

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

225

**CWP No.37009 of 2019
Date of Decision: 31.10.2023**

M/s Prashant Associates

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kamaldeep Singh Sidhu, Advocate for the petitioner.

Mr. Sanjeev Soni, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J (ORAL)

1. The petitioner-firm by way of this petition has approached this Court for issuance of a writ in the nature of mandamus directing the respondents to pay the amount payable to the petitioner for construction of the building of the Industrial Training Institute (Women) at Dera Bassi, District SAS Nagar, in pursuance of the agreement dated 19.06.2016 (Annexure P-1) and work allotment memo dated 19.07.2016 (Annexure P-2).

2. Learned counsel for the petitioner *inter alia* contends that the petitioner-firm was awarded the work for the construction of the building of the Industrial Training Institute (Women) at Dera Bassi after accepting the bid of the petitioner and allotment of the tender to the petitioner-firm by the respondents. The petitioner-firm has started the construction work and on completion of a part of the construction, it raised first running bill dated 10.08.2016 (Annexure P-3) of Rs.12,22,972.32 (RA-1). During the construction of the site, a dispute had arisen between the respondents with a third party. Finally, the parties approached this Court and a stay was

granted on 26.08.2016 in CWP-7177-2016. Learned counsel for the petitioner-firm contends that prior to the issuance of stay order, the firm had already executed certain works in furtherance of construction of the building. Towards the first running bill dated 10.08.2016, 75% partial payment i.e. Rs.8,34,678/- was made to the petitioner-firm on 07.10.2016. Thereafter, second running bill dated 13.10.2016 for Rs.9,25,512/- (RA-2) and third running bill dated 20.10.2016 for Rs.2,34,820/- (RA-3) were submitted to the respondents for the work carried out at the site by the petitioner-firm.

3. Learned counsel for the petitioner-firm refers to the running bills and the specific response filed by respondents No.1 to 3 in their written statement. The running bills dated 10.08.2016, 13.10.2016 and 20.10.2016 have been duly verified and endorsed by the consultant hired by respondent No.3 as per the agreement. As such, learned counsel for the petitioner prays for release of the payment, the details of which have been re-produced as under:-

S. No.	Particulars	Amount
1.	Earnest Money	Rs.4,00,000/-
2.	Bill (RA-1)	Rs.12,22,972/-
3.	Bill (RA-2)	Rs.9,25,512/-
4.	Bill (RA-3)	Rs.2,34,820/-
5.	Watchman salary	Rs.64,000/-

4. There is no justification for non-payment of the amount due for the works already completed by the petitioner-firm in construction of the site before issuance of the stay order dated 26.08.2016 (supra).

5. Per contra, learned State counsel opposes the prayer of the petitioner for release of the amount indicated above on the ground that after passing of the stay order dated 26.08.2016, the petitioner was directed to

stop the work and lift its material lying on the site and to submit its bills regarding the construction work and miscellaneous expenditure. The petitioner-firm has already been paid Rs.8,34,678/- against the first running bill dated 10.08.2016 and there is no further entitlement as no amount was due towards the petitioner-firm for any pending work.

6. I have heard learned counsel for the parties at length and with their able assistance, perused the record of the case file.

7. The grievance raised by the petitioner-firm in the present petition is for non-payment for the work executed by it and the dispute which was raised by the third party would not suffocate the right of the petitioner. In pursuance to the agreement between the parties (Annexure P-1), the petitioner-firm has deposited its earnest money of Rs.4,00,000/- as a guarantee and also engaged labour/work force for the construction of the site in question.

8. A perusal of the agreement (Annexure P-1) indicates that there is a clear cut recital in the agreement that the employer shall pay the contractor such sums as shall become payable hereunder at the time and in the manners specified in the schedule of payment. On the basis of work executed at the site, the petitioner-firm had submitted three running bills (RA-1 to RA-3) of these works for which the aforementioned running bills were duly verified by the respondents through the consultant hired in terms of the agreement (Annexure P-1). Both the parties had acted upon the agreement. The respondents had allotted work vide memo dated 19.07.2016 (Annexure P-2) and the petitioner-firm had deposited the earnest money by way of demand draft dated 13.07.2016. As such, a binding contract between both the parties has been arrived at on the basis of the agreement (Annexure P-1). In terms of Section 7 of the Indian Contract Act, both the

parties are bound to perform their part of the agreement and the respondents cannot be allowed to wriggle out of the liability to make payments to the petitioner-firm towards the actual work executed by the petitioner-firm on the site.

9. In view of the facts and circumstances of the case, the present petition is disposed of with a direction to respondent No.2 to verify the actual work executed at the site by associating the consultant engaged in terms of the agreement dated 19.06.2016 (Annexure P-1). Respondent No.2 shall also provide a personal hearing to the representative of the petitioner-firm before taking any decision in this context.

10. Needless to say that in case any amount is found to be due towards the petitioner-firm on due verification by the consultant concerned, the balance payment thereof shall be released within a period of three months.

31.10.2023

D.Bansal

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No