

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

105

**CM-14752-CWP-2023;
CM-14753-CWP-2023 in/and
CWP-2580-2022
Date of decision: 01.09.2023**

SUNIL GARG AND ANOTHERPetitioners

VERSUS

STATE OF HARYANA AND OTHERSRespondents

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

Present: - Petitioner -Sunil Garg in person.

Mr. Divyam Singh, Advocate
for the applicant.

Mr. Vivek Saini, Addl. A.G. Haryana

Mr. Samarth Sagar, Advocate with
Mr. Mukesh Kumar Ahuja, Chief Administrator-HSAMB.
for respondents No.2 to 5.

VINOD S. BHARDWAJ, J. (Oral)

CM-14752-CWP-2023 ; CM-14753-CWP-2023

The present applications have been filed under Section 151 of the Code of Civil Procedure, 1908 for placing on record the representation and the orders as well as for being impleaded as respondent.

Learned counsel appearing of the applicant contends that the applicant-Rajesh Singh was working as a Head Clerk while applicant-Sanjay Kumar was working as a Head Draftsman in the office of Haryana State

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-2-

Agriculture Marketing Board (hereinafter referred as “HSAMB”), Sonapat. The controversy relates to an arbitration award pertaining to Rs. 85,64,615/- that had been passed against the Contractor and in favour of the respondent-HSAMB. However, notwithstanding the above said arbitral award, the officials of the respondent-HSAMB, in connivance, concealed the said aspect and processed the file of the Contractor for release of payment and order was also obtained thereafter. The report was obtained about the work executed and the said report was got approved concealing the arbitral award and execution petition. A writ petition was eventually filed by the Contractor for such release when the above said discrepancies and connivance came to notice.

Counsel for the applicant has contended that he is merely a Clerk and dealing with the file and had in fact prepared the abstract of Bitumen issued and consumption statement and there was no concealment on his part. However, on being confronted that when the file had been moved through them, it was essential for the applicants to mention about the said aspect in the noting file and as to whether the said details had been mentioned or not, counsel for the applicant pleads ignorance. He, however, contends that he may be permitted to withdraw the instant applications so as to pursue his challenge against the chargesheet and the proceedings initiated against him by the Department as per law.

Counsel for non-applicant have no objection to the same.

Disposed of as withdrawn.

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-3-

CWP-2580-2022

1. Challenge in the present petition is to the order dated 26.10.2021 (Annexure P-8) passed by respondent No.3 i.e. Chief Engineer-1, Haryana State Agriculture Marketing Board, Mandi Bhawan, Panchkula which is an internal communication from the Chief Engineer-I to the Executive Engineer, HSAMB, Sonapat wherein the Chief Engineer-I has directed the Executive Engineer of the HSAMB not to give any evidence/statement in the pending execution proceedings after specifically noticing that during the review of the final bill of construction of link Road from Village Harsana Malcha to Bandepur of Sonapat Division, an audit objection was raised and financial irregularities were noticed in the said work on the part of the contracting agency. It also transpired that the amount recoverable from the Contractor/Agencies as noticed in the audit was Rs. 4.42 Crores and that the same has not been recovered so far. It was also pointed out that a dispute had in fact been put up before the Arbitrator to recover the risk and cost amount from the defaulting agency. An arbitral award had been passed in favour of the HSAMB and on account of non-payment of the awarded amount, an execution petition had already been filed before the Executing Court. The process of recovery was under way. A further mandamus had also been sought for seeking implementation of the reports/order dated 28.10.2020/29.10.2020 (Annexure P-5) claimed to have been prepared by respondents No.2 to 4 i.e. HSAMB through its various officials and to prepare and finalize the bills of consumption of bitumen as per the said report.

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-4-

2. Counsel for the petitioner contends that the client had taken away the brief from him. The petitioner is present in person and disputes the above said claim made by the counsel for the petitioner.

3. The petitioner in person has been heard at length and it has been argued that the petitioner is engaged in the work of construction of road and has been awarded contracts of State Government. The work qua construction of S/R of 42 link roads in District Sonapat had been allotted to the petitioner in the year 2009. The said work was initiated and completed as per terms of the contract executed, qua 30 roads, however, due to closure of the stone quarries by orders of the Government of Haryana, there was delay in completion of work. Action under Clauses 2 and 3 was thereafter initiated by the respondent against the petitioner and the contract was cancelled and the work was allotted to some other person. It has been averred that there is a dispute regarding usage/consumption of bitumen and that as per the original contract issued, the usage of Bitumen was authorized as 180 kg per 100 sq. km as per serial No.6 and similarly Bitumen was specified for use with regard to a different coating. However, notwithstanding the specific clause and without any intimation to the petitioner, the authorized usage of bitumen was reduced from 180 kg per 100 sq. km to 100 kg per 100 sq. km. vide Circular dated 28.10.2009. The above said Circular was never conveyed to the petitioner and the same was only an internal decision of the respondents which never translated as an integral part of the contract between the parties by way of amendment or addendum.

4. Oblivious of the aforesaid internal Circular, the invoices/running Account bills had been prepared by the petitioner which

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-5-

were verified by the Engineers/officials of the respondents. Due measurement were conducted and usage was verified to be accurate and in accordance with the terms and conditions of the Contract. He places reliance on the above said reports. Since there was fault on the part of the respondents in assessing the amount to be recovered from the petitioner and the above said demand had been arrived at by improper consideration of the usage of Bitumen as per the Circular (Annexure P-3) instead of the usage of the Bitumen as per the Contract, hence, the demand was inaccurate, unjustified and unwarranted. A representation was accordingly submitted by the petitioner to the Chief Administrator of the HSAMB for settlement of the issues whereupon the Chief Engineer had been deputed by the Chief Administrator to recheck the claim raised by the petitioner and to report regarding excess consumption/usage of Bitumen. An enquiry was thereafter initiated by respondent No.3 through the Executive Engineer and the record was perused. All relevant factors were taken into consideration and a report dated 28.10.2020 was submitted by the Executive Engineer to the Chief Engineer for his approval. The same was approved by the Chief Engineer and forwarded to the Chief Administrator on the same date i.e. 28.10.2020 and approval was also granted by the then Chief Administrator of the HSAMB on 29.10.2020 in which only 2.388 metric (MT) Bitumen has been shown as an excess consumption against total consumption of 1195.259 metric ton (MT). The same being an excess by 0.2%, was within the permissible limit and there was no violation of the conditions of the Contract.

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-6-

5. It is submitted that pursuant to the said report and the order passed by the Chief Administrator, the Executive Engineer, HSAMB, Sonapat made a statement before the Executing Court that the Committee is preparing the Bills as per the decision taken by the Chief Administrator of the Haryana State Agriculture Marketing Board on 29.10.2020. It is also argued that on the basis of the aforesaid report/orders passed by the competent authority, the bills were prepared and different amounts in different awards have been shown to be pending towards the petitioner. Vide an intra departmental communication dated 26.10.2021 (Annexure P-8) from the Chief Engineer-1, HSAMB, it was directed that no statement be made before the Executing Court. The above said action is now a subject matter of challenge in the present writ petition as being illegal and unjustified since the order of 28.10.2020/29.10.2020 had been passed after obtaining a report and re-measurement of the works done by the petitioner.

6. Pursuant to the notice issued, a short reply by way of affidavit of Ramesh Chander Deswal, Executive Engineer, HSAMB, Division Sonapat had been filed wherein it was averred that the dispute pertaining to the payments/construction of link roads from Village Harsana Malcha to Bandedpur of Sonapat Division had been referred to arbitration and Sh. Ishpal Chauhan was appointed as the sole Arbitrator. An award dated 29.01.2016 has been passed by the sole Arbitrator in favour of the HSAMB. No challenge to the said award had been made by the petitioner and the said award has attained finality. Owing to non-deposit of the amount as awarded, an execution petition was filed by the HSAMB before the Additional District Judge, Sonapat and non-bailable warrants had been issued for securing

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-7-

presence of the petitioner. During the pendency of the above said execution proceedings, the petitioner submitted the request with the Chief Administrator of the HSAMB regarding the enquiry of Bitumen issued and completion of the work executed by the Agency on 29.07.2020.

7. It was averred in the above said affidavit that notwithstanding passing of the award by the sole Arbitrator, the Executive Engineer, Sonapat and the other officials actively concealed the factum of the arbitral award in favour of the Department and the pending execution proceedings with an intent to bestow undue favours to the petitioner. The said facts were not brought to the knowledge of the superior officers and consequently, the report tendered by the enquiry officer on 28.10.2020 and the subsequent orders dated 29.10.2020 obtained on the basis of such report are illegal and are an outcome of fraud. The entire factual aspects had not been brought to the notice of the competent authority and the same had not been deliberated upon before the decision was taken. It was thus decided to take appropriate action against the erring/delinquent officials including the Executive Engineer and all other persons who were conniving with the petitioner for securing the reports to suit the interest of the petitioners. Charge-sheet had been issued to the Head Clerk as well as the Head Draftsman under Rule 4 (b) of Haryana Civil Services (Punishment and Appeal) Rules, 2016 alongwith the then Executive Engineer, Sonapat. Further, the Chief Engineer-1, vide order dated 08.07.2022 proposed to withdraw the said report dated 28.10.2020 and as the said report has already been withdrawn, any reliance on such a report cannot be placed for supporting the claim for seeking release of the payment.

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-8-

8. During the course of hearing held on 07.09.2022, an interim order was passed calling upon the respondent- HSAMB to submit a detailed reply giving status of the pending investigation/inquiries and the subsequent action taken by the Chief Administrator, HSAMB against the erring officials.

9. A status report by way of affidavit of Shashi Bhushan Saharan, Executive Engineer, HSAMB, Sonapat was filed as per which a show cause notice was issued to the then Chief Engineer-1, Mohinder Singh vide memo No. 1528 dated 14.02.2023 with a direction to submit a reply within a period of 21 days. Charge-sheet under Rule 7 had also been served upon Ajay Kumar Rathee, XEN; Sanjay Kumar, Head Draftsman and Rajesh Kumar, Deputy Superintendent (retired) on 16.01.2023. The replies were submitted by the delinquent officials and after considering the same, the Enquiry Officer, has already been appointed on 16.02.2023. The report in this regard was to be submitted expeditiously.

10. Counsel for the respondents No.2 to 5 on instructions from Sh. Mukesh Kumar Ahuja, Chief Administrator, HSAMB who is present in Court, informs that the enquiry report dated 02.08.2023 returning a finding of the charges having been proved against all the above 03 delinquent officials had been submitted on 03.08.2023. A separate process for initiating departmental proceedings against the then, Chief Engineer-I, HSAMB is on way. An assurance is given by the Chief Administrator, Haryana State Agriculture Marketing Board that the proceedings shall be taken to a logical end including initiation of criminal proceedings, if so advised, against the erring officials as well as the persons conspiring with them.

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-9-

11. This Court has no reasons to doubt or suspect the assurance given today in Court by the Chief Administrator. The above statement is accepted.

12. Having heard the petitioner who is present in person as also the counsel appearing on behalf of the respondents, the following undisputed facts emerge:

i) That the respondent-department had initiated arbitration proceedings against the petitioner-Contractor with respect to the works in question.

ii) That an award had been passed in favour of respondents-HSAMB for an amount of more than Rs. 85 lacs approximately.

iii) That no objections under Section 34 of Arbitration & Conciliation Act, 1996 and/or appeal under Section 37 has been filed by the petitioner raising a challenge to the findings recorded by the sole Arbitrator and the award passed.

(iv) It is also not the case of the petitioner that he was not associated by the sole arbitrator during the conduct of the arbitration proceedings and/or that no opportunity to prove his case had been afforded to him.

(v) That the execution proceedings are already pending and non-bailable warrants had been issued against the petitioner to seek enforcement of the arbitral award.

(vi) That notwithstanding the pendency of the execution proceedings, the application was moved before the Chief Administrator on which a report was sought for. In such report, the Executive Engineer as well

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-10-

as the Chief Engineer-I, HSAMB deliberately concealed the factum of the Arbitration award having been passed against the petitioner and the pendency of the execution proceedings. An order was thus obtained from the Chief Administrator, without placing all relevant and material facts to his knowledge.

(vii) That the charge-sheet has already been issued to the erring officials and the charges have been proved. Further disciplinary action is contemplated and is pending before the competent authority.

(viii) That the above said report and order dated 28.10.2020/29.10.2020 have already been withdrawn by the Chief Engineer-I and that the order of such withdrawal is not subject matter of challenge in any proceeding or before any Court.

13. Even though it was argued by the petitioner that an official of the respondent had given a statement before the Executing Court that they have accepted the report and shall take action in accordance with the said report, however, the said aspect is disputed by the counsel appearing on behalf of respondents No.2 to 5. He contends that the annexure appended by the petitioner is not a complete annexure and he submits that no such statement was ever made.

14. Taking into consideration, the aforesaid facts that have been placed before this Court, I find that it is prima facie a case where an attempt had been made by the petitioner to commit a fraud on the public exchequer by obtaining inaccurate report concealment of relevant, material and essential information. The petitioner found support in his endeavour from the officials who were otherwise responsible in law for ensuring safe-guards

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-11-

of public funds. Such an attempt to draw away undue and illegal gains from public exchequer needs to be strictly dealt with. No concession or indulgence can be shown to such attempted fraud played on the public funds. No benefits can be claimed to be crystallized when such benefit stems from a prima facie fraud. Even though the petitioner claims that his merit and clauses of contract have not been properly considered by the sole arbitrator and that excessive recovery alongwith high interest has been ordered, however, such contention on merits against the arbitral award cannot be accepted in present proceedings. The petitioner had statutory remedies against the award that was passed in 2016. Having opted not to challenge, the award which has already attained finality cannot be re-opened in these proceedings.

15. I find that the case of the petitioner suffers not only from lack of merit and *bona fide* but also smacks of a clever intent to maliciously claim benefit from public exchequer. Even though ordinarily this Court would be inclined to impose heavy cost on a mischievous litigant, however, considering the prayers made by the petitioner, I refrain from imposing such cost.

16. The present petition is accordingly dismissed for the aforesaid reasons.

17. As an assurance has been given by the Chief Administrator of the HSAMB that appropriate action shall be taken by the competent authority against the erring officials and preferably within a period of 04 months. Compliance be submitted after a period of 04 months.

**CM-14752-CWP-2023; CM-14753-CWP-2023 in/and
CWP-2580-2022**

-12-

18. Petitioner at this stage prays that he may be granted an indulgence to repay the entire awarded amount in 12 equated installments. He submits that the respondents may inform the amount which is outstanding as per the award against him and that the first installment of the above said outstanding amount conveyed to him shall be deposited by the petitioner within a period of 10 days of such communication. The respondents have no objection to the above said offer. The following directions are hence issued in the present case to balance the equities:-

- i) The respondents shall communicate to the petitioner the outstanding amount recoverable from the petitioner in terms of the award as granted by the sole Arbitrator within a period of 10 days on or before 11.09.2023.
- (ii) The first installment of the above said amount so conveyed, without any prejudice, shall be deposited by the petitioner on or before 22.09.2023.
- (iii) Post dated cheques qua the remaining installments, in equated amounts, shall be handed over by the petitioner to the respondents.
- (iv) The petitioner further undertakes that the aforesaid cheques shall be duly encashed and honoured on presentation, as per the due date mentioned in the post date cheque.
- (v) In the event of all the cheques being cleared, the respondents undertake not to pursue the present execution proceedings.
- (vi) It is made clear that in the event of any default committed by the petitioner in ensuring that the cheque(s) submitted by him are honoured, the respondent-department shall be at liberty to initiate and revive the pending execution proceedings in accordance with law.

CM-14752-CWP-2023; CM-14753-CWP-2023 in/and CWP-2580-2022 -13-

19. The parties shall remain bound by the statement made in Court today.
20. To be listed for compliance.

SEPTEMBER 01, 2023
Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned :

Whether Reportable :

Yes/No

Yes/No