

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

227

CWP-36507-2019
Date of Decision: 16.02.2023

NARESH KUMAR

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Joginder Siwach, Advocate for
Mr. Rajeev Dev Sharma, Advocate
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

Mr. Rishav Soni, Advocate for
Mr. T.V.S. Lehal, Advocate
for respondents No.3 and 4.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of Certiorari for quashing the order dated 04.01.2016 (Annexure P-2) passed by the respondent No.3- Municipal Council, Dera Baba Nanak, District Gurdaspur whereby the respondent No.3 has declined the claim filed by the petitioner. The relevant extract of the same is reproduced hereinafter below:

“3. For the bills of work order No.34 dated 4/10/2010 issued by Municipal Council Dera Baba Nanak payment has been made as per the following:-

Sr. No.		Amount	Voucher Number	Dated	Security Not Refund
1.	359617/-	297403/-	92	08.06.2012	35962/-

2.	344861/-	285199/-	106	02.11.2012	34486/-
Total	704478/-	582602/-			20136/-

That the securities regarding the above-mentioned works are still due to be paid, which were stopped because the petitioner did not produce the records regarding the deposit of EPF due to the labour regarding the above works as per the law.

Here you are informed that in the meeting of the Municipal Council dated 20.08.2015 resolution number 33 dated 20.08.2015 in which divisional officer made his report that construction Park and beautification Dera Babba Nanak Ward No.5 work order No.15 dated 19.10.2012, that Sh. Naresh Kumar contractor was allotted work regarding above mentioned subject. This work was to be carried out of the grant issued by PSIDC. The outlay for the work was Rs.16.48 lakh. Till now work worth Rs.675,723/- has been completed. But the contractor was doing this work at a slow pace and there were shortcomings in this work and therefore this office directed the work to be done completely and correctly, but till now the contractor has neither completed the work nor has he correctly done the work. It is worth mentioning here that this work was to be done out of the grant received from the government and the government is also demanding the UC of this work. It seems that the above-mentioned contractor is deliberately doing this. In this manner the image of the Municipal Council is also getting damaged in the public. Therefore, it is recommended that all these be blacklisted and pending work be re-tendered

While passing the above-mentioned resolution unanimously that related contractor Naresh Kumar despite being issued work order No.94/15 dated 19.10.2012 despite the time period of 4 months given by him having elapsed only 1 Fountain and 8 pipes were brought and at some places this material being of a very inferior quality the divisional officer of the Municipal Council issued notice dated 11.12.2014 and 22.09.2014 through which the abovementioned contractor was duly notified, but even after

passage of such a long time he neither completed the work nor did he rectify the shortcomings point out by the divisional officer and the payment of Rs.675000/- which was made to Naresh Kumar, even that was paid in excess of the small amount of work done by him. Which should be investigated by any independent technical agency Due to this huge negligence of the contractor the city has been deprived from using the grant given by the government for public welfare and from having a beautiful park. And the money paid to the contractor has been misused. In this manner contractor Naresh Kumar is blacklisted by the house unanimously. And all his securities which are there with the Municipal Council are forfeited. And for misusing of money of the Municipal council by the contractor whatever legal action is made out, should be taken. And regarding the above- mentioned work whatever express payment has been made that also be recovered by the Municipal Council.”

Pursuant to the notice, issued to the respondent, a reply on behalf of the respondents No.3 and 4 has also been filed, wherein the following stand has been taken:

“4. That it would be pertinent to mention here that it is while doing the above said work of beautification and park of war no 5, the petitioner faltered. The outlay of the work was Rs 16.48 lakh but till 2015 work of only Rs.6,75,723/- was completed and it was found that the petitioner deliberately was delaying the work and that he had not done the work correctly as well which is why a resolution was passed dated 04.10.2015, wherein the petitioner was blacklisted by the House of the answering respondent. The said Resolution has been annexed as Annexure P-3, which was confirmed by the Department. It would e pertinent to mention here that the petitioner has not challenged the said resolution, i.e. even if the Writ Petition is allowed the said resolution still stands, wherein the petitioner has been blacklisted and his securities were to be confiscated.

5. Further it would be pertinent to mention here that the petitioner has challenged the Speaking Order dated 04.01.2016, wherein it has specifically been mentioned that securities regarding the work orders have been stopped as the petitioner did not produce the records regarding the deposit of Employers Provident Fund due to the labour regarding the work order but there is not even a single mention in the Writ petition qua the said amount deposited or not which is another reason for withholding the securities of the petitioner.

6. That the petitioner himself is in the wrong here and the present petition should be dismissed on the above mentioned grounds that one the petitioner has been blacklisted for not completing the works in time and the other that the petitioner has not shown that he has paid the EPF due.”

Even though the aforesaid reply had been filed on 08.01.2021, however, no rejoinder controverting the aforesaid factual assertions has been filed by the petitioner, even after expiry of more than two years.

Since disputed questions of facts are involved in the present petition, which relate to determination of *inter se* rights as per the work order, the present writ petition is disposed of as not pressed at this stage.

Liberty is, however, granted to the petitioner to take recourse to the alternative remedies available to him for redressal of his grievance(s) in accordance with law.

16.02.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No