

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 27.04.2023

(1) CWP-15694-2015
MANISH DHINGRAPetitioner

V/S

STATE OF HARYANA AND ORS.Respondents

(2) CWP-22689-2015
SUNIL JAINPetitioner

V/S

STATE OF HARYANA AND ORS.Respondents

(3) CWP-22769-2015
BIJLEE SINGHPetitioner

V/S

STATE OF HARYANA AND ORS.Respondents

(4) CWP-22799-2015
JASBIR SINGHPetitioner

V/S

STATE OF HARYANA AND ORS.Respondents

(5) CWP-33315-2019
PARVEEN KUMARPetitioner

V/S

STATE OF HARYANA AND ORS.Respondents

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(6)	<u>CWP-32807-2019</u>
RAJESH SHARMA	Petitioner
V/S	
STATE OF HARYANA AND ORS.	Respondents
(7)	<u>CWP-32778-2019</u>
M/S MAPCO PRECAST	Petitioner
V/S	
STATE OF HARYANA AND ORS.	Respondents
(8)	<u>CWP-32827-2019</u>
TARUN KUMAR BHATIA	Petitioner
V/S	
STATE OF HARYANA AND ORS.	Respondents
(9)	<u>CWP-32850-2019</u>
SATYAWAN SINDHU	Petitioner
V/S	
STATE OF HARYANA AND ORS.	Respondents
(10)	<u>CWP-995-2020</u>
AMAR NATH	Petitioner
V/S	
STATE OF HARYANA AND ORS.	Respondents
(11)	<u>CWP-32814-2019</u>
YOGESH KUMAR	Petitioner
V/S	
STATE OF HARYANA AND ORS.	Respondents

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(12)

CWP-32831-2019

RAMAN NANDA

.....Petitioner

V/S

STATE OF HARYANA AND ORS.

.....Respondents

(13)

CWP-10959-2022

SUNIL KATYAL

.....Petitioner

V/S

STATE OF HARYANA AND ORS.

.....Respondents

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

Present: - Mr. Ravinder Rana, Advocate with
Mr. Naveen Kumar, Advocate for
Mr. Vivek Khatri, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Ashok Singh Chaudhary, Advocate
for the respondent No.3-M.C.

VINOD S. BHARDWAJ, J. (Oral)

A batch of 13 petitions, is being decided by a common order as the parties agree that identical issues arise for determination in the present batch of writ petitions. For the facility of reference, facts are extracted from *CWP- 15694 of 2015* titled “*Manish Dhingra versus State of Haryana and Others*”.

2. Briefly summarized, the facts of the case are that the petitioner is a Contractor situated in District Panipat. The respondent No.3-Municipal

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Corporation Panipat invited tenders for execution of various development works on 13.12.2012. The details of the said works are extracted as under:

- “i. P/f of interlocking tiles 80mm thick pavers block from H/o Daya Nand to H/o Rohilla electrical, 8 Marla Panipat.*
- ii. P/f of interlocking tiles 80mm thick pavers block from H/o J.P. Sharma to H/o Surinder Kumar, Power House Gate to Dr. Vijay Kumar, 8 Marla Panipat.*
- iii. Construction of street with interlocking tiles 80mm thick from Sethi chowk to Raju Diary Khel Bazar, Panipat.*
- iv. P/f of interlocking tiles 80mm thick from Dev & sons, Sanoli Road towards Khurana Sweets, Panipat.*
- v. Renovation & white washing of various municipal Buildings, D.C. Camp office, ADC Residence, CTM Residence, E.O. Residence, M.C. Building, M.T. Panipat.*
- vi. Renovation & white washing & other Misc. works of (M.C. Building) CEO, SDM Residence, M.T. Panipat.*
- vii. Renovation of park near H/o Surender Lamba, M.T. Panipat.*
- viii. P/f of interlocking tiles 80mm thick pavers block along Maan Kiryana Store in Sidharth Nagar, Panipat.*

3. The petitioner being an enlisted Contractor of the Municipal Corporation, Panipat applied for the said works and the same were allotted to him by the respondent No.3-Municipal Corporation, Panipat. He successfully and satisfactorily executed the work allotted as per specifications of the Engineers-In-charge. Thereafter, the petitioner approached the respondent No.3 for seeking release of his dues. Comments

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of the Engineers were called for by the District Municipal Commissioner whereupon the Committee submitted its report (Annexure P-1) qua the due & satisfactory execution of the said works. However, notwithstanding the said report. The payment was still not made. The petitioner thereupon approached the respondent No. 3 repeatedly, however, the payment in question was never disbursed. The petitioners also submitted a representation to the Director, Urban Local Bodies, Haryana for release of the payment which was down marked to the respondent No.3 for taking necessary action in accordance with law and to release the payment if found payable as per law. It is averred that notwithstanding the communication sent by the Directorate, no action was taken by the authorities whereupon the petitioner thus served a Legal Notice dated 31.10.2014. The respondents still failed to take a decision on the same, hence, he approached this Court by way of filing CWP-4540 of 2015. The above said writ petition was disposed of by this Court vide order dated 30.03.2015 directing the respondent No.3 to consider and decide the Legal Notice dated 31.10.2014 within a period of 02 months from the date of receipt of a certified copy of the said order. In compliance of the above, the respondent No.3 passed the impugned order dated 19.06.2015 (Annexure P-8) denying the factum of execution of the work and also the claim raised by the petitioners. Aggrieved thereof, the present petition has been filed.

4. Written statement on behalf of respondents No. 2 & 3 had been filed on 12.04.2016 wherein it was averred that disputed questions of fact arise for determination in the present petitions for which the writ petition may not be an appropriate remedy.

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5. A separate reply was also filed on 28.08.2017 on behalf of respondent No. 3 i.e. Municipal Corporation, Panipat wherein it was stated that the claim of the petitioner had been rejected vide the impugned order dated 19.06.2015 for the reasons that the works, qua which the execution is being pressed and payment claimed, there is no official work order ever issued; no filling of the MB (Measurement Book) was carried out by the Engineering Department and there was no submission of bill as well by the petitioners. It is thus averred that the execution of work has apparently not been carried out at the instance of any competent authority and the same is seemingly an outcome of some directions given by a third party for which the Municipal Corporation cannot be held liable. It is further pointed out that for allocating any work to a Contractor, the process as enlisted in the Haryana Municipal Accounts Code, 1939 is to be followed. It is necessary that the estimates of the proposed work are prepared by the Engineering Cell whereupon technical and administrative approval is accorded for floating of tenders. Public notice is issued for inviting bids from the interested parties to execute the said works and thereafter the same is to be allotted in favour of the lowest bidder. Before the commencement of the work, the Contractor is issued a work execution order by the competent authority and an agreement for such execution of work is also required to be signed between the parties. The inspection of the work is to be undertaken periodically by the Engineering Cell and a Measurement Book is required to be filled up for verification of the bill and/or payments to be made. An invoice is finally required to be raised by the Contractor on the basis of the actual work carried out by him which is to be verified by Engineering Department. It is

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only thereafter that a payment becomes due to a Contractor. It is contended that in the instant case, there was no tender floated by the Municipal Corporation and no agreement was ever executed between the parties. Consequently, in the absence of any work order having been issued or sanction for execution of the work having been granted, the Municipal Corporation cannot be held liable to make payment for such activity undertaken by the petitioners herein.

6. After noticing the aforesaid specific stand adopted by the respondent, this Court vide its order dated 21.02.2018, called for a status report about the action to be taken against the officers/officials on whose asking the work was executed and a report of satisfactory execution of the work was submitted.

7. A status report dated 04.04.2019 was thereafter filed on behalf of respondents No.2 & 3 wherein it was averred that the Show Cause Notices have been issued to the said officials to explain their position for giving direction to the Contractor for execution of the work and for giving their report when the tenders thereof had not been called for by the Municipal Corporation, Panipat and no work order had been given. It was also reported that one official namely Sanjay Sharma, Junior Engineer had since then expired and thus, proceedings could not be initiated against him. It was also assured that action against the officials is being taken as per law.

8. No replication/rejoinder to any of the aforesaid responses/status report had been filed even though the replies had been filed in the year 2016; 2017 and the status report was filed in the year 2019.

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9. Learned counsel appearing on behalf of the petitioner has vehemently argued that the execution of work is not a subject matter of dispute and a committee of the Engineering Wing of the Municipal Corporation, Panipat has duly reported about the due & satisfactory execution of the said works by the petitioner. The respondent-Municipal Corporation thus cannot, at the stage of disbursing the payment for the work executed, plead absence of liability for the acts done by its employees. Since the petitioners executed the works on the asking of the officials under a bona fide belief that such oral directions hold due sanctity of law and have already been approved by the competent authority, hence, they having been forced to alter their position and to carry out the work cannot thereafter be denied their right to seek reimbursement of their bills. He further contends that even in the initial response filed by the respondents, the respondent No.3 does not dispute the fact that the work in question had been executed by the Contractors. Once the execution of the work is not denied and there is nothing on record to suggest that the execution of the work was a gratuitous act on the part of Contractors, the liability was thus to be made good. When there was no charitable intent or object at the stage of execution of the work, the expectations of the petitioners to consideration of the same cannot be prejudiced. He further contends that the respondent No.3-Municipal Corporation, Panipat should be estopped from denying its liability after having reaped the benefits of the execution of the works by the petitioners herein. Having claimed the benefit, it is bound to compensate the contractors.

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10. Per contra, learned counsel appearing on behalf of respondent No.3-Municipal Corporation, Panipat contends that for the purposes of creating a binding obligation to pay, there has to be existence of a contract between the parties. In the absence of any enforceable contract between the parties or absence of the checks and balances prescribed under the Municipal Accounts Code, 1939, there is no mechanism for the Municipal Corporation to ascertain the liability. He further contends that the petitioners herein claim to be the Contractors of the Municipal Corporation and as such, they cannot be perceived to be unaware of the procedure for allotment of the works. Having been associated with the working of the Corporation, ignorance of law cannot be pleaded by them. He further contends that so far as the reliance on Annexure P-1 i.e. the report by the officers is concerned, the Municipal Corporation issued Show Cause Notices to the said Officers who had furnished the report. As such, the said report cannot be taken as a final word for the determination of the liability, if any by the respondent-Municipal Corporation. It is further contended by the Counsel that the respondent No.3-Municipal Corporation, Panipat had further filed a detailed reply in the year 2017 wherein it had taken detailed objections with regard to the non-execution of the work and also that there was no material to verify execution of the work by the petitioners and such unverified payment could not be made. No replication controverting the aforesaid stand of the respondent-Corporation was ever filed. He thus contends that the factual stand adopted by the respondent No.3-Municipal Corporation has remained uncontroverted. Hence, disputed questions of fact would arise for adjudication which cannot be gone into by the High Court in exercise of its

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writ jurisdiction. He further places reliance on the judgment in the matter of ***“Union of India versus M/s Puna Hinda*** reported as **2021 (10) SCC 690** to buttress his submission that the disputed question of fact are not be gone into the by the High Court. The relevant extract of the above said judgment is reproduced as under:

“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.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

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12. The undisputed position of fact that has emerged in the present case is reproduced as under:

- (a) No technical or administrative approval for the work was ever obtained;
- (b) No transparent procedure for allotment of work was undertaken & in the absence of any detailed notice invited tender, it can not be held that the bid of petitioner was lowest;
- (c) No work order had ever been executed in favour of the petitioners;
- (d) No rates for execution of the work and bill of quantities was prepared & approved.
- (e) No Measurement Book as required under the Municipal Accounts Code, 1939 was ever filled up by any Engineer-Incharge qua the work in question.
- (f) No agreement as mandated under the Act, 1939 was ever entered between the petitioners and Municipal Corporation.
- (g) No invoice for the execution of the Bill has also been submitted by the petitioners.
- (h) The officials who authored the report Annexure P-1 are subjected to departmental proceedings and Show Cause Notice had been issued by the respondent-Municipal Corporation.
- (i) No verification of the execution of the work was done as per the prescribed procedure & the checks & balances provided thereunder.

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(j) No budgetary approval for the work was granted.

13. Alongwith the aforesaid facts that emerge in the present case, the provision of Contract Act, 1872 recognize existence of an oral agreement between the parties and it is duly enforceable provided the same is not illegal. Besides, the case of the petitioner is based primarily on the report (Annexure P-1) submitted by the officials of the Engineering Wing of respondent No.3-Municipal Corporation, Panipat which such report is denied and disowned by the respondent No.3-Municipal Corporation. Hence, various issues giving birth to disputed questions of fact such as nature of agreement; the quantity of work executed; the rate at which payment is to be made; whether the Corporation can be bound by such works for which no Letter of Intent/work order has been issued etc. would emerge. In light of the judgment in the matter of *M/s Puna Hinda (Supra)* relied upon by the Counsel for the respondent No.3, the writ Court would not, under such circumstances, dwell into the said issue in exercise of its extra-ordinary jurisdiction under Articles 226/227 of the Constitution of India. The petition is accordingly dismissed for the said reason and without commenting on the maintainability of the claim of the petitioners lest it prejudices the rights of respective parties. Liberty is granted to the parties to take recourse to the remedies available to them in accordance with law.

14. Notwithstanding the fact that various disputed question of facts have been raised and relied upon by respondent No.3-M.C. Panipat, this Court cannot be oblivious of the fact that the petitioners have pointed out an illegal practice that was adopted by the officials of the Engineering Wing of the respondent No.3-Municipal Corporation. The status report furnished by

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the respondent No.3 speaks only about the Show Cause Notice issued to the Officers. Even though they had suggested a possible collusion between the petitioners and the officials of the Engineering Wing, however, the respondent No.3 has chosen to maintain silence with regard to the action that needs to be taken against the officials of the Engineering Wing then Incharge of the affairs who are stated to have instructed the petitioners for the execution of the works and all others who joined together. Even though, no premium can be given to the petitioners for failing to secure the orders and ensure compliance of the procedure required under law, however, at the same time no premium can also be extended to officials of the Engineering Wing who are also presumed to be aware of the procedure required to be followed and yet chose to brazenly violate the statutory mandate. Even though a Show Cause Notice is stated to have been issued, however, the final outcome thereof has not been informed. It seems that the authorities have chosen to bury the issue to provide a safety shield to the officers of the Engineering Wing who were apparently actively involved in alluring the petitioners to execute the said works.

15. The Principal Secretary, Department of Urban Local Bodies is thus directed in the facts of the present case to ensure that an expeditious decision on the impending departmental proceedings is taken against the officials of the Engineering Wing who were then posted and who are stated to have connived/colluded with the petitioners to undertake the said works for them. Additionally, the possibility of making a reference to the State Vigilance Bureau for conducting an enquiry/Investigation into the matter be also examined and if need be, appropriate directions be issued. Compliance

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report shall be filed by the Principal Secretary/Additional Chief Secretary, Department of Urban Local Bodies within a period of 06 weeks from today.

Needless to mention that since the petitions in questions have remained pending since the year 2015, as and when an appropriate remedy is availed by the petitioners, the period during which the petitions have remained pending before this Court shall also be duly taken into consideration by the competent authority/Court while computing limitation.

The present petitions are accordingly dismissed.

To be listed for compliance.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 27, 2023

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No