANIL KSHETARPAL, J. (ORAL)

The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India with the following substantive prayers:-

“Writ in the nature of mandamus directing the respondents to release the payment along with interest of the work executed by the petitioner for construction of cycle track and pedestrian path from junction No.54 to 59 (except bridge portion between junction 57, 58) and from junction No.54 to 44 U.T. Chandigarh, allotted to the petitioner vide order Annexure P-1, dated 10.07.2017.

And

For directing the respondents to extend the time for completion of the work awarded to the petitioner vide order Annexure P-1

Or

Any other writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case.”

Clause 20 of the E-Tender Notice, provide that the agreement shall be drawn with the successful tenderer on the prescribed CPWD, Form-

8, as per “General Condition of Contract of CPWD Works, 2014”. Clause 25 of the General Conditions of Contract of CPWD Works, 2014, provide that in case of any disputes relating to the meaning of specifications, design, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same as to whether arising during the progress of the work or after the cancellation, termination, completion, or abandonment thereof, shall be decided by a sole Arbitrator. Clause 25 (ii) of the same is extracted as under:-

“Clause 25(ii)

Except where the decision has become final, binding and conclusive in terms of Sub Para (i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed

in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal.

It is also a term of this contract that no person, other than a person appointed by such Chief Engineer, CPWD or Additional Director General or Director General, CPWD, as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs.1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both

the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.”

The grievance of the petitioner as noticed from the prayer clause is two fold; (i) that his payment has not been released, (ii) that respondents be directed to extend the time for completion of the work awarded to the petitioner.

In the considered view of this Court, both the prayers made, fall for adjudication before the Arbitrator.

In view thereof, the petitioner is relegated to the remedy before the Arbitrator.

In view of the above, the present writ petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

21.07.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

**Whether speaking/reasoned:-
Whether reportable:-**

**Yes/No
Yes/No**