

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

206

**CWP-4624-2016
Date of Decision: 12.12.2023**

M/s GSJ ENVO LTD.

..... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.... Respondents

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

Present: Mr. G.S. Rana, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

Mr. Sanjeev Soni, Advocate
for respondents No.2 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

1. Challenge in the present petition is to the order dated 22.12.2015 (Annexure P-18) whereby the petitioner company has been held responsible for damage and liable to pay compensation against the work of Operation and Maintenance. Consequently the release of balance security of Rs.22,40,000/- was hence denied.

2. A request for adjournment has been circulated by the counsel for the petitioner stating that he is not feeling well. However, a perusal of the order sheet shows that the matter is being adjourned repeatedly since January, 2020 on account of the request made by the counsel for the petitioner or due to his absence. No valid reasons is forthcoming as to why the matter ought to be adjourned especially when the writ petition pertains to the year 2016 in

which the reply had already been filed in the year 2017. The matter cannot be kept pending at the convenience of the parties for any indefinite period and needs to be adjudicate on the basis of the facts that are pleaded before the Court.

3. Even though proxy counsel has entered appearance on behalf of the counsel for the petitioner, however, he pleads that he has no instructions. Hence, this Court has proceeded ahead with the matter. It has been averred in the writ petition that the petitioner was allotted the balance work of construction, erection, testing, commissioning, operation of 152 MLD Sewage Treatment Plant based on UASB Technology at Balloke, Zone-C, Ludhiana under the Satluj Action Plan vide letter dated 22.12.2006 for a sum of Rs. 21,60,93,580/-. As per the terms and conditions of the Contract, the balance work was left incomplete by the previous contractor and was to be completed within the contractual period and the work allotted to the petitioner is claimed to have been satisfactorily completed as per the design by 22.08.2009 and the plant was handed over to the Department in a good running condition. It is averred that the period includes the construction of plant, stabilization and operation of maintenance of the plant for 09 months. The petitioner was instructed to run the plant for a further period upto 22.08.2009 as no agency was finalized for operation and maintenance of the plant. An accident occurred on 21.07.2009 due to heavy rain on the intervening night of 20/21.07.2009 during extended period which damaged chlorination tank, adjoining channels and boundary wall which was purely an outcome of natural calamity and no one could have been held responsible for the mishap/accident. It is averred that the damaged work was not within the scope of the petitioner. The respondents have invited tenders for repair work

on 03.08.2009 and after negotiations on 04.08.2009, the repair work was allotted to the petitioner vide work order No. 2764 dated 07.08.2009. It is contended that the petitioner successfully executed and completed the repair works and the petitioner was paid the full amount due and respect thereof. After the completion thereof, the respondents released some amount, however, they withheld a balance of Rs. 22,40,000/- of the security amount. The present petition was thus filed for seeking release of the said amount.

4. A short reply by way of affidavit of Gurdeesh Pal Singh, Executive Engineer, Division No.1, Punjab Water Supply and Sewerage Board had been filed wherein it has been averred that the petitioner was allotted the balance work of construction, erection, testing and commissioning of the aforesaid Sewage treatment works on 22.12.2006. The said work was completed on 03.04.2009, however, on the consent of both the parties, the period of operation of maintenance of the plant was extended upto 22.08.2009 on the same terms and conditions. The scope of work and technical specifications was duly mentioned in volume -II-C of the Tender document which included the following works:-

1.1.11 Round the Clock watch and ward of the entire premises including plants/machinery etc. will also be the responsibility of the contract.

1.1.16 In addition to scope of work defined above, operation & maintenance of following units, which are not included in the construction scope of this work, is also to be done by the contract.

a) Boundary wall of STP

b) Effluent channel from STP to Budha Nallah.

c) Land scaping & Forestation done on the Sewerage Treatment Plant.

d) Estate Water Supply, included tubewell & Pipe line etc.

5. Hence, the petitioner Contractor was responsible for round the Clock watch and ward of the entire premises including plant/machinery and due to callousness/negligence, the damage was caused to the plant on the intervening night of 21.07.2009 as there are no man power available at the plant to operate and open the gate of effluent channel due to which the chlorine contact tank, channels and boundary wall of the Sewerage Treatment Plant were damaged. A cost of Rs. 22, 40,000/- had to be incurred by the respondent department on repair of these damaged items.

6. While responding to the aspect that the incident in question took place on account of a natural calamity, it was averred that during the preliminary enquiry, the authorized representative of the petitioner appeared and got recorded his statement to the effect that the damage was due to the closer of the gates and it was the duty of the petitioner to operate the gates. Since no staff was posted at the time when the accident occurred, the loss was sustained by the respondent-department. The Enquiry Committee held the petitioner firm responsible for the loss.

7. A reference was also made to Clause 25 of the Contract Agreement as per which in the event of any dispute, the same was to be settled by way of an arbitration clause prescribed thereunder. The relevant extract thereof reads thus:

- i. *If any dispute or difference of any kind whatsoever shall arise between the PWSSB, its authorised representative and the Contractor/ bidder in connection with or arising out of this contract or the execution of work there under.*
- v. *All disputes or differences in respect of which the decision is not final and conclusive shall, at the request of either party made in a communication sent through registered -AD. Post, be referred to the sole arbitration of the Superintending Engineer of the circle concerned in the PWSSB, acting as such at the time of reference unless debarred from acting as an Arbitrator by an order of the PWSSB, in which event, the MD shall appoint any other technical officer not below the rank of Superintending Engineer to act as an Arbitrator on receipt of a request from either party.*
- vii. *The reference to the Arbitrator shall be made by the claimant party within 120 days from the date of dispute of claim arises during the execution of work. If the claim pertains to rates or recoveries introduced in the final bill the reference to the Arbitrator shall be made within six calendar months from the date of payment of the final bill to the Contractor/ bidder or from the date a registered notice is sent to the Contractor/ bidder to the effect that his final bill is ready by the Engineer In charge (whose decision in this respect shall be final and binding) whichever is earlier.*

8. Even though the aforesaid written statement was filed by the respondents on 30.05.2017, however, no rejoinder/replication was filed by the petitioner controverting the averments contained thereunder.

9. Having gone through the documents available on record and perused the same, the facts which emerge are that the damage to the sewerage Treatment plant occurred on the intervening night of 21.07.2009 and that a fact finding enquiry was held by the respondents wherein the statement of the representatives of the petitioner company was also recorded and they acknowledge that the lapse was on the part of the petitioner-company since there was no manpower deployed at the plant on the relevant date. The recommendation was accordingly made by the said committee for effecting recovery of the loss that was sustained by them. The finding of the said enquiry by the Committee are not subject matter of challenge before this Court in the present petition. Be that as it may, the agreement executed between the parties provides for an arbitration clause. The issue as to whether the loss sustained by the respondents was on account of natural calamity and/or on account of negligence on the part of the petitioner in discharging its obligations under the Contract are disputed questions of fact which cannot be gone into by this Court. The present petition, thus cannot be allowed at this stage. The same is accordingly disposed of with liberty to the petitioner to pursue his remedies as per the contract executed between the parties for recovery of the dues, if any.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 12, 2023
Vishal sharma

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