

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

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**CWP-4422-2020 (O&M).
Date of Decision: 02.03.2023.**

M/S SURYA CONSTRUCTION

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Chirag Girdhar, Advocate,
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

Mr. A.K.Bazaz, Advocate,
for respondents No.2 and 3.

Mr. Aditya Pratap Puggal, Advocate,
For respondent No.4.

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 make the balance payment of Rs.11,00,000/- qua the work of Construction of RCC Road by laying RMC (M-30) from Sharu Steel to Village Nichi Mangli, Ward No.13, Ludhiana, executed by the petitioner.

Learned counsel for the petitioner contends that above contract of construction was allotted to the petitioner on 11.11.2016 and the said

work was duly completed in a time bound manner without any defect. Consequently, the petitioner was entitled to release of the aforesaid amount. He submits that as the needful was not done, a legal notice was sent by the petitioner to the respondents.

Notice of motion had been issued in the present case and the written statement on behalf of respondent No.3-the Municipal Corporation, Ludhiana was filed. The above said respondent submitted that the work in question was not pertaining to the Municipal Corporation, Ludhiana and as such, they are not necessary party.

A short reply on behalf of respondents No.1 and 2 by way of affidavit of Rakesh Kumar, Joint Secretary, Department of Local Government, Punjab, Chandigarh, was filed, wherein it has been averred that there is no competing interest of the State and that the payment qua the work executed is to be made by respondent No.4.

Written statement on behalf of respondent No.4 has also been filed wherein they have submitted as under:-

“2. That even otherwise, it is respectfully submitted that in the meeting of District Urban Infrastructure Committee dated 04.10.2016, Respondent No.4/Municipal Improvement Trust, Ludhiana was appointed as executing agency by the government for the 10 development works to be done under PIDB funds in Sahnewal Constituency-59 out of which Trust executed 9 works. Out of these 9 works, the work of Construction of Road by laying RMC (M-30) from Peepal Chowk to Sharu Steel Road, W. No.13, Ludhiana was also to be done. This work was assigned to the petitioner firm by the respondent No.4 vide its work order No.LIT/SE/7617 dated 11.11.2016. After which, the petitioner firm had started the work on the spot. But due to non-issuance of grant by PIDB, the petitioner firm stopped the work and had never started

again and PIDB had never ever issued grant of this work. It is also clarified there that the works to be done were as Deposit works under PIDB (Punjab Infrastructure Development Board) funds and the payment of these works was also to be done after the receipt of PIDB funds. Therefore, the payment of the above said works could not be done by the respondent No.4/Improvement Trust, Ludhiana from its funds. In view of the above said facts, due to non-issuance of grant of the above said works by PIDB, the payment of the work done at site could not be made.

3. That out of the above said work of Construction of Road by laying RMC (M-30) from Peepal Chowk to Sharu Steel Road, W. No.13, Ludhiana, according to the work done on the spot, the bill amounting to Rs.10,56,178/ was recorded in MB. But due to non- issuance of grant by PIDB, the payment could not be made to contractor/petitioner firm.

4. That it is important to mention here that due to non-issuance of funds by PIDB, the work has been stopped for a long time, due to which the people are facing lot of trouble and keeping in view the same Improvement Trust, Ludhiana according to the orders of Chairman, the respondent No.4 passed its Resolution No. 108 dated 30.06.2021 regarding works (1) Construction of Road by laying RMC (M-30) from Peepal Chowk to Sharu Steel Road, W.No.13, Ludhiana and (2) Construction of Road by laying RMC (M-30) from Sharu Steel to Village Nichi Mangli, W.No.13, Ludhiana, which were allotted to the petitioner firm, to be done from the trust's funds, under section 69-A of Punjab Town Improvement Act, 1922 for the approval of government, which is still pending.

5. After the approval of the same, the payment of the above said works already allotted to the petitioner will be made from the funds of respondent No.4 and the payment of work done on the spot will be made from the trust's funds.”

The respondent No.4 has thus acknowledged that the payment in question is due to the petitioner and that the same could not be released on account of grant not being released from the PIDB. The PIDB was also impleaded as a party – respondent No.5 and as per office report, it has been served, however, there is no representation on behalf of the said respondent.

I have heard the learned counsel for the respective parties and have gone through the documents appended along with the present petition.

It is not in dispute from the perusal of the above that the petitioner had been engaged by respondent No.4 for execution of the aforesaid work that had been allotted to him. The payment in question also fell due on account of the work undertaken by the petitioner till such time that the work in question was stopped on account of non-payment. The respondent No.2 acknowledges the liability and also submits that the aforesaid amount is due and payable to the petitioner. However, the reason assigned by respondent No.4 for non-payment of the aforesaid amount is that they are not in receipt of the grant/money from the Punjab Infrastructure Development Board.

The same is a matter of internal arrangement between the respondents and cannot have a bearing on the rights of the petitioner. Since respondent No.4 had employed the petitioner, it was the obligation of respondent No.4 to release the payment irrespective of whether it has further received the payment from its own principal or not. There is no privity of contract in so far as the petitioner and respondent No.5 is concerned. The delay on the part of the State agencies inter se cannot be the

reason for the respondent to deny the release of payment which is undisputedly due in favour of the petitioner.

Accordingly, the present petition is allowed and the respondent No.4 is directed to release the undisputed amount in favour of the petitioner within a period of 03 months from today. In the event the amount is not released in the aforesaid period, the petitioner shall be entitled to interest @ 6% per annum from the date of filing of the present petition till release of the amount.

March 02, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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