

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

**264**

**CWP-3196-2020**

**SHIV KUMAR**

... Petitioner

**VERSUS**

**STATE OF PUNJAB AND OTHERS**

... Respondents

**A N D**

**265**

**CWP-3203-2020**

**Date of Decision: 16.01.2023**

**SANDEEP KUMAR**

... Petitioner

**VERSUS**

**STATE OF PUNJAB AND OTHERS**

... Respondents

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

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Present: Mr. S.S. Maini, Advocate  
for the petitioner(s).

Mr. Vishnav Gandhi, DAG, Punjab.

Mr. Parambir Singh (Sunny) Advocate  
for respondents No.2 to 5

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**VINOD S. BHARDWAJ, J. (ORAL)**

Learned counsel for the petitioners submits that the controversy involved in both the cases is identical and hence, both petitions can be decided by common order. Accordingly, with the consent of parties, both above mentioned writ petitions are being adjudicated by common order. For the facility of reference, the facts are being taken up from CWP-3196-2020 titled as 'Shiv Kumar Vs. State of Punjab and others'.

Briefly summarized, the facts of the present case are that the petitioner is a proprietorship concern and was allotted various works during the year 2016-17 by the Superintending Engineer, Punjab Mandi Board, Sri Muktsar Sahib.

Upon allotment of the said works, the same were satisfactorily completed by the petitioner without any complaint or defence. The bill was also submitted by the petitioner, which was verified by the concerned Sub Divisional Officer and was further forwarded to the Executive Engineer of the Punjab Mandi Board, Sri Muktsar Sahib. The bill was approved for a payment of Rs.10,59,335/- by the Executive Engineer, Punjab Mandi Board, Sri Muktsar Sahib on 13.12.2016, however, only an amount of Rs.9,79,325/- was paid by the respondents and an amount of Rs.56,910/- had not been paid and the same remained outstanding without any valid reason. Additionally, an amount of Rs.4,60,497/- is also claimed to be due on account of furnishing earnest money deposited by the petitioner, to which the petitioner was entitled after satisfactory completion/execution of the allotted works by him.

A legal notice dated 08.01.2019 for release of the aforesaid amount alongwith interest was duly served upon the respondents, however, neither the payment has been made nor has any reply been filed by the respondents to the said legal notice.

Response on behalf of the respondents No.2 to 5 has been filed, wherein the respondents have not disputed the facts of the petition. It is averred that as per the concurrence dated 29.08.2016 given by the Chief Minister, Punjab as Chairman of the Bathinda Development Authority, Bathinda, the Principal Secretary to the Government of Punjab House Building and Urban Development sanctioned the amount of Rs.500/- lacs for this purpose and

Rs.15 lacs for renovation of Bar Room at Judicial Court Complex, Sri Muktsar Sahib. Administrative approvals were also accorded to various other projects and that the partial amount to the extent of 40% out of the sanctioned administrative approval has been released. The disbursements have been made to the claimants. It is averred that release of balance funds i.e. 60% of the total sanctioned amount is still awaited, as a result whereof, the dues payable to the petitioner and other claimants could not be paid. A plea was also taken that there was an arbitration clause in the agreement and that the petitioner may take recourse to the said remedy.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

Undoubtedly, the respondents have not disputed in their response the due and satisfactory execution of the works allotted to the petitioner as well as his entitlement to the amount in question. Thus, it cannot be said that there is any dispute with regard to determination of the amount and/or entitlement of the petitioner to the amount in question. Once the same is not a subject of the dispute, the respondents cannot delay the release of such payment on an artificial pretext that the petitioner may take recourse to the remedy of arbitration clause. The existence of a dispute is *sine qua non* for invoking the arbitration. When no such dispute exists, the ruse of arbitration cannot be created for delaying the release of the payment.

It is also not in dispute that the administrative sanction of the works had been granted before execution of the works, however, for no valid reason, the amount payable to the petitioner was withheld and not paid by the competent Authority. In any case, non-releasing of the sanctioned amount by

the State Government cannot be the basis for withholding the release of legitimate dues. The arrangement for the finances against the works executed is the responsibility of the State-respondents and any such reason cannot be held to be a valid reason in law for denial of the rightful dues against a contract.

Accordingly, the present petitions are allowed.

The respondents concerned are directed to release the undisputed payment as prayed for and referred to in the present petitions in favour of the respective petitioners within a period of three months from today alongwith interest at the rate of 6% per annum from the date of filing of the present petitions till actual release.

16.01.2023  
rajender

(VINOD S. BHARDWAJ)  
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No