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

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**CWP-6535-2021 (O&M).**
**Date of Decision: 16.10.2023.**

**BAL KRISHAN**

.. Petitioner

Versus

**STATE OF PUNJAB AND OTHERS**

... Respondents

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

Present: Mr. S.S. Maini, Advocate, and
Mr. Khushkaran K. Goyal, Advocate,
for the petitioner.

Ms. Niharika Shama, AAG, Punjab,
for respondents No.1 and 7.

Mr. Maninder Singh Saini, Advocate,
for respondents No.2 to 5.

Mr. Ishan Thakur, Advocate, for
Mr. L.S. Sidhu, Advocate,
for respondent No.6

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

A writ in the nature of mandamus has been sought for seeking directions to the respondents to make the payment for the work executed by the petitioner.

Learned counsel appearing for the petitioner has argued that the petitioner is a contactor working at various places including Sri Muktsar Sahib and was allotted tender for execution of the “work of brick pavement over kaccha passage of different streets of Ward No.4-D at Market Committee in District Sri Muksar Sahib vide work Code MKS 16-162 vide agreement No.113/16-17 dated 08.07.2016. The same was duly approved and a letter of acceptance was issued. After completion of the substantial work, the petitioner started submitting running account bills which were also being cleared. The work was finally completed and fourth and final bill was raised by the petitioner. The same was verified by the concerned quarter as per the laid down specifications and finding no defect and deficiency in the execution of the work, the case of the petitioner was recommended for payment of Rs.73,031/- towards the contract fee and also a sum of Rs.2,64,496/- towards the security deposited by the petitioner, hence, a total amount of Rs.3,37,527/- was claimed by the petitioner.

Respondent, on the other hand, has contended that the project in question has received concurrence of the Chief Minister Punjab as Chairman of Bathinda Development Authority on 29.08.2016 and an amount of Rs.5 crores was sanctioned by the principal Secretary to the Government of Punjab, House Building and Urban Development Department sanctioned the amount of Rs.500 Lakhs for the dry brick pavement in the streets of various wards of Sri Mukstar Sahib. A further grant of Rs.15 lakhs for renovation of the Bar Room at Judicial Courts Complex, Sri Muktsar, was also forwarded. The administrative approval was granted by the President, Nagar Council, Sri Muktsar Sahib for Rs.573.30 Lakh to provide the brick pavement procurement in various wards as decided by the Chief Minister in his official function.

The funds were received by the Bathinda Development Authority and the same were released on 28.07.2016 and that certain other payments were also released thereafter. However, the Government of Punjab, as well as the Deputy Commissioner, Sri Muktsar Sahib did not release the balance payment. The Mandi Board is only an executing agency for execution of the works and payments in question are to be released only after the same are received from the Development Authority which sanctioned the project. The funds having not been released by the Funding Authority through the Deputy Commissioner, the payment could not be released and the same could be released only upon receipt of the same. It is further contended that the time limit for execution of the work was two months. The same was to be completed by 10.09.2016 however, the same was completed on 24.11.2016 i.e. after a delay of two months and 14 days. Hence the petitioner is liable to pay damages for the delayed work. Further, it is argued that there is a specific clause of arbitration which exists in the said case and that the present petition would not be maintainable in the present form.

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

It has remained uncontroverted that the execution of the work was done by the petitioner and that there has been no complaint with respect to the quality of the work executed. The defence raised by the respondents is that there was a delay in execution of the work and that as a result of delay the respondents are entitled to claim damages. However, no details as regards any assessment/decision taken by the respondents quantifying damages has been made by the respondents in their written statement. Besides, the stand of the respondents is mutually contradictory as, on the one hand, they are saying that they would release the payment in case the same is received from the funding Authority and on other hand, they have raised a plea of liquidated damages without having assessed the same. Once the dispute as regards the damages/compensation was being made by the respondents themselves, the burden lay on the respondents to have sought determination of the damages for delayed execution of the work as per the terms of the agreement or sought reference to arbitration. The respondents Authorities cannot simply withhold the payment and wait for the contractor to seek reference. The failure is apparently on the part of the respondents to raise a dispute or to seek reference thereof and they have withheld release of entire amount on account thereof.

However, at the same time, the amount in question was payable in the year 2016 and the present writ petition had been filed in the year 2021.

Taking into consideration the totality of circumstances and the inordinate delay on part of the petitioner in approaching the Court as well as the objections taken by the respondents, it would not be expedient for this Court to enter into an arena of dispute where rival claims with respect to limitation and/or entitlement of the petitioner as well as determination of quantum of liquidated damages arise.

The present petition is accordingly disposed of with liberty to the parties to take recourse to the alternative remedies available to them. However, noticing that the conduct of the respondents has been arbitrary and is not well founded in the terms of the contract and is reflective of just a high headed approach of the respondents, it is deemed appropriate to impose costs on respondents No.2 to 5.

Accordingly, the respondents No.2 to 5 are directed to deposit costs of Rs.10,000/- with the District Legal Services Authority, Sri Muktsar

Sahib, within a period of 04 weeks from the receipt of a certified copy of the order.

The present petition is accordingly disposed of.

**October 16, 2023** **(VINOD S. BHARDWAJ)**
**raj arora** **JUDGE**

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