IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 10541 of 2021
Date of decision: 28.06.2021

M/s Shree Sai Facilities

… Petitioner

Versus

The General manager, Northern Railways and others

… Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Shailendra Sharma, Advocate, for the petitioner.
(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court)

RAVI SHANKER JHA, C.J. (ORAL)

A writ in the nature of *certiorari* is prayed for to quash the notice dated 15.03.2018 (Annexure P-4) as also the order dated 13.06.2018 (Annexure P-11) vide which the contract that had been entered into between the parties was terminated owing to a fraud purport to have been committed by the petitioner. Further, the petitioner also prays for a direction requiring the respondents to release the balance payment of Rs.1,31,61,376/- for the works that were executed by the petitioner-firm.

The facts that are required to be noticed are limited.

Pursuant to a tender notice dated 18.11.2015, the petitioner was assigned works for mechanized cleaning of terminal train at washing line and/or platform and/or stabling line at coaching depot Amritsar (ASR) & Jalandhar Cantt. (JUC) for a period of two years. A formal contract dated 10.08.2016 was entered into between the petitioner and respondent No.3 (Sr. Div. Mechanical Engineer (C&W), Northern Railway, Ferozepur Division

Ferozepur Cantt.). Accordingly, the petitioner started executing the tender and would submit monthly bills. And by the end of July 2017, it had received an amount of Rs.1,52,00,000/- for the works that were executed. However, subsequently respondent No.3, served the petitioner with a show cause notice dated 15.03.2018, for, the associate accounts had noticed certain anomalies in the bills submitted by the firm, and, as a result of which false payments amounting to Rs.3,34,28,537/- were credited in its account. It was observed that even though Mechanical Engineer (C&W), wing of Ferozepur Division, had not initiated for payment of bills after October 2017 (Amritsar) and May 2017 (Jalandhar Cantt.) but the petitioner-firm had received Rs.3,34,28,537/- for the bills pertaining to September 2017 to December 2017 for Amritsar and from June 2017 to December 2017 for Jalandhar Cantt.. Thus, for, the authorities had never cleared/approved those bills, the payments were got released on the basis of fake bills and forged signatures. Petitioner-firm was accordingly advised to deposit the said amount within three days and submit explanation in this regard. The petitioner in its reply dated 20.03.2018 to the notice (ibid) disputed the accusations and stated that the said amount was never credited in the account of the petitioner-firm but in some bogus account for which the firm was not responsible. And, eventually, for, the petitioner was accused of having failed to take the necessary action and show any satisfactory/adequate progress in connection with the submission of billing documents, vide letter dated 13.06.2018 (Annexure P-11), respondent No.3, terminated/rescinded the contract between the parties. Thus, this petition.

Learned counsel for the petitioner submits that in fact the fraud was committed by an employee of petitioner-firm namely Sandeep Kumar who created a bogus proprietorship firm, under the same name and style as the petitioner i.e. Shree Sai Facilities, and by forging documents opened a fake bank account in Panjab National Bank, Ambala Cantt.. Whereafter, forged bills were prepared in the name of the petitioner-firm and in connivance with railway officials the disputed amount was got transferred in the bogus bank account. Something which would not have been possible but with the active connivance of senior railway officials. It is urged, when the petitioner learnt this, it made a complaint to the CBI to register a case against all those who were party to the fraud, but the department instead accused the petitioner and issued a notice dated 15.03.2018 (ibid), which eventually led to cancellation of the contract (Annexure P-11). Further, he submits that the matter was inquired into by the Vigilance Department of Indian Railways and the report submitted in this regard shows that Sandeep Kumar had cheated the department in connivance with the railway officials. Likewise, in a departmental inquiry conducted by the authorities 8 employees of the railway were found guilty of the charges levelled against them. Thus, the petitioner-firm had no involvement in the said fraud-scam.

We have heard learned counsel for the petitioner and perused the records.

Apparently, the contract between the parties was cancelled/rescinded on 13.06.2018, in terms of Clause 62 of Standard General Conditions of Contract. Resultantly, the security deposits furnished

by the petitioner were forfeited and the performance guarantee was encashed. Not only that the petitioner was also debarred from participating in the tender for executing the pending works. Thus, the cause of action, if any, accrued to the petitioner in June 2018. But, the petition at hands has been filed after almost three years on 12.03.2021. Nothing is stated, least a plausible explanation that could constitute a sufficient cause, to explain the gross, inordinate and unexplained delay, the petition suffers from. That apart we may also refer to the reliefs that have been prayed for in the petition:-

a) to quash the notice dated 15.03.2018 (Annexure P-4) vide which the petitioner was alleged to have drawn Rs.3,34,28,537 by submitting fake bills with forged signatures, and the payments that were never approved/cleared by the authorities;

b) and, to quash the order/letter dated 13.06.2018 (Annexure P-11) whereby the contract between the parties was cancelled/rescinded for, the petitioner was alleged to have committed fraud with the department;

c) further, respondent be also directed to release Rs.1,31,61,376/- to the petitioner for the works he had executed.

Thus, ex facie the issues that would arise for consideration, in context of the reliefs being prayed for would require evidence, to be adduced by all the stakeholders, for conclusive determination of the dispute. Further, though the petitioner said to have lodged an FIR against its employee (Sandeep Kumar) and his accomplices, who actually committed the fraud but neither the requisite details of the alleged FIR nor any information as regards the stage of investigation or trial if pending before any Court have been furnished. There is yet another aspect which we may advert to: the dispute sought to be raised arises out of a contract dated 10.08.2016, that had been entered into between the parties. However, a copy thereof has not been placed on record by the petitioner to ascertain if it contained an arbitration agreement/clause or any dispute redressal mechanism. However, from perusal of the averments set out in paragraph 24 of the petition we find that the contract agreement (ibid) provides for arbitration to resolve any dispute between the parties.

Thus, in the wake of the position, sketched out above, the only and the inevitable conclusion that could be reached: we are dissuaded to interfere in the matter in exercise of extraordinary jurisdiction under Article 226 of the Constitution.

The petition is accordingly dismissed.

However, for, we have not examined the claim of the petitioner-firm or the matter on merits, it shall be at liberty to avail such other remedies that shall be admissible in law.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

28.06.2021
Manoj Bhutani/Amodh

Whether speaking / reasoned:	YES
Whether Reportable:	NO