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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-2288-2020 (O&M)
Date of decision: 08.11.2023

Kulwinder Singh

....Petitioner

Versus

Union of India & Ors.

....Respondents

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

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Vivek Chauhan, Advocate
for the respondents/ UOI.

VINOD S. BHARDWAJ J. (Oral)

Prayer made in the present petition is for seeking issuance of a direction to the respondents to release the balance amount of Rs.4,29,262,- out of the total amount of Rs.15,06,828.58/-, which has been withheld despite the petitioner having satisfactorily completed the work and a completion certification having been issued in his favour on 15.02.2013 from the Military Engineering Service, Jalandhar Cantt. and Garrison Engineer (West), Jalandhar Cantt.

Counsel for the petitioner contends that the petitioner is Proprietor of M/s. Kiskon Constructions, Hot Mix Plant Site, Village Rampur Lallian, District Jalandhar. The petitioner was awarded the tender for provisions of roads and repairs to certain roads in Jalandhar Cantt. by Garrison Engineer on 15.06.2011 for a total contractual value of Rs.15,06,828.58/-. Pursuant to allotment of tender for work, in

question, the same had been duly completed by the petitioner. Certain minor defects were pointed out by the respondents, which were duly rectified. Thereafter, a request was submitted by the petitioner for release of the pending bills, however, notwithstanding the request and several reminders issued, the said payment stand withheld by the respondents and that only a payment of Rs.8,72,022/- was made on 17.02.2018 and another payment of Rs.1,17,030/- was made on 25.06.2018. The total amount, thus, released was Rs.9,89,052/- out of total amount of Rs.15,06,828.58/-. No reasons have been conveyed or assigned as to why the balance amount has not been released.

Counsel for the respondents refers to the written statement filed by Garrison Engineer, Jalandhar Cantt. dated 01.08.2022. As per him, the award and completion of work is not disputed. However, after the submission of the final bill, it was found that there was less execution of quantity beyond the permissible limit (-5%) as per Manual on Contracts, 2007 for Item No.11. The minimum quantity of 71.25 out of 75 as per the agreement had to be executed, however, he executed only 20.55. Hence, recovery was implemented due to the non-execution of a freakishly low item beyond the permissible limit. The same was also agreed to and signed by the petitioner. The final bills was hence, prepared and the petitioner signed the same, without any reservation or conditions. A proposed tentative recovery of Rs.4,29,261.69/- was assessed and accepted by the petitioner. The balance payment has, thereafter, been released by the respondents. It is, thus, contended that in

the absence of any challenge to the recovery made by the petitioner, such recovery has been agreed to by the petitioner himself, thus, there is no occasion for release of the said amount. The differential and balance amount has already been released in favour of the petitioner. Notwithstanding that the written statement had been filed in the year 2022, however, no replication/rejoinder controverting the stand of the petitioner has been filed. Hence, it remains uncontroverted that the recovery was agreed to by the petitioner.

In the abovesaid circumstances, counsel for the petitioner does not press the present petition so as to pursue his remedies against the recovery effected, in accordance with law, as may be available.

Disposed of, accordingly.

Needless to mention that the period during which the present petition has remained pending shall be taken into consideration, while computing for the claim, if any, filed by the petitioner.

(VINOD S. BHARDWAJ)
JUDGE

08.11.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No