

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

227

CWP-33648-2019 (O&M).
Decided on: August 30, 2022.

M/s Mangla Enterprises

.. Petitioner

VERSUS

State of Punjab and others

.. Respondents

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

PRESENT Mr. Harsh Aggarwal, Advocate, for the petitioner.
Mr. Sanjay Sabharwal, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of mandamus directing the respondents to release the payment of Rs.14,29,922/- qua the work executed by the petitioner.

Learned counsel appearing on behalf of the petitioner contends that the respondent had floated tenders for execution of the work of bifurcation of Water Supply Scheme Village Nangal Faizgarh & Gabbe Majra, Block Kharar, District S.A.S. Nagar for providing and installing 200 mm i/d straight Tubewell with Reverse Rotary Rig, upto 300 mtr. depth below ground level complete in all respects (under PRWSSSIIP-II) for the contract price of Rs.16,11,500/- to which the petitioner had given a bid

dated 20.01.2017 and which was accepted by the respondent No.1. A letter of acceptance and work order was issued to the petitioner, whereafter, the work was initiated on 02.07.2017 under the supervision of the Executive Engineer–cum Engineer Incharge. The water testing samples were sent to the Environ Tech Laboratories, Mohali on 29.08.2017 and the same were duly approved. A completion certificate was also issued by the respondent Executive Engineer on completing the work for providing drinking water supply at village Nangal Faizgarh & Gabbe Majra, Block Kharar, District Mohali. He further contends that the Executive Engineer had approved the bill for an amount of Rs.14,29,922/- after deduction of income tax and labour cess from the total approved bill of Rs.14,74,146/-. However, the said amount is not being released to the petitioner. He submits that the petitioner would be satisfied in case his representation/legal notice dated 04.07.2019 (Annexure P-11) directing the release of payment is ordered to be decided in a time bound manner.

Learned counsel appearing on behalf of the State has drawn attention of this Court to the reply filed by way of affidavit of Er. Michel, Executive Engineer, Water Supply and Sanitation Div. No.3, S.A.S. Nagar, to contend that there is an arbitration clause was there in the said agreement. He, however, does not dispute the fact that the work had been executed by the petitioner and that first and final bill has been raised for the amount of Rs.14,74,146/-. There is no averment contained in the aforesaid short reply that there is any dispute pertaining to the execution of the work/or the workmanship thereafter. Consequently, there is no dispute

relating to any aspect of the agreement. Once the execution of the work is not the subject matter of the dispute, the respondent-State cannot refrain from its obligation and raise the arbitration clause as a means to delay the performance of its own obligation.

The Hon'ble Supreme Court in the matter of ***Uttar Pradesh Power Transmission Corporation Limited and another Vs. CG Power & Industrial Solutions Limited and another***, (2021) 6 SCC 15, observed as under:-

“63. In this case, there is apparently no dispute, difference or controversy between UPPTCL and Respondent 1 as to the true construction, meaning or intent of any part of the conditions of contract or to the manner of execution or the quality or description or payment for the same. Nor is there any dispute as to the true meaning, intent, interpretation, construction or effect of the clauses of contract, specifications or drawings or any of them.

xxx xxx xxx

66. Even though there is an arbitration clause, the petitioner herein has not opposed the writ petition on the ground of existence of an arbitration clause. There is no whisper of any arbitration agreement in the counter-affidavit filed by UPPTCL to the writ petition in the High Court. In any case, the existence of an arbitration clause does not debar the court from entertaining a writ petition.

67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The

High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly: (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corpn. v. Registrar of Trade Marks Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1 : AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corpn. v. Gayatri Construction Co., (2008) 8 SCC 172 , cited on behalf of Respondent 1.

Furthermore, the Hon'ble Supreme Court in the matter of

Union of India and others vs Tania Construction Private Limited, (2011)

5 SCC 697, held as under:-

“33. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the Writ Petition and also on its merits.”

Learned counsel appearing on behalf of the State, however, has no objection to the petition being disposed of directing the respondent No.3 to take a decision on the legal notice/representation dated 04.07.2019 (Annexure P-11) in a time bound manner.

Accordingly, the instant writ petition is disposed of with a direction to respondent No.3 to take a decision on legal notice/representation dated 04.07.2019 (Annexure P-11) for payment of the execution of the work allotted to the petitioner within a period of four months from the receipt of certified copy of this order after affording an opportunity of hearing to the respective parties.

It is made clear that in the event any amount is found due payable to the petitioner upon adjudication of the legal notice, the same would be released forthwith in favour of the petitioner and preferably within a period of three months thereafter.

August 30, 2022.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No