

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

CWP No. 23026 of 2021

Date of Decision: 02.12.2021

Garg and Company

-Petitioner

Versus

State of Haryana and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. H.S. Brar, Sr. Advocate, with
Mr. Alok Mittal, Advocate,
for the petitioner.
Mr. Ashish Yadav, Addl. A.G., Haryana.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India for issuance of an appropriate writ in the nature of mandamus directing the respondents not to take coercive steps to encash the Bank Guarantee of the petitioner till adjudication of its claim under the Dispute Redressal System.

Notice of motion was issued on 15.11.2021 by passing the following order:-

“Learned counsel for the petitioner submits that the order of termination of the contract was passed by Superintending Engineer, Ambala Circle, PWD (B&R), Ambala

Canntt. On 28.10.2021, CWP No.21982 of 2021 was got dismissed as withdrawn with liberty to assail the aforesaid order. On 29.10.2021, a demand was created in respect of the contract in question and that was conveyed to the petitioner on 29.10.2021 itself. Petitioner ventured to file CWP No.22513 of 2021 in this context and the same was got dismissed as withdrawn on 08.11.2021 with liberty to avail other remedies available to the petitioner i.e. either invoking the arbitration clause or filing a civil suit or approaching the respondent-Authority by filing a representation. Learned counsel further submits that on 10.11.2021, the petitioner filed a representation before the Additional Chief Secretary in pursuance of the liberty given to the petitioner. The said representation is pending before the said authority. Learned counsel further submits that in view of termination order having been passed by the Learned counsel for the petitioner submits that the order of termination of the contract was passed by Superintending

Engineer, Ambala Circle, PWD (B&R), Ambala Cantt. On 28.10.2021, CWP No.21982 of 2021 was got dismissed as withdrawn with liberty to assail the aforesaid order. On 29.10.2021, a demand was created in respect of the contract in question and that was conveyed to the petitioner on 29.10.2021 itself. Petitioner ventured to file CWP No.22513 of 2021 in this context and the same was got dismissed as withdrawn on 08.11.2021 with liberty to avail other remedies available to the petitioner i.e. either invoking the arbitration clause or filing a civil suit or approaching the respondent-Authority by filing a representation. Learned counsel further submits that on 10.11.2021, the petitioner filed a representation before the Additional Chief Secretary in pursuance of the liberty given to the petitioner. The said representation is pending before the said authority. Learned counsel further submits that in view of termination order having been passed by the Superintending Engineer, Ambala Circle, PWD (B&R), Ambala Cantt., the

petitioner has no remedy under Clause 24 of the Contract as the said authority cannot be the appellate authority also. The bank guarantee furnished by the petitioner has already been extended till 31.01.2023.

Mr. Amit Kumar, SDO, PWD (B&R), Kurukshetra is present in the Court. Learned State counsel on instructions from Mr. Amit Kumar, SDO, PWD (B&R), Kurukshetra submits that in case, the petitioner invokes the arbitration clause within 10 days from today, the bank guarantee shall not be encashed till such time.

Adjourned to 02.12.2021.

Reply, if any, be filed by the respondent(s) by the next date of hearing.”

At the time of issuance of notice of motion, Mr. Amit Kumar, SDO, PWD (B&R), Kurukshetra was present in Court and learned State counsel on instructions from the said officer submitted that in case the petitioner invokes the arbitration clause within 10 days, then the Bank Guarantee shall not be encashed till such time.

Learned senior counsel for the petitioner submits that the petitioner- Company has already invoked the arbitration clause and the petitioner has also approached the department for appointment of arbitrator.

Learned State counsel on instructions from Junior Engineer Kamal admits the aforesaid factual contention of learned senior counsel for the petitioner and submits that the respondent- department shall not encash the bank guarantee till conclusion of arbitral proceedings.

It is agreed that the parties would not indulge in adopting any delaying tactics in arbitral proceedings.

Disposed of.

02.12.2021

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No