

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

131

CWP-23340-2022
Date of Decision: 12.10.2022

M/S KHER CONSTRUCTIONS

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Chirag Girdhar, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G., Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Articles 226/227 of the Constitution of the India for issuance of a writ in the nature of Mandamus directing the respondents to release the due amount of Rs.29,00,788/- qua the work of improvement of Landran Junction from Km. 13.600 to 16.100 on Chandigarh-Landran-Chunni-Sirhind Road (SH-12A) (including 1 year defect liability period + 4 year maintenance period) executed by the petitioner alongwith interest @ 12% per annum.

Learned counsel for the petitioner contends that the aforesaid work was allotted to the petitioner on 27.01.2020 and he had immediately commenced the same. The said work was completed by the petitioner within the stipulated time period i.e. till 06.08.2021. The payment of the 9th and final Bill was, however, not made even though the same had been duly passed and certificate was also issued to the effect that the work has been completed as per the PWD specifications. The requisite quality control tests have also been conducted and no complaint whatsoever was found therein. It is contended

that the petitioner visited the office of the respondents on a number of occasions for the due payment of the above said work but the due payment has not been made till date. Finally a legal notice dated 22.08.2022 was also served. The respondents have replied to the said legal notice on 08.09.2022 and the relevant portion of the same reads thus:

“2. The para 2 of legal notice is submitted to the extent that the payment for the 9th & final bill has not been released to the agency. The agency M/s Kher Constructions was written vide SDE, NH Subdivision Chandigarh letter no. 81 dt. 28.06.21 and this office letter no. 1709 dt. 10.08.21 to remove the Observations made by Quality control Cell (QCC) report dated 22.06.21. The agency never showed any urgency to remove the Observations made in QCC report for the period of almost eight months and never did any compliance for same in writing to this office. The extension of time (EOT) till 31.08.21 was allowed & approved to the agency vide the S.E., National Highway Circle, Chandigarh memo No.4951 dated 31.03.22. As soon as the EOT was approved the Final bill of the work was prepared and put up to this office by SDE, NH Subdivision Chandigarh on 05.04.22. The final bill of the work was sent to C.E (H.Q), Patiala vide this office letter no.345 dated 07.07.22 only after the proprietor Mr. Yogesh Kher came present in this office after three months time and duly certified to accept the approved items rates as per Technical sanction of work and measurements of the final bill. In compliance with QCC report, recovery amounting to Rs.60736/- was done in 7th running bill and for compliance of observations made by QC cell, department sought Agency's action in this regard before which final bill can't be prepared and submitted for payment. However, agency didn't inform the department about the compliance being done for the observations pointed by QC cell. Therefore, the delay was never intentional. Further, the final bill of work was prepared for the timely demanding of funds from competent authority. The agency never reported any delay for passing the final bill of

work after its completion on 06.08.21 in writing to this office till date and has self purposely delayed eleven months in getting the final bill of work passed & approved. The final bill of the work had already been sent to higher authorities this vide online E-office file. The payment to agency would be released as necessary budget allocation is made for the same and compliance of observations as pointed out by QCC is received from the agency. There had been no delay in preparation of the final bill of the work and passing the bill to the agency by this office.”

Learned counsel for the petitioner contends that the respondents have admitted that the amount in question is due and they have not appended any counter claim, deficiency or shortcoming attributable to the petitioner in the execution of the work. The only reason cited by the respondents for non-payment of the amount is that they are yet to receive the payment from the budgetary allocation without assigning any specific time period within which the said payment would be released. He contends that since the amount in question is not in dispute and that the only reason cited by the respondent-authorities is non-releasing of funds, he would be satisfied in case the respondent No.4 is directed to consider the present petition as a representation and to decide the same by passing a speaking order thereupon within a specific time frame.

Notice of motion.

Mr. Saurav Verma, Addl. A.G., Punjab who is present in the Court, accepts notice on behalf of the respondents and he has no objection to the innocuous prayer made by the counsel for the petitioner being allowed.

Accordingly, the present petition is disposed of with a direction to the respondent No.4 to consider the present petition as a representation and

to consider and decide the same within a period of six weeks from the date of receipt of certified copy of this order.

It is, however, made clear that upon considering the representation, if any amount is found to be paid to the petitioner, the same shall be disbursed within a period of 08 weeks thereafter, failing which the amount so found due shall carry interest at the rate of 6% per annum from the date of filing of present petition till actual disbursement.

Petition stands disposed of accordingly.

12.10.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No