

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

247

**CWP-5618-2021
Date of Decision: 16.08.2023**

SUSTAINABILITY VISION FOUNDATION TRUST

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Gaurav Mohunta, Advocate and
Mr. Nishant Arora, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the impugned order dated 15.02.2021 (Annexure P-1) vide which the respondent No.2 has cancelled/terminated the contract/agreement dated 08.09.2020 (Annexure P-4) executed between the petitioner and respondent No.2 for solid waste management of District Sonipat (Rural). A further direction has also been prayed for release of the pending bills dated 05.12.2020 (Annexure P-11) and 14.01.2021 (Annexure P-13) for the period from October to December 2020.

The facts of the present case are that the petitioner, which is an incorporated trust, had entered into an agreement with the respondents on 26.08.2019 for door to door collection of garbage and solid waste management for village Bhatgaon Mallyan, Bhatgaon Dungran, Salimsar Majra and Luhari Tibba in District Sonipat for the period from 01.09.2019 to 30.11.2019. The contract for abovesaid four village was renewed on 01.01.2020 for the period

from 01.12.2019 till 30.11.2020 and additional work of three new villages i.e. Rattangarh, Jaji, and Mahipur was also added in the renewed contract. Thereafter, on 09.09.2020, the petitioner was awarded contract for the entire Sonipat (Rural) w.e.f. 08.09.2020 till 07.09.2021.

It is contended that on 01.05.2020, Rs.168/- per capita per year were allocated for door to door collection, transportation, segregation and safe disposal of solid waste in all the Gram Panchayats and on 25.06.2020, a sum of Rs.316 crores was sanctioned for the Gram Panchayats and Gram Samitis etc.

Work order dated 09.10.2020 was thereafter issued in favour of the petitioner pursuant to the agreement dated 08.09.2020 for garbage collection. The petitioner claims that he immediately commenced the collection of garbage from all villages under intimation to the respondent No.2 on the same day and respondent No.3 was also directed to extend proper assistance and cooperation to the petitioner in execution of the said works. The Mission Director (SBM-G) also visited the areas where the petitioner was awarded work on 21.12.2020 and specific instructions were issued to the petitioner regarding proper implementation of the scheme. No complaint was noticed about non-performance of the work by the petitioner.

The petitioner submitted a bill on 05.12.2020 for a sum of Rs.2.02 crores approximate for services and management of solid waste Sonipat (Rural) alongwith the progress report of the works done during the said period. However, when no payment was released, the petitioner sent reminders. Instead of releasing the payment, a show cause notice dated 27.01.2021 was received by the petitioner from respondent No.2 as to why the work order date 09.10.2020 issued to the petitioner be not cancelled since he did not start the

work allotted to him and has not deposited the security amount with respondent No.1. The said letter was received by the petitioner on 02.02.2021 and the reply thereto was immediately sent on 04.02.2021 stating that the work had commenced on 15.10.2020 and intimation in this regard was also sent to respondent No.2. It was also stated that the security amount be adjusted from the first bill and further that an undertaking was nonetheless given by the petitioner that he shall deposit the security amount as and when demanded/required by respondent No.2. Ignoring the above response sent by the petitioner a second show cause notice dated 10.02.2021 was served on the petitioner which was also replied to on 11.02.2021 reiterating the submissions made earlier. However, notwithstanding the response filed by the petitioner, the impugned order dated 15.02.2021 was passed by the respondents cancelling the work order.

It has been argued by the counsel for the petitioner that the show cause notices sent by the respondents was primarily on two grounds i.e. firstly on account of non-deposit of security amount and secondly about not having commenced the solid waste management work. However, in the impugned order (Annexure P-1) a third ground has also been relied against the petitioner which amounts to travelling beyond the notices issued to him. The allegation is that the petitioner never submitted the monthly status report of the work performed by him to the respondent No.2. The said new ground incorporated in the impugned order of cancellation of work is not tenable as no opportunity to respond to the same has been afforded to the petitioner. In any case, the petitioner claims that the progress report for the months of October and November 2020 alongwith the bills dated 05.12.2020 had been thereafter

submitted and therefore, the said ground does not sustain. A reiteration has been made that the work of collection of garbage and solid waste management had been commenced w.e.f. 15.10.2020 and intimation in this regard had been duly submitted. The inspection was also conducted by the Director, (Swachh Bharat Mission-Gramin). No communication was sent about non-commencement of the work despite the work order having been allotted or non-performance by the petitioner. It is further reiterated that the petitioner had always been ready and willing to deposit the security amount in terms of the contract agreement, however, no time limit had been prescribed in the agreement for such deposit. Hence, the agreement in question could not have been cancelled for the aforesaid lapses.

Written statement on behalf of the respondents has been filed wherein the execution of the agreement between the parties and allocation of work to the petitioner is not disputed. It is, however, averred that the petitioner failed to execute the work as per the terms and conditions mentioned in (Annexures P-2 to P-4). The Agency was not found working properly when the work was got verified from the concerned Gram Panchayats. An opportunity of hearing was granted to the petitioner and after considering the reply submitted by the petitioner, the impugned order was passed. The petitioner had been called upon to explain his position regarding violation of Term No.4 of the contract, wherein it was agreed between the parties as under:

"The second party will be responsible for clearing the drains and lanes of the above proposed area, non hazardous waste generated garbage collection, transportation and disposal of all approved residential and commercial. The garbage will be collected as per S.W. collection. The second party will deposit 5% security

amount against the monthly agreement amount in the name of Deputy Commissioner, Sonipat before the nationalized bank in the shape of FDR/CDR or National Savings Letter and the same will be returned after successful completion of the project."

It is also submitted that the petitioner admits that the security amount has not been deposited by him and he has not made good the said deposit even till today. A mere readiness and willingness cannot be construed as compliance of the essential terms and conditions of the agreement. Further, in the reply dated 11.02.2021 (Annexure P-17) the petitioner has averred that he is ready and willing to resume the work, however, due to financial constraints, he was forced to stop the work. The reply has remained the same even for the second show cause notice. The respondent No.2 had also sought reports from all the Block Development & Panchayat Officers vide communication dated 23.12.2020 regarding the actual work done by the petitioner-agency in the area of District Sonipat as the requisite information had not been furnished by the petitioner-agency. As per report received from the concerned Block Development & Panchayat Officers, it was informed that the petitioner-agency had neither carried the cleaning works in any of the villages nor submitted its work report before the respondent. Hence, complete opportunity of explaining the failure in rendering the requisite services and to deposit the security amount had been extended to the petitioner, but no satisfactory response had been given by the petitioner. There was thus violation of the terms and conditions of the agreement and failure to render services of waste collection in District Sonipat (Rural).

Reference was also made to the Clauses 20 and 21 of the agreement as per which the monthly progress report were required to be furnished. The aforesaid conditions are extracted as under:

"Point No.20:-

"The garbage will be collected by the second party according to frequency and the details of monthly progress report of the labours engaged in each field will be provided to the first party or any person authorized by them."

Point No.21:-

"The second party will deposit 2% security amount against the monthly agreement amount in the name of Deputy Commissioner, Sonipat before the nationalized bank in the shape of FDR/CDR or National Savings Letter and the security deposit will not be returned until one month from the date of completion of the work."

It is also averred that a mere expression of readiness and willingness is not compliance of the terms and conditions. Further, the petitioner having itself conveyed that he was facing financial constraints supports the claim of respondents that sufficient man power had not been deputed. An argument has further been raised that submission of monthly progress report was integral for verification of the work claimed to have been executed. Having not furnished the same, the claim remains unverified. No such undisputed document regarding work done has been attached with the petition as well. Hence, all disputed questions are involved in the present petition.

Even though the aforesaid reply had been filed on 26.10.2022, however, despite a lapse of nearly one year, no replication/rejoinder controverting the stand of the respondents has been filed.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

A perusal of the impugned memo No.1650 dated 15.02.2021 shows that the contract in question had been terminated by the respondents after noticing the following discrepancies:

"Para No.20: The waste will be collected according to the frequency by the second party and the monthly progress report of each region/area will be provided to first party or its authorized persons.

Para No.21 2% security amount will be deposited by second party in the shape of FDR/CDR of the nationalized bank or National Saving Letter in the name of Deputy Commissioner, Sonipat in respect of the monthly estimated agreement amount and the same will be returned after successful completion of the project. The security deposit will not be returned until one month from the date of completion of the work."

In view of the above, neither you have informed regarding the start of work after execution of agreement nor you have deposited 2% security amount in the shape of FDR/CDR of the nationalized bank or National Saving Letter before the undersigned/in the office. Apart from this, no monthly report has been made available by you to this office and in addition to this according to the report received from the all sections/blocks of District Sonapat to the effect that no work has been carried out in any of the blocks of the panchayat by your firm. The facts presented by you in your written reply in which the details of the bills presented before the first party have been made, this reasoning is not relevant because according to the report received from all the sections, no work has been carried out by you in any gram panchayats on the ground level. Therefore, the basic

condition of the agreement has not been complied with by you and the demand for payment without working is not rational and reasonable.

Therefore, keeping in view the above facts and on the basis of terms and condition mentioned at para no.24 of the agreement ("if the work is not completed on time by the second party or the work is not found satisfactory then the first party has the right to cancel the agreement and forfeited the security of the second party through, so that the above work can be made through the other contractor or agency as an alternative and risk") regarding facility and service provided by the second party, your agreement is hereby cancelled with immediate effect and you are not entitled to any payment and the first party has no obligation towards you."

It is evident that the respondents have noticed about non-submission of the progress report for each region and failure to deposit the security amount. It is even though apparent that the aforesaid aspect with regard to non-submission of the monthly progress report had not been raised in the shows cause notice served upon the petitioner, but other aspects were duly raised. Even though the petitioner continued to respond that he is ready and willing to comply with the same, however, the compliance thereof was never done.

It is also evident that even though the issue of non-submission of the monthly Work Progress Report had not been referred in the show-cause notice and had formed the basis of order of cancellation. The petitioner has failed to bring on record any evidence of the present case on the basis whereof it can be averred that the aforesaid deficiency did not exist and that the petitioner had been submitting the monthly progress report as per the conditions of the agreement. Even though vehement effort has been made by the petitioner

to refer to the invoice to contend that the requisite compliance has been made, however, the aforesaid annexure appended to the invoice is non-responsive of the information required to be submitted by the petitioner under condition No.20 i.e. a Monthly Progress Report of the labour engaged in each field required to be provided to the first party or to any other person authorised by the first party. Apparently, raising of invoice is not the same thing as providing the monthly progress report of labour engaged in each field. The annexure appended alongwith the invoice attached in the petition are blank in all material particulars. The invoice is to be verified on the basis of claim raised in the monthly progress report and payment is to be made thereafter. Submission of invoice is thus not a substitute for the requirement of submission of a monthly progress report.

The counsel for the petitioner has referred to the judgment of this Court in the matter of “**M/s Kharar Rice Mills Versus State of Punjab and Others**” bearing **CWP No.10250 of 2021** decided on **06.07.2023** to contend that the respondents cannot have travelled beyond the domain of show cause notices. Without disputing the abovesaid proposition of law, it is observed that it was incumbent for the petitioner to have contradicted to the aforesaid reasons that found mention in the impugned order of the cancellation of the contract/agreement. Having failed to respond to the same, the position remains disputed and there is no reason as to why the extraordinary writ jurisdiction should be exercised at this juncture. The petitioner had every opportunity to place on record the relevant material that could have substantiated the prejudice caused or to establish that all the relevant material/documentation is complete and is available for verification. It was a bare prudence to refer to material,

which, in an event of opportunity granted, would have demolished the finding recorded. Having failed to place any supporting and substantiating documents, it may not be possible to hold that the order was passed without appreciating evidence and that in the event of the opportunity having been granted, the petitioner would have successfully controverted the findings recorded by them. The objection thus remains technical and the finding of fact becomes disputed. The same cannot be ascertained by the High Court. The Hon'ble Supreme Court held in the matter of **“Union of Inida and others Versus M/s Puna Hinda”** bearing **Civil Appeal No.4981 of 2021** as under:

“1-22 XXXXX XXXXX XXXXX

23. *The High Court has based its order on the ground that after five monsoons, the final measurements could not be ascertained. If the final measurements could not be done at the spot, the contemporary evidence and the measurement books prepared from time to time could be the basis for determining the liability of the appellants. The Joint Survey Report is not an admitted measurement, though some officers might have signed it. The Report prepared after the completion of work wherein no such work done is reflected in the measurement book prepared during execution of work is an attempt to inflate the claim raised by the writ petitioner. The entire amount claimed by the writ petitioner is disputed. It has been asserted that the entire payment due as against the claim of work order had been made, as reflected from the following table:*

I	<i>Awarded cost of the work under the Contract</i>	<i>Rs.31.87 Crores</i>
II	<i>Cost of the work already executed by the department on the same stretch before the award of work</i>	<i>Rs.0.86 Cr.</i>
III	<i>Cost of the work as reduced in view of prior departmental work</i>	<i>Rs.31.01 Crores</i>
IV	<i>Amended cost of work under the</i>	<i>Rs.35.03 Crores</i>

	Contract	
V	Contract cost in revised DPR processed to Ministry of Road, Transport and Highways	Rs. 42.27 Crores
VI	Payment made to the contractor/respondent herein inclusive of Rs.3.86 Crores as per the order dated 18.05.2017 of the Hon'ble High Court	Rs.42.27 Crores
VII	Contractor's claim as per final bill dated 23.11.2015	Rs. 71. 76 Crores

24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallized. Therefore, in the absence of any acceptance of Joint Survey Report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e., arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads.

25-26 XXXXX XXXXX XXXXX”

Since this Court is not examining the disputed issues at this stage and relegating the petitioner to the alternative remedy of approaching the Civil Court for seeking the redressal of his grievance, it would not be appropriate for

this Court to comment any further on the merits of issues involved lest it prejudices rights of the parties.

Taking into consideration the circumstances as noticed above, this Court feels that disputed questions of facts arise in the present petition for determination. Condition No.34 of the agreement executed between the parties provides that in the event of any dispute between them, the same shall be resolved through appropriate proceedings at Sonipat. The said condition reads thus:

"1-33 XXXX XXXX XXXX

34. The jurisdiction in case of any dispute shall be at Sonipat.

35. XXXX XXXX XXXX"

The said clause provides for dispute resolution before Civil Courts at Sonipat.

The present petition is accordingly dismissed at this stage for reasons above and without commenting on merits of the claim.

However, the petitioner may, if so advised, take recourse to the alternative remedies available to him in accordance with law.

AUGUST 16, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No