

CWP-5257-2020(O&M)
and connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-5257-2020(O&M)

M/s Surinder Kumar Contractor
.....Petitioner
Versus
State of Punjab and others
.....Respondents

2. CWP-21944-2020(O&M)

Mandeep Singh
.....Petitioner
Versus
State of Punjab and others
.....Respondents

3. CWP-2295-2020(O&M)

Gursharan Singh
.....Petitioner
Versus
State of Punjab and others
.....Respondents

4. CWP-5755-2020(O&M)

M/s Jublee Enterprises
.....Petitioner
Versus
State of Punjab and others
.....Respondents

5. CWP-656-2021(O&M)

M/s Pacific Engineers and Builders
.....Petitioner
Versus

State of Punjab and others

.....Respondents

Date of decision: 02.02.2021

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.R.K.Girdhar, Advocate for the petitioner
in CWP-5257, 2295, 5755 of 2020 and CWP-656-2021

Mr. Rahul Bhargawa, Advocate for the petitioner
in CWP-21944-2020

Mr. Pradeep Bajwa, Addl. AG, Punjab
in CWP-5257-2020

Mr. P.I.P.Singh, Advocate for respondents no.2-4
in CWP-5257-2020

Ms. Maloo Chahal, DAG, Punjab
in CWP-2295-2020, CWP- 5755-2020 and
CWP-656-2021

ANIL KSHETARPAL, J.

By this order five Civil Writ Petitions i.e CWP-5257, 21944, 2294, 5755 of 2020 and CWP- 656 of 2021 shall stand disposed of.

These writ petitions have been filed by the Contractors praying for issuance of a direction to the respondents-State of Punjab or its instrumentalities to release of the payment due towards them since they, after completing the work allotted to them by way of tender or otherwise, have submitted their final claim/bills.

It has been noticed that a large number of writ petitions are filed in the High Court claiming that payments are not released to the contractors for quite a while. At one stage, the State of Punjab admitted that there is a financial crunch in the State and efforts are being made to

deal with the same in the best possible manner. It appears the situation still continues. No doubt, the State or its instrumentalities have no discretion to not pay to the contractors/suppliers after their work/supplies have been completed. However, the question is what should be the the most justifiable solution in the prevailing situation?

Keeping these facts in mind, learned Chief Secretary, Govt. of Punjab, was requested to file an affidavit proposing the ways and means to regulate the release of payments to the contractors. In **Gautam Construction Company vs. State of Punjab and others**, a decision taken on 23.10.2018 by the Department of Finance, Punjab, was brought to the notice of the Court, which reads as under:-

“1. In compliance to the order dated 6.12.2017, of the Hon'ble High Court, a series of meeting of the officers of the respective departments were convened in the Department of Finance, Government of Punjab. The purpose of the meeting was to gauge the level of pending liabilities in a holistic manner and to device a mechanism for clearance of pending bills. The current financial situation with over Rs.10,000 cr. Resources gap as per the BE2017-18 approved by the Vidhan Sabha and over Rs.6000 cr. of pending bills in treasury was kept while formulating this policy. The current liabilities for various projects for 2017-18 came out to be Rs.14.30 cr. approx. for the Department of

PWD(B&R), Department of Water Resources, Department of Water Supply and Sanitation. After due deliberations on the issue of the State financial Health and the States pending liabilities, following policy regarding resolution of these pending liabilities has been framed so that the affected contractors need not knock the door of the courts and they get their dues on priority basis and in time bound manner.

The Administrative Departments priority wise list of works for defraying the pending liabilities has been decided as under:-

PWD(B&R)

1. Priority-I - 100% Centrally sponsored schemes
 - a) Head3054-National Highways
 - b) Head 5054-CRF
 - c) Judicial Complexes Head-4059
2. Priority-II- 60% Govt. of India funded
 - a) PMGSY
3. Priority-III
 - a) NABARD Projects
 - b) BRTS Scheme
4. Priority IV- Other State funded and deposit works
 - a) Building works of various departments
 - b) Link roads
 - c) Head 5054-R and B
 - d) PIDB funded projects and schemes
 - e) PRBDB funded projects – PIDB Misc. Works

- f) Head 3054-SH
- g) Urban Mission
- h) Others

WATER SUPPLY AND SANITATION DEPARTMENT

Priority-I Special assistance of Central Plan Scheme on recommendations of NITI AAYOG for mitigation of drinking water problems in habitations affected with Arsenic and Fluride.

Priority-II

- a) Water Bank assisted Punjab RWS&S Improvement Project (EAP).
- b) Swachh Bharat Mission (Gramin)

Priority-III

- a) NRDWP
- b) NABARD projects

Priority-IV Other State funded and deposit works.

WATER RESOURCES DEPARTMENT

Priority-I 100% Centrally sponsored schemes

- a) Head-FMO-RMABA
- b) Relining of Rajasthan Feeder (Punjab Govt.) has not share to pay)
- c) Sirhind feeder (Punjab Govt. shares approximately 42% but since this work is related to lining of Rajasthan feeder. Hence, it is placed in category-I).

Priority-II

- a) ISBIG (GOI: GoP share 60:40)
- b) Schemes with GOI: GOP share 75:25

Priority-III

- a) Flood protection works (Head FMP) GOI:GOP share (50:50)
- b) Channelization of Sakki Nala NABARD projects (Head FMP) GOI:GOP share (50:50)

1. NABARD Projects

Priority-IV

Schemes out of State Fund

Schemes with GOI:GOP share
25:75

The policy consists of the following stipulations:-

a. The State feels sincere responsibility to defray all the pending liabilities due for the work done or being done by various contractors for the State. Thus, no new works shall be started by any Administrative Department until all such pending liabilities are cleared. However, if any new work is to be started it shall be out of the Administrative Departments own resources subject to prior approval of the finance Department.

b. It is expected that the current pending liabilities amounting to Rs.1430 Cr. approx shall be cleared by the Finance Department by 31-03-2019, in a gradual and phased manner, on a best effort basis.

c. The liabilities shall be cleared in a phased manner in accordance with the priority list given by the respective Administrative Departments. Every Administrative Department shall also ensure that work seniority is maintained with the priority list given by them.

d. The Administrative Departments shall submit an updated priority wise list of their pending liabilities in the first week of every month to the Finance Department.

e. The Finance Department after scrutinizing the priority wise demand of the Administrative Departments shall release the funds depending upon the financial situation of that month.

f. The Administrative Departments shall ensure that the dispute resolving mechanism stipulated in the contract/tender/Agreement for work is adhered to strictly so that the contractors do not rush to the Courts seeking remedy.

g. In the court cases where the Hon'ble Courts have issued directions for passing speaking orders, specific speaking order as per such directions/ order of the Hon'ble Court may be passed by the Administrative Department, mention the amount to be paid to the petitioner. It must be ensured that for such order for payment has been made in strict adherence to Punjab financial rules

(PFR) and the instructions of the Finance Department issued from time to time.

h. While passing the speaking order, it must be mentioned that proper budget is available with the department and if not the Administrative Department is required to check on the cost of enhancements while asking for revised allocations from the Finance Department.

i. Administrative Departments before making an order for payment must ensure that all deductions as per the terms of tender/ Agreement and/or on account of deficiency in work etc. have been made. Moreover, if the work is a subject matter of an enquiry and/or investigation the latest status and the implications of such enquiry/ investigation must be considered in accordance with the principles of property before arriving at the final payable amount.

j. If any bill is pending in any Treasury for a payment pertaining to such as court matter, such matter must be taken up by the officer of a rank of Additional Secretary & above of the concerned Administrative Department with the Finance Department at personal level. Such matter shall be taken up with the Finance Department at least 10 working days prior to the date of hearing in the Court.

k. In case the matter pertains to sanction of additional budget funds the concerned branch officer of the Finance Department may be contacted at personal level so that the amount may be sanctioned well within time. While moving the case for grant of additional budget funds, the date and amount of administrative sanction & financial sanction must be mentioned. Any difference between the amount already spent & additional funds asked for and the amount of Administrative Financial sanction, must be clearly explained.

i. A copy of reply already filed by the Administrative Department in the court cases in which the Finance Department is also a party, must be sent to the Financial Department for its vetting and approval.

m. It is also duty of the concerned Administrative Department to process the court file well in time and to follow up the cases with the Finance Department. In case of any delay in processing and follow up of the court file, the concerned Administrative Department shall be held responsible.”

Thereafter, a bunch of 67 writ petitions were disposed of.

Once again, the matter came under the scrutiny of the Court in ‘**Skylark Industries vs. Sh. Sarabjit Singh and others**’ COCP-3834-2019, decided on 19.12.2019. The Principal Secretary, Department of Finance, Punjab, was summoned by the Court. He, after admitting that there is a financial crunch in the State, apprised the Court that the payments would be released in a systematic manner. The Court was assured that the following steps shall be taken:-

“(i) That each of the department which is floating the tender and has admitted liabilities will upload the details of the admitted liabilities on its website within six weeks from today. Thereafter, a centralised website would be created which would be maintaining the priority of the admitted dues.

(ii) It is assured that admitted liability for all the departments except Local Bodies as existing today would be clear by 31.3.2020 strictly according to the priority list maintained.

(iii) For Local Bodies Department, it is assured that liabilities would be cleared by 30.4.2020.

(iv) In order to ensure that legal notice or representation served if any on the department is dealt with in a time-bound manner, it is stated that the aggrieved person while making the representation may also send one copy to the Principal Secretary of the department concerned. The Government shall ensure that decision, in case there being no legal impediment to do so, would be taken within four weeks from its receipt and in case of failure, the Principal Secretary will fix the responsibility of the

defaulting official for not doing the needful.

(v) In order to put a break to further accumulation of the admitted liability, the Finance Secretary has suggested that for new project, no tender would be floated without approval from the Finance Department and in case any of the department does so, responsibility of the head of the said department would be fixed.

(vi) It is further assured that in any of the matters in which legal notice is pending as on date, the same would be decided within four weeks from today. There is no doubt that the State Government will leave no stone unturned to implement the above undertakings in letter and spirit. Needless to add here that in case that contractors are aggrieved of the orders passed on their legal notice/representation, they would be at liberty to avail remedies in accordance with law. At this stage, it is also pointed out that in the present case, payment of the admitted amount has already been made to the petitioner. In view of the above, the contempt petition is disposed of. However, with the petitioner shall be at liberty to avail remedies in accordance with law.” .

Learned Chief Secretary, Punjab, has filed an affidavit dated 22.12.2020 that on 08.01.2021 and 10.01.2021, a Committee constituted for this purpose has taken the following decision:-

“I.It has been decided that the Department of Public Works (B&R) would be the nodal department for formation/implementation and executing the Centralized System of pending bills as per High Court orders passed on 19.12.2019.

II. All the Engineering Department would follow the instructions issued by Finance Department on 23.01.2018 and upload their bills as

according to the priority mentioned in these instructions.

III. All the concerned Engineering Department would upload their liabilities (relating to the payment of contractors) on their respective portal and then Department of PWD, B&R will upload the same on the website: pwdpunjab.gov.in to have a Centralized priority list for State for such payments.

IV. For this purpose, all the concerned departments would provide the requisite information/ date such (as user name, scheme master etc.) to the department of Public Works.

V. A Standard format for uploading the stability of the contractors was discussed and finalized by all the members which includes the XENs of all concerned Administrative Departments.”

Once again, as noticed above, a large number of writ petitions are being filed and the officials, without adhering to the directions already issued in the previous writs, are trying to save their own skin on a case to case basis. Whenever some sort of directions are issued in a writ petition, the authorities try to give priority only to such payments, showing a superficial compliance of the Court's order whereas the remaining contractors/claimants are unjustifiably denied the payments due towards them. This arbitrary practice has further led to continuous litigation and travesty of justice.

Normally, the Courts are reluctant to interfere in the financial matters of the State. However, when circumstances are extraordinary and there is a vacuum, then the Court is left with no choice but to step into and make sincere endeavours to bring in some sort of order in the system

It has been brought to the notice of the Court that CWP-5257-2020 is against the Punjab Health System Corporation, which is an

independent and autonomous Corporation, like urban local bodies, which does not receive funding or no funds are released to it through the Department of Finance and Treasury.

With reference to objection that the Punjab Health System Corporation is an autonomous body, it may be noted here that such Corporations and local bodies are instrumentalities of the State and hence, fall within its umbrella.

Keeping in view the aforesaid facts, learned counsel for the parties have been heard at length on various dates of hearing. After having analyzed the entire picture canvassed before this Court, it becomes important to issue certain directions in the interest of justice. Hence, these writ petitions are disposed of with the following directions:-

- (i) The State or its instrumentalities shall maintain a priority list of the admitted amount to be released to various contractors/suppliers.
- (ii) Such priority list shall be prepared Department wise and it shall not be deviated from and the payments shall be released only in accordance with the instructions issued in this regard.
- (iii) The Chief Secretary shall get this order circulated to all the Departments/local bodies/instrumentalities of the State to follow the directions issued in letter and spirit.
- (iv) As and when, any representation/notice is received

from a contractor/supplier for release of the undisputed amount, the concerned authority shall be bound to inform him of his/her/its priority number within 10 days of the receipt of such representation/notice, positively.

02.02.2021
rekha
Whether speaking/reasoned Yes /No
Whether Reportable Yes / No

(ANIL KSHETARPAL)
JUDGE