

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

221

**CWP-32077-2018
Date of decision: 18.01.2023**

GARG SONS ESTATE PROMOTERS PRIVATE LIMITED

.....Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present:- Mr. Nikhil Handu, Advocate
for the petitioners.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of writ in the nature of Mandamus directing the respondent No.4 to nominate/constitute the Empowered Standing Committee as envisaged in Clause 24.3 (III) of the Contract Agreement (Annexure P-3).

2. Counsel for the petitioner submits that the petitioner-company has been carrying on business operation under the name and style of “*Garg Sons Estate Promoters Private Limited*” and that the petitioner had submitted its bid for the contract regarding upgradation of Patiala-Sirhind Road and Patiala Bhadson Road viz. Chalaila-PMGSY (Pradhanmantri Gram & Sadak Yojna) scheme phase-VIII length 8.48 kilometers Package

PB No.1517 and maintenance of road for five years. After all the tendering procedure including negotiation was over, the bid of the petitioner was found to be most suitable and a letter of allotment dated 01.09.2009 was issued to the petitioner. The value of the work under the contract stood at Rs. 576.27 lakhs and the project was to be completed within a period of 09 months from the date of allotment. The petitioner fulfills the requisite the terms & conditions of the letter of allotment whereupon the contract (Annexure P-3) came into being. The respondent No.4 was obligated under Clause 21.1 of the contract to make available and unencumbered work site to the petitioner to undertake its project at the stage of commencement itself. It is further averred that the scope of the work included widening of the road and that the additional land is required for carrying out the above said activity of widening. The work of the petitioner was however stalled/prevented since there was standing crop next to the existing road. The same was duly intimated by the petitioner to the respondent No.4 vide letter dated 30.11.2009. The non-availability of the land for undertaking the widening activity was thus conveyed to the respondent-authorities.

3. The position remained unaltered for a prolonged period and the issue was raised again and again through repeated letters/reminders but to no avail. Various other problems as has been set out in the petition were also duly conveyed to the respondent-authorities but failed to evince any suitable response so as to enable the petitioner to undertake the project in question. Notwithstanding the lapse being on the part of respondent No.4, a liquidated damage @ 1% of the initial contract price per week was levied upon the petitioner w.e.f 30.06.2011 and communicated vide letter dated 08.07.2011.

4. Aggrieved of the above, the petitioner submitted a

representation dated 10.07.2013 to the respondent No.1 pointing out various deficiencies. However, no action was taken despite receipt of the above said detailed representation. The contract was eventually closed by respondent No.2 vide order dated 07.08.2014 after allegedly extracting an undertaking from the petitioner. The respondent No. 4 unilaterally prepared a final bill of the petitioner for various components of the work done and released the payment against the same on 30.09.2014. The said bill did not reflect the correct measurements and valuation of the work undertaken by the petitioner. Aggrieved thereof, the petitioner invoked the disputes redressal system/clause of the contract as envisaged in Clause 24. A claim was thus lodged before the Competent Authority. However, no decision was taken thereupon for a period of 45 days whereupon the petitioner preferred the said claims before the next authority envisaged under Clause 24.3 i.e. the Standing Empowered Committee. A prayer was thus made that the respondent-Department may be directed to constitute the Standing Empowered Committee so that the grievance of the petitioner is redressed.

5. Counsel for the respondent State on instructions from Mr. Bankesh Sharma, Executive Engineer, PWD (B&R) submits that Clause 24.3 of the Contract Agreement envisages an appeal to be preferred before the Standing Empowered Committee against the decision of the competent authority. In the present case, as no decision has been taken by the competent authority, hence, there is no occasion for examination of any dispute by the Standing Empowered Committee. She further informs on instruction that the Chief Engineer has been appointed as competent authority under Clause 24.1 of the Disputes Redressal System as stipulated in the Contract Agreement and that the said competent authority shall pass a

decision on the representation/claim submitted by the petitioner within a period of 45 days from today as envisaged. It is further submitted that appropriate steps for constitution of the Empowered Standing Committee envisaged under Clause 24.3 shall be undertaken in a time bound manner in the event any appeal is preferred by the petitioner against the order passed by the competent authority. In light of the aforesaid statement made by the learned counsel appearing on behalf of the respondent-State and on instructions from Mr. Bankesh Sharma, Executive Engineer, PWD (B&R). Counsel for the petitioner submits that the petitioner has been rendered infructuous at this stage.

Disposed of accordingly.

Needless to mention that the respondent shall remain bound by the statement made in the Court today. It is clarified that this Court has not examined the merits of the claim raised and the facts noticed above are only for reference and without expressing any opinion thereupon.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 18, 2023

Vishal Sharma

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