

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

242

CWP-9440-2022

Date of decision: 16.10.2023

M/S SAROHA CONSTRUCTION COMPANY .....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS .....Respondents

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

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Present:- Mr. Lajpat Rai Sharma, Advocate and  
Mr. Naveen Kumar, Advocate for  
Mr. Vinod Kumar Khatri, Advocate  
for the petitioner.

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

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

1. Prayer made in the present writ petition is for seeking issuance of directions to respondents No.2 to 4 to release the payment to the petitioner for the work of construction of RCC open through RD 0 to 4000 of Mahesh Nagar Drain in District Ambala claims to have been satisfactorily executed by the petitioner.

2. Counsel for the petitioner has argued that the respondent-department had invited tender for the above said work of constructing RCC open through RD 0 to 4000 of Mahesh Nagar Drain in District Ambala wherein the petitioner has submitted his bid being fully eligible.

3. Finding the bid submitted by the petitioner to be most responsive, the work in question was allotted to the petitioner. However, the work could not be started in time due to nation wide lock down imposed by the Central government all over the country and the

said lockdown continued till 31.05.2020. The construction could thus be initiated only thereafter. Even though, it was mandated that the right of way had to be provided and the site should have been cleared from all encumbrances in all respects, however, the site in question was encumbered and various notices were sent by the petitioner to the respondent-authorities. Further, the time was of essence to the contract and more than 1 ½ years passed away as a result of the delay and failure of the respondents in handing over a encumbrance free site during which the market rates of all items increased manifold. The petitioner made numerous requests to the respondents for release of the payment admissible to him, however, the same was not done. A legal notice was also sent by the petitioner to the respondent and on failure of the respondents to take a decision, CWP-26392-2021 was filed before this Court. The same was withdrawn with liberty to approach the respondents in terms of Clause 23 of the agreement on account of existence of a dispute redressal system vide order dated 28.01.2022. The respondents thereafter, issued a letter to the petitioner on 31.01.2022, calling upon him to complete the remaining work failing which penal action was to be taken. Another Legal notice was sent by the petitioner to the respondents invoking Clause 23 of the Agreement and prayed for reference of the dispute between the parties to the dispute redressal mechanism, however, the respondents have not referred the dispute to the dispute redressal system stipulated under the agreement.

4. Written statement on behalf of the respondents No.1 to 4 has been filed wherein the factum of allocation of the aforesaid work

and also the institution of the above said CWP-26392-2021 is not disputed. It is contended that the petitioner was required to avail the remedy provided under the dispute redressal system as per Clause 23 and was supposed to submit his claim before the competent authority i.e. the Chief Engineer, BWS Unit, Irrigation Water Resources Department, Panchkula, however, in the legal notice dated 10.02.2022, there is nothing mentioned about the claims ascertained in the present writ petition, hence, the petitioner never approached the competent authority as per the terms and conditions of the contract and the demand raised herein was never raised in the legal notice dated 10.02.2022. It is further submitted that the above said legal notice was responded vide communication dated 12.09.2022 informing the petitioner that he is required to approach the competent authority for redressal of his grievance/dispute in terms of Clause 23.1 of the Contract Agreement. A reminder was again issued by the Executive Engineer to the petitioner to submit an appropriate claim. The needful has, however, not been done. Further, it also averred that a liquidated damage charges amounting to Rs. 54,82,491/- as per clause 42 of the bid document had been imposed upon the petitioner by the Executive Engineer vide letter dated 07.12.2022 and that the said amount has also not been deposited. Thereafter, on 14.12.2022, the competent authority also terminated the contract agreement in terms of Clause 52.1 of Section 3 of the bid document. It is thus contended that the petitioner is seeking release of the payment for the work done by him which is claimed to be at around Rs. 36 lakhs approximate whereas the liquidated damages claimed by the respondent-department are to the

tune of Rs. 54.82 lakhs.

5. Even though, the aforesaid written statement had been filed in January, 2023, however, no replication controverting the said aspects has been filed by the petitioner. This Court has thus no alternative but to assume that the petitioner has not approached the respondent-authorities for reference of the dispute as per the dispute redressal system.

6. Besides, disputed questions of fact as regards the assessment of liquidated damages, the right or entitlement of the petitioner to claim force majeure, if any are also required to be ascertained. The said aspects cannot be gone into by this Court. An alternative dispute redressal system has been duly provided for under Clause 23 of the aforesaid agreement. The present petition is accordingly disposed of with liberty to the petitioner to move an appropriate claims/representation with the competent authority espousing his grievance and raising his claims. In the event of any such claim being filed, the respondents shall take appropriate decision thereupon in accordance with the contract document and forward the same to the competent authority for adjudication. In the event of the claim being so preferred, the competent authority shall take an expeditious and a time bound decision.

Petition is accordingly disposed of.

(VINOD S. BHARDWAJ)  
JUDGE

OCTOBER 16, 2023

*Vishal sharma*

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