

2024:PHHC:091970



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

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**CWP-22905-2021
Date of Decision: 22.07.2024**

SHAMSHAD ALI KHAN

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

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

Present: Mr. Suvir Kumar, Advocate
for the petitioner.

Mr. Arvind Seth, Advocate
for respondent No.1- Union of India.

Mr. Saurav Verma, Addl. A.G., Punjab
for respondents No.2 to 5.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 12.07.2018 (Annexure P-34) passed by respondent No.3 – Executive Engineer, Water Supply and Sanitation Division, Malerkotla, District Sangrur, whereby the respondent-State, while considering the claim of the petitioner, as raised in the legal notice and in compliance to the order dated 11.05.2018 passed by this Court in CWP-11855-2018, has dismissed the claim of the petitioner.

It is specifically averred that all due payments have already been made to the petitioner and no payment is now due against the works carried out by the petitioner and rather the Department is entitled to recover the balance



penalty amount of Rs.10,320/-. The operative part of the order dated 12.07.2018 reads thus:

“I have considered the submissions made in the representation dated 17.5.2018 and have gone through the record of the entire Pilot Project. As aforesaid, the petitioner was allotted the work under National Drinking Water Security Pilot Project, Block Dhuri, District Sangrur, Punjab vide letter no. 5609 dated 03.07.2012 issued by Executive Engineer, DWSS Malerkotla. As per the Agreement, the petitioner was required to carry out the activities of the Pilot Project in 42 villages of Block Dhuri within a period of 2 years but he could not carry out the activities as stipulated in the Agreement. Under the agreement reached out between the parties, the activities of the Pilot Project were to be carried out in 42 villages of the-block but as per the report submitted, the petitioner carried out the same for only 14 tins, of villages against the target of 42 villages whereupon a meeting was- held on 19.10.2012 at 11:30AM under the Chairmanship of Secretary, Govt of Punjab, DWSS, to review the progress of the Support Organization for implementation of National Drinking Water Security Plan in over exploited block Dhuri Distt. Sangrur which was also attended by the petitioner Shamshad Ali Khan. In the meeting, the petitioner promised to complete the work by way of arranging the complete staff till 22.10.2012, copy of the proceedings of the meeting is attached herewith as Annexure R-1 In view of the undertaking given by the petitioner (Annexure R-1), a decision was taken in the meeting that no payment shall be made till he arranges the complete staff for carrying out the activities of the Project as per the terms of the Agreement.

Despite all this, the petitioner did not submit the detail of the vehicles and office accommodation to the undersigned and rather



submitted the travelling bills without ever maintaining the log books. The travelling bills submitted for Rs. 35,000 to Rs. 10,000/- per month were not payable as no log book was found maintained which was in violation of the Agreement. The log books were not submitted in spite of the objection raised on the bills nor did the petitioner appoint the required staff as undertaken in the meeting as aforesaid. The team leader and engineering facilitator also remained absent from duty w.e.f. 17.12.2012 to onwards which is evident from office letters no. 4462 dated 12.6.2014 (Annexure R-3), No. 6082 dated 1.8.2013 (Annexure R-4 and letter no. 5265 dated 21.6.2013 (Annexure R-5) In view of all the failures on the part of the petitioner, a penalty to the tune of Rs. 51,13,207/- was imposed vide an order No. 8111 dated 22.12.2014 copy of which is annexed as Annexure R-6.

In view of the penalty having been imposed after following due process of law and in terms of the Agreement between the parties, no payment is outstanding to be paid to the petitioner Shamshad Ali Khan Support Organization against the work carried out by it. Even no representation with regard to penalty for non performance was submitted as per the stipulation contained in Clause 15 of the Agreement which provides that "penalty for non engagement of the required persons shall be levied @ 20% of the man month cost for the first week and 10% for every additional week." (Annexure R-7). Clause 15 Page 17 of the Agreement further provides that "in the event of any dispute arising between the parties hereto in respect of any matter compromised in the contract, the same shall be adjudicated only by a competent court having jurisdiction over the place where the contract is awarded and Agreement is concluded and by no other court or authority". That vide letter bearing-no. 8111 dated 22.12.14 as referred to above, since the work had not been completed within stipulated



period, the quorum of Support Organization team was never completed even till the completion date i.e. 2.7.2014, services of Engineering Facilitator were not provided by the organization during the period from 17.12.2012 to 02.07.2014 and that of Team Leader from 07.6.2013 to 2.7.2014, the organization was informed that as per the terms and conditions of the Agreement, penalty for non-engagement of required staff shall be levied @20% of the Man month cost for the first week and @ 10% for every additional week. As time was the essence for completion of the project, penalty for non-performance as per the work programme was to be levied @ 5% of the total bill claimed However, the total penalty was not to exceed the total cost of the Agreement.

In view of the provisions of the Agreement, a penalty to the tune of Rs.5,11,320/- as calculated was imposed out of which a sum of Rs. 5,0,1000/- (the details of which are attached herewith as Annexure R-8) stood adjusted/deducted from the amount of the bills submitted by the petitioner leaving a balance amount of Rs. 10,320/- outstanding against the petitioner. Therefore, there is no merit in the claim raised by the petitioner in its representation dated 17.5.2018.

It is pertinent to mention here that the petitioner had moved an application before SE, Water Supply & Sanitation Circle, Sangrur vide letter no. 2128 dated 13.2.2015 whereupon the SE, waived off the penalty but order of waiving off penalty was recalled as said SE was not competent to waive off the penalty amount as Arbitrator. Therefore, the order of waiving of penalty was cancelled / recalled by the CE (North) Punjab, DWSS, Patiala vide letter no. jss/k(d-3)/4061 dated 26.8.2015.

In view of the position explained above it is evident even from Annexure R-9 too (which contains the details of work allotted, item wise rates, work done and the payments made as per



work done) that all the due payments have already been made to the petitioner organization and no payment is now due to it against the works carried out and rather the department is entitled to recover balance penalty amount of Rs.10,320/-. Hence the claim raised by the petitioner organization is hereby rejected.”

The respondents-State of Punjab have filed its specific reply wherein it has stated as under:

“2. That in this regard, it is most respectfully submitted that the brief facts of the case are that the petitioner's support Organization was allotted work under National Drinking Water Security Pilot Project, Block, Dhuri, District Sangrur (Punjab) vide letter no. 5609 dated 3.7.2012 issued by Executive Engineer, DWSS, Malerkotla. Copy of letter is attached as Annexure R-1 As per the agreement the petitioner was required to carry out the activities of the pilot project in 42 villages of Block Dhuri within a period of two years but petitioner could not carry out the same as stipulated in the agreement and his payment was stopped whereupon the petitioner filed the Civil Writ Petition No. 11855 of 2018 with the prayer for issuance of a writ in the nature of mandamus directing the respondents to release the payment of the bill submitted by petitioner in respect of impugned work. As aforesaid, the said CWP culminated in to an order dated 11.5.2018 by virtue of which, a direction was issued to consider his representation as contained in the legal notice. Respondents have considered the submission made in representation dated 17.5.2018 and have gone through the record of the entire Pilot Projects. But as per the report submitted the petitioner carried out the same for only 14 numbers of villages against the target of 42 villages, whereupon a meeting was held on 19.10.2012 at 11.30 AM under the Chairmanship of Secretary, Govt. of Punjab, DWSS, to review



the progress of the support organization for implementation of National Drinking Water Security Plan in over exploited block Dhuri, District Sangrur which was also attended by the petitioner. In the meeting the petitioner promised to complete the work by way of arranging the complete staff till 22.10.2012. In view of the undertaking given by the petitioner, a decision was taken in the meeting that no payment shall be made till petitioner arranges the complete staff for carrying out the activities of the project as per the terms of the agreement.

3. That despite all this, the petitioner did not submit the detail of the vehicles and office accommodation to the respondents and rather submitted the travelling bills without ever maintaining the log books. The travelling bills submitted for Rs. 35,000/- to 40,000/- were not payable as no log book was found maintained which was in violation of the agreement. The log books were not submitted inspite of the reminder issued vide office letter no. 5268 dated 21.6.2013 (Copy of letter is attached as Annexure R-2) nor did the petitioner appointed the required staff as undertaken in the meeting as aforesaid. The team leader and engineering facilitator were also remained absent from duty w.e.f. 17.12.2012 to onwards which is evident from office letters no.4462 dated 12.6.2014, 6082 dated 1.8.2013 and letter no.5265 dated 21.6.2013. Copy of letters are attached as Annexure R-3 to R-6. In view of all the failures on the part of the petitioner, a penalty to the tune of Rs.5,11,320/- was imposed vide order no.8111 dated 22.12.2014. Copy of order/letter is attached as Annexure R-7.

4. That in view of the penalty having been imposed after following due process of law and in terms of the agreement between the parties, no payment is outstanding to be paid to the petitioner's Support Organization against the work carried out by it. Even no representation with regard to penalty for non



performance was submitted as per the stipulation contained in clause 15 of the Agreement which provides that "Penalty for non engagement of the required persons shall be levied 20% of the man month cost for the first week and 10% for additional week." Copy of agreement is attached as Annexure-R-8. Clause 4(ii) of the agreement further provides that "In the event of any dispute arising between the parties hereto in respect of any matter compromised in the contract, the same shall be adjudicated only by a competent court having jurisdiction over the place where the contract is awarded and agreement is concluded and by no other court or authority. That vide letter bearing no. 8111 dated 22.12.2014 as referred to above since the work had not been completed within stipulated period, the quorum of Support Organization team was not completed at the end of completion dated i.e. 2.7.2014, service of Engineering Facilitator were also not provided by the organization during period from 17.12.2012 to 2.7.2014 and that of Team Leader from 7.6.2013 to 2.7.2014, the organization was informed that as per the terms and conditions of the agreement, penalty for non engagement of required staff shall be levied @ 20% of the month cost for the first week and @ 10% for every addition week. As time was the essence for completion of the project, penalty for non performance as per the work programmed was to be levied @ 5% of the total bill claimed. However, the total penalty shall not to be exceeded the total cost of the agreement.

5. That in view of the provision of the agreement, a penalty to the tune of Rs.5,11,320/- as calculated was imposed out of which a sum of Rs.5,01,000/- stood adjusted/deducted from the amount of the bills submitted by the petitioner leaving a balance amount of Rs.10,320/ outstanding against the petitioner. Therefore, there is



no merit in the claim raised by the petitioner in its representation dated 17.5.2018.

6. That it is pertinent to mention here that the petitioner had moved an application before SE, Water Supply & Sanitation Circle, Sangrur vide letter no.2128 dated 13.2.2015 whereupon the SE, waived off the penalty but order of waiving off penalty was recalled as said SE was not competent to waive off the penalty amount as arbitrator. Copy of letter is attached as Annexure R-9. Therefore, the order of waiving of penalty was cancelled/recalled by the CE (North) Punjab, DWSS, Patiala vide letter no.jss/k(d-3)/4061 dated 26.8.2015.”

It is evident that even though the aforesaid reply was filed by the respondents-State of Punjab on 20.05.2022 but despite a lapse of more than two years since then, no replication controverting the specific stand of the respondents-State of Punjab has been filed.

Counsel for the petitioner has also fairly conceded that currently there is no document available on record on the basis whereof it can be ascertained that the liability is admitted and is undisputed.

Having heard the learned counsel for the parties and in view of the specific stand adopted by learned counsel for the petitioner, I am of the opinion that question of liability of respondents, if any, towards the petitioner would involve disputed questions of facts, which cannot be gone into and/or examined by this Court at this stage.

Hence, for the foregoing reasons, the present petition is disposed of with liberty to the petitioner to take recourse to the alternative remedies available to him in accordance with law.



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Needless to mention that the period during which the present petition remained pending before this Court shall be taken into consideration while computing limitation in case the petitioner opts to take recourse to any such alternative remedy.

JULY 22, 2024
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(VINOD S. BHARDWAJ)
JUDGE

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