

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

109

CWP-1039-2024
Date of Decision: 18.01.2024

CITY PROMOTER AND BUILDWELL PVT LTD

... Petitioner

VERSUS

HARYANA STATE ROADS AND BRIDGES DEVELOPMENT
CORPORATION LTD AND OTHERS

... Respondents

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

Present: Mr. D.K. Singal and Mr. Rahul Garg,
Advocates for the petitioner.

Mr. Vivek Saini, Advocate
for respondents No.1 and 2.

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No.3 and 4.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer made in the present petition is for directing the respondents to furnish a panel of three names to the petitioner to select a non-official member of the Standing Empowered Committee (SEC) and to take all further actions culminating in constitution of Standing Empowered Committee and also to direct respondent No.2- Haryana State Roads and Bridges Development Corporation to release the amount payable to the petitioner in terms of their order dated 14.06.2023 passed by the respondents.

Learned counsel for the petitioner contends that the petitioner-Company had participated in the tender process for the construction of Housing Complex in the Campus of Rajeev Gandhi Thermal Power Project at

Village Khedar in District Hisar. Having found the bid of the petitioner to be most responsive, the contract was awarded to the petitioner and an agreement was executed between the parties on 08.11.2008 valued at Rs.22,78,84,668/-. The stipulated completion period was 18 months from the date of allotment. The work in question was satisfactorily executed by the petitioner-Company, in terms of various clauses of the agreement, and a completion certificate was issued to the petitioner on 20.02.2012. Certain disputes, however, arose between the parties in relation to the payment. Clause 24 of the Agreement provides for a Disputes Redressal System. The said clause is extracted as under:

"Clause 24. Dispute Redressal System

24.1 *If any dispute or difference of any kind what-so-ever shall arises in connection with or arising out of this Contract or the execution of Works or maintenance of the Works there under, whether before its commencement or during the progress of Works or after the termination, abandonment or breach of the Contract, it shall, in the first instance, be referred for settlement to the competent authority, described along with their powers in the Contract Data, above the rank of the Engineer. The competent authority shall, within a period of forty-five days after being requested in writing by the Contractor to do so, convey his decision to the Contractor. Such decision in respect of every matter so referred shall, subject to review as hereinafter provided, be final and binding upon the Contractor. In case the Works is already in progress, the Contractor shall proceed with the execution of the Works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.*

24.2 *Either party will have the right of appeal, against the decision of the competent authority, to the Standing Empowered Committee constituted by MD, HSRDC the cost of which will be borne by both the parties on 50:50 basis. The payment will be made at the rate of Rs 1000/- per member per day.*

24.3 *The composition of the Empowered Standing Committee will be:*

- I** *One official member, Chairman of the Standing Empowered Committee, not below the rank of Chief Engineer of the PWD (B&R) Department;*
- II** *One official member not below the rank of Superintending Engineer; and*
- III** *One non-official member who will be technical expert not below the rank of Superintending Engineer selected by the Contractor from a panel of three persons given to him by the Employer.*

24.4 *The Contractor and the Employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the Contractor and the Employer for oral arguments for a specified period. The Empowered Committee shall give its decision within a period of ninety days from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.*

24.5 *The decision of the Standing Empowered Committee will be binding on the Employer for payment of claims up to five percent of the Initial Contract Price. The Contractor can accept and receive payment after signing as "in full and final settlement of all claims". If he does not accept the decision, he is not barred from approaching the courts.*

Similarly, if the Employer does not accept the decision of the Standing Empowered Committee above the limit of five percent of the Initial Contract Price, he will be free to approach the courts applicable under the law."

It is contended that the petitioner submitted his representation for settlement of the dispute invoking Clause 24.1 of the Agreement on 09.03.2016, giving details of the genesis of the claim, its quantification and the reasons for the same. However, no response was received from the respondents. A further request was submitted vide letter dated 31.01.2019 and the claim was thereafter revised vide letter dated 20.06.2019.

Pursuant to the order passed by the Managing Director of the Haryana State Roads and Bridges Development Corporation, the claim of the petitioner was verified at site by a team of officers and a comprehensive report was submitted recommending making of payment to the tune of Rs.1,18,62,265/-. The respondents continued to sit over the matter despite the abovesaid report and passed the speaking order only on 14.06.2023 rejecting other claims except claim No.1. Claim for the amount of Rs.1,18,62,265/- was allowed and held admissible as per the speaking order passed by the respondents. The other claims of the petitioner were, however, rejected by the respondents.

Aggrieved of the abovesaid rejection, the petitioner submitted a letter for preferring an appeal before the Standing Empowered Committee in terms of Clause 24.2 of the Agreement. Even though the said request followed by the reminders had been sent, however, the Standing Empowered Committee is not being constituted by the respondents thereby causing prejudice to the petitioner. Additionally, even though a period of more than six months has

been passed after the passing of order since 14.06.2023, however, the awarded amount too has not been released in favour of the petitioner. The petitioner has thus approached this Court for the twin reliefs- firstly, the release of the undisputed payment as contained in the speaking order passed by the respondent-Authorities themselves and secondly for issuing directions to the respondents to constitute a Standing Empowered Committee to look into the grievance of the petitioner.

Notice of motion.

Mr. Vivek Saini, Advocate, Haryana accepts notice on behalf of respondents No.1 and 2.

Mr. Pankaj Mulwani, DAG, Haryana accepts notice on behalf of respondents No.3 and 4.

Counsel for respondents No.1 and 2 is not in a position to controvert or offer any explanation as to how non-payment of the amount despite its acceptance and order of the respondents would be justified. There is no satisfactory explanation for the inordinate delay that has been caused in release of the said payment, notwithstanding that the initial report was submitted by the officials of respondent No.4 in the year 2019, which has finally culminated in the speaking order dated 14.06.2023. Learned counsel for respondents No.1 and 2 is further not in a position to dispute that the Clause 24.2 of the Agreement executed between the parties provides for a Standing Empowered Committee to look into the issues which remained unredressed. It is uncontroverted that the claims, other than claim No.1, raised by the petitioner have been declined by the respondent-Authorities, giving rise to a

dispute at the behest of the petitioner which can only be adjudicated/espoused before the Standing Empowered Committee.

Taking into consideration the facts noticed above and also the fact that a person cannot be left remediless and the respondent –Department also cannot be allowed to prolong the grievance of a person by not providing for the remedy of the appeal by not adhering to the procedure that has been contractually agreed between the parties. Merely because the respondents have declined the claim of the contractor/petitioner pertaining to certain heads would not mean that the grievance stands settled. The remedy(ies) perceived under the contract ought to be made available to a party aggrieved. There is no reason as to why Standing Empowered Committee, stipulated in the contract executed between the parties, should not be constituted for extending a remedy to the petitioner to espouse his grievance and seek redressal thereof. Further, since the respondents have themselves acknowledged the liability of Rs.1,18,62,265/-, there is also no reason as to why the above said amount ought not to have been released in favour of the petitioner notwithstanding a subsequent dispute being raised by the petitioner qua rejection of the remaining claims.

The present petition is accordingly disposed of at this stage without commenting on the merits of the case set up by the petitioner with regard to the legitimacy and validity of the remaining claims, with a direction to the respondents to release the amount of Rs.1,18,62,265/- as admitted by them in the speaking order dated 14.06.2023 within a period of three months from the date of receipt of a certified copy of this order. If the said amount is not released within the abovesaid period, the petitioner shall be entitled to

interest of 6% per annum from the date of filing of the present petition till the release thereof. The dispute/question of other further relief arising therefrom would be kept open. Additionally, the respondents shall also take effective and appropriate steps for constituting the Standing Empowered Committee stipulated under the contract for redressing the subsisting grievances of the petitioner. Let the above be also done within a period of 3 months as noticed above.

Petition stands disposed of accordingly.

JANUARY 18, 2024
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(VINOD S. BHARDWAJ)
JUDGE

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