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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP-362-2023 (O&M).
Decided on: January 10, 2023.

M/s Rajinder Kumar and Company

.. Petitioner

VERSUS

The State of Punjab and others

.. Respondents

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

PRESENT Mr. Chirag Girdhar, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been preferred by the petitioner seeking issuance of an appropriate writ in the nature of Mandamus directing the respondents to release the due payment of Rs.7,47,450/- qua the work of Upgradation of L/R NH10 (KM 393.00) to MDR 40 (KM 34.00) via Kathera, Kamalwala, Islamwala Block Khuian Sarwar/Fazilka (Ghullu to Fazilka-Malout Road) (T-03 & T-05 Block Kjhuan Sarwar & Faika) under World bank assisted RRP-II, Tranche-I, PMGSY Phase-IX, District Fazilka, Package No.0540, Length 15.00 KM including maintenance work executed by the petitioner.

Learned counsel appearing on behalf of the petitioner contends that the petitioner has executed the aforesaid works assigned to it from time to time without any complaint. The above work was allotted to the

petitioner on 22.11.2011 vide allotment letter Annexure P-1 the same was duly undertaken by the petitioner and successfully completed without any objection or complaint. The maintenance work was thereafter initiated by the petitioner on 06.07.2013 and the same was also successfully completed till 06.07.2016. Payment of the some of the maintenance bills had been made, however, the payment of first and final (third year) bill amounting to Rs.7,47,450/- of the maintenance period w.e.f. 06.07.2015 to 06.07.2016 had not been released. The petitioner places reliance on the copy of the bills (Annexures P-1 and P-2) to demonstrate the successful execution of the aforesaid work.

After the expiry of the defect liability period, the petitioner was entitled to release of the said amount, however, the same having not been done, the petitioner submitted a representation to the respondent authorities seeking release of the said payment. Evincing no response, a legal notice was served by the petitioner to the respondents about the said demand. Vide response dated 17.11.2022, the employer i.e. the Executive Engineer of the Punjab Mandi Board, Grain Market, Fazilka, has admitted the liability and has also submitted that the above amount is awaited from the funding agency i.e. The Punjab Roads and Bridges Development Board and that as and when the funds are received form the funding agency, the same shall be released.

Learned counsel for the petitioner thus contends that the respondents had neither disputed the entitlement of the petitioner to the above said amount and/or the due and satisfactory execution of the work by

the petitioner. The response to the legal notice sent by the respondents clearly admits the liability and the undertaking of the respondents to pay the same. The delay is however, attributable to the non-release of funds by the funding agency i.e. Punjab Roads and Bridges Development Board. He contends that such internal departmental communications cannot be the basis for not releasing the payment of the contractor who has satisfactorily executed the work.

Notice of motion.

Ms. Niharika Sharma, AAG, Punjab, accepts notice on behalf of respondent No.1-State whereas Mr. Saurav Verma, Addl. A.G. Punjab, who by virtue of his assignment would thus also be on the panel of all the statutory Boards and Corporations of the State of Punjab, is requested to and accepts notice on behalf of respondents No.2 to 5.

Learned counsel for respondents No.2 to 5 contends that the reply dated 17.11.2022 to the legal notice sent by the office of the Executive Engineer (Civil) Punjab Mandi Board, Fazilka, although admits the due execution of the work as well as the due payment, however, he contends that issuance of such response evinces doubt. However, such doubts cannot be the basis for declining the claim raised by the petitioner. Once the employer has himself acknowledged the liability and has admitted that the same is overdue to the petitioner and that the payment has not been made only for the reason that the amount is not being received from the funding agency, the same cannot be perceived as a valid reason for denying the payment which fell due in favour of the petitioner in the year 2016.

Accordingly, I find no valid justification for withholding the payment of the contractor in the present case despite satisfactory discharge of the contractual obligations by the Contractor.

The present petition is accordingly allowed. The respondents are directed to release the undisputed payment payable to the petitioner within a period of three months from today along with interest @ 6% per annum from the date of filing of the present petition till such time the payment is released in favour of the petitioner.

January 10, 2022.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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