

2024:PHHC:070344



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

(Sr.247+248+249+250+251)

Date of decision: 02.05.2024

(1)

CWP-8763-2023

ASHISH MEHRA

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

(2)

CWP-8780-2023

THE SONGAL SARAL COOPERATIVE L AND C SOCIETY LTD

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

(3)

CWP-8788-2023

THE SONGAL SARAL COOPERATIVE L AND C SOCIETY LTD

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents



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(4)

CWP-8794-2023

THE SONGAL SARAL COOPERATIVE L AND C SOCIETY LTD

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

(5)

CWP-8871-2023

SATPAL

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present: - Mr. Ivneet Singh Pabla, Advocate
for the petitioner(s).

Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. Vivek Saini, Advocate
for respondents No.2 to 6-MICADA.

VINOD S. BHARDWAJ, J. (Oral)

1. A batch of 05 writ petitions are being decided by a common Judgment since the issues and facts involved in these writ petitions are identical. A reference is, however, made to facts from **CWP-8788-2023**

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titled “*The Songal Saral Cooperative L and C Society Ltd. versus State of Haryana and Others*”.

2. The brief facts of the case are that the petitioner-Society was allotted the work by respondent-Department for laying “Underground Pipeline of water course at outlet RD 10200 Tail, Koel Sub. Minor”, by respondent No. 3 i.e. Chief Engineer, vide his letter dated 18.02.2021. Pursuant to the allotment of the said work, the petitioner-Society commenced execution of the work at the site. However, at the time of execution of the work, there were certain issues and objections raised by the farmers’ through whose land the work was to be executed. They preferred an application before the Divisional Canal Officer for alteration of the work of laying of underground Pipeline of water course. The said petition filed by the farmers was dismissed by the Divisional Canal Officer. Aggrieved of the dismissal of the petition by the Divisional Canal Officer, the farmers preferred an appeal before the Superintending Canal Officer under Section 20(1) and (3) of the Haryana Canal and Drainage Act, 1974. Vide order dated 17.06.2021, the Superintending Canal Officer directed as under:-

Decision:-

The appeal case cited above was examined thoroughly. After hearing the arguments of appellant, respondent shareholders and Zildar/Canal Patwari on behalf of D.C.O. CAD Division, Kaithal, perusal of the chak plan, the report of the subordinate staff and other data made available to this Court at the time of hearing, the decision is as under:-



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1. *Extension in lining from point H (92// 18 X 24) towards North upto point H1A (86// 18 X 24) in a length of about 5 killa is hereby approved in the interest of development of better irrigation.*
2. *Extension in lining from point G (92//16X91//21) towards North upto point G1A (92// 5 X 91 //10) In a length of 3 killas is hereby approved in the interest of development of better irrigation.*
3. *Extension in lining from point (93// 16 X 92 //21) towards North upto point 1 (85// 16 X 86 //21) in a length of 5 Killas is hereby approved in the interest of developinent of better irrigation.*
4. *Extension in lining from point L (93//21X97//2) towards west upto point M (94// 25 X 97 //1) in a length of 1 Killa then towards north upto point N (94// 15 X 93 //20) in a length of 2 killas total in a length of 3 Killas is hereby approved in the interest of development of better irrigation.*
5. *The demand of Sh. Shamsher S/o Sh. Ramkala has already been decided at Sr. No. 3.*

The decision is subject to the condition that the expenditure may not let to be exceeded from the prescribed norms and further it is decided that an affidavit may also be obtained from the land owners through whose land the extension of lining of water course stated above is to be made, in respect of providing land in width of 2 Karams without any compensation, in case where the land of water course has not been reserved by the consolidation department. The decision may be conveyed to all concerned as per rule.”

3. As a result of the aforesaid direction, there was an increase in the scope of work. The petitioner executed the said work in accordance with the revised schedule and as per the directions given by the Engineer-in-

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charge. The execution thereof was duly recorded by the authorities in the Measurement Book. However, the payment with respect to the increase in the scope of work, in terms of the order passed by the Superintending Canal Officer, was however not released. The Executive Engineer, MICAD Circle, Kaithal sent a letter No. 1614/1-WE dated 13.07.2022 to the Superintending Engineer, MICAD Circle, Kaithal, seeking approval of the revised estimate for the increase in the scope of work. The relevant extract of the letter reads thus:-

No. 1614/1-WE

Dated 13.07.2022

To

The Superintending Engineer,
MICAD Circle,
Kaithal

*Subject : Revised Estimate for laying underground
RCC pipe line in a watercourse of outlet
RD-10200-TL Koel Sub Minor.*

*Ref:- Your good office letter No. 4277/3-W
dated 10-11-2021.*

*Above cited revised estimate as received
vide your letter No. under reference is resubmitted
herewith the reply that in-continuation to this office
letter No. 1584/1-WE dated 06-09-2021, it is
submitted that tender rates of the work RD-10200-
TL Koel Sub Mr. was approved vide Chief
Engineer, MICADA Haryana, Panchkula letter No.
362/36-W dated 18-02-2021 for the quantity
mentioned in estimate vide Chief Engineer,
MICADA Haryana, Panchkula letter No.*

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3216/30W dated 06-06-2018 where in clause 10/11 depicts the limit criteria of 16.77% above DTR.

In this regard, it was ensured that tendered work upto the quantity of sanctioned estimate did not cross the limit of 16.77% above DTR as per rules, but on the demand of farmers, and after approval of competent authority vide S.C.O. MICAD Circle. Kaithal letter No. 3-4/Rev. dated 17-06-2021, extension work was got executed for the same items and at same tender rates as re-tendering again for the same work and for small quantity was not justified keeping in view the time limits and nature of work being seasonal. Moreover limit of 16.77% above DTR was for the specified quantities of the original sanctioned estimate for which tender was floated and this can vary on the extensions.

Now approval of revised estimate as per past practice of the department is required keeping in view that quantities of various items has been got executed on the same approved tendered rates of the respective item. The performa for revised estimate has been filled as desired by the higher authority and enclosed herewith the revised estimate. The excess length of this watercourse i.e. 3190 rft has been adjusted against the saving of watercourse RD-15850-R, Shamdo Mr. which is also falls in the list of 660 Nos. watercourses instead of watercourse outlet RD-30400-Tail Gumthala Mr. already intimated in the explanatory memo.

An early sanction of the revised estimates is requested, please.”



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4. The said letter was thereafter forwarded by the Superintending Engineer to the Chief Engineer, MICADA, Haryana who constituted a Committee comprising of four Superintending Engineers of different Circles. The said Committee was called upon to submit a report as regards the revised estimates for approval by the competent authority qua the increase in scope of work.
5. In compliance to the said order, the Committee submitted its report vide letter dated 16.09.2022. In the said detailed report, the Committee made a report as regards four works i.e. RD-10700-L, Sangarpura Minor, RD 44955-R, Rajound Disty, RD 10200-LT, Koel Minor and RD 23500-R, Shamdo Minor. The same is extracted as under :-

1	RD-10700-L, Sangarpura Mr.	<i>The amount of the revised estimate has been increased mainly due to extension of RCC pipe length of 2838 Rft and the extension was approved vide SCO decision on the demand of farmers during execution of the work. The earthwork has also been increased due to the reason that the original estimate was sanctioned with the provision of vertical earthwork section without taking side slopes but as per site conditions at more depth stability of vertical side slopes was not practically possible, so the earthwork qty increased due to side slopes and increase in average depth of trenching.</i>
2	RD-44955-R. Rajound Dy	<i>The amount of the revised estimate has been increased only due to execution of watercourse in UGPL 4730 ft against approved UGPL length of 1109 ft. as the farmers adamant for executon of watercourse in UGPL and given their consent also.</i>
3	RD-10200-Ft Koel Minor	<i>The amount of the revised estimate has been increased mainly due to extension of RCC pipe length of 3190 Rft and the extension was approved vide Sco decision on the demand of farmers execution of work, the earth work has also been increased due to the reason that the</i>



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		<i>original estimate was sanctioned with the provision of vertical earthwork section without taking side but as per site conditions at more depth stability of vertical side slopes was not practically passable so the earthwork qty increased due to side slopes and increase in average depth of trenching.</i>
4	<i>RD-23500-R Shambo Minor</i>	<i>The amount of the revised estimate has been increased due to execution of of extra holdi,s so the qty of items like earthwork. Brickwork cement plaster, PVC pipes for nakka etc. has been increased on approved tender rates.</i>

6. The above said Committee thus noticed that the increase in the scope of work in relation to the Koel Minor was on the demand of the farmers and that the earth work was also increased in addition to the extension of the RCC pipe length. A recommendation was thus made for approval of the revised estimates.

7. Counsel submitted that despite the aforesaid report having been submitted by the Committee, verifying that there was an increase in the scope of the work and that the same had been carried out at the asking of the Executing Officers/Project Engineer-in-Charge after order by the Superintending Engineer to meet the requirements of the farmers, the payment was not released. The petitioner thus filed CWP-26713-2022 for seeking release of the said payment. The above said writ petition was disposed of by this Court vide order dated 22.11.2022, directing the respondents to take a decision on the representation dated 09.11.2022 and pass a reasoned and speaking order thereupon.

8. That before passing of the order in compliance to the directions given by this Court vide order dated 22.11.2022, the Executive Engineer, MICAD Division, Kaithal constituted a Committee for comparative analysis

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of rates as well as the measurements. The said Committee submitted its report No. 11/2-A dated 16.01.2023 giving details with respect to the increase in the scope of work, the quantities executed as per the MB, the approved tender rates and also the balance amount which was payable as per the estimate and executed quantity.

9. On consideration of the said report, the Administrator passed its order dated 28.02.2023 whereby the claim was partly accepted and payment to the tune of Rs. 35,91,331/- was found payable to the petitioner while the balance amount of Rs. 17,06,483/- was declined as prior approval of the competent authority had not been obtained. It was observed by the competent authority that the extra work had been executed on the request of the farmers and that such recommendation is not tenable since no such work could be executed on a mere request by the farmers without the prior approval of the Department. The Contractor had increased the contract value and the change of specifications and length of the water course from 12113 ft. to 15294 ft. without prior approval leading to an overall increase in the contract value by 74.03%.

10. Counsel contends that the contention noticed by the respondents in the impugned order is misconceived as it was not a case where the petitioner had changed the scope of the work at his own level and instead the said changes were got executed by the Engineer-in-charge on the directions of the Superintending Canal Officer in his order dated 17.06.2021.

11. Learned Counsel also submits that the respondent-authorities themselves accepted and acknowledged carrying out of changes and extension in the scope of work on their command and thus

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forwarded the claim of the petitioner acknowledging that he had executed the said work. After the due execution of the work in accordance with the directions issued by the Superintending Engineer, the admissible payments to the petitioner could not be denied on the pretext of absence of prior approval from the competent authority. He submits that the petitioner cannot be held responsible for any administrative lapses committed by the respondent authority themselves and that the work having already been verified, the admissible amount had to be released to the petitioner.

12. Counsel for the respondents No.2 to 6 on the other hand does not dispute that the tender for laying underground pipeline of water course had been allotted to the petitioner for the project value of Rs. 37.70 lacs approximately over a length of 12113 running ft. and that the petitioner was the lowest bidder. It is, however, submitted that certain rates quoted by the petitioner for the main items were much below the DTR and as the justification qua execution of the work at those rates was suspect, the petitioner was called upon to visit the office and justify the said quoted rates. In response thereto, the petitioner appeared before the official respondents and clarified that few items had been claimed at a lower rate but side by side other main items of the work are profitable for him as a result of the same, the overall work execution will result into a 16.77% profit margin and that he would not suffer loss as a net result. It is submitted that the petitioner had given an undertaking in this regard whereafter the tender rate for this work was sanctioned by the Chief Engineer, MICADA, Haryana Panchkula, being the competent authority, in favour of the petitioner. After the work was allotted to the petitioner, he was duty bound to work according to the

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approved and agreed terms and conditions of the tender, however, the petitioner changed the specifications/length of the allotted work on the request of the farmers without taking necessary approval from the competent authority. It is submitted that the increase in the scope was unilateral and for the works for which he quoted a higher rate and as a result thereof the tender premium has been increased from 16.77% to 44.64% above the DTR. The same was thus in violation of Clause 10 of the terms and conditions of the tender. A tabulated description of the cost was also given by the respondent in the written statement.

13. It is vehemently argued by the Counsel for the respondent that the claim of the petitioner has thus been rightly declined as any increase in the scope of the work mandated a prior approval of the competent authority and that the petitioner having not sought prior approval, he is not entitled to the payment for the work that was executed by him on his own and on the demand of farmers.

14. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

15. While the case of the petitioner in the present case is that he had executed the works as per the directions issued by the Engineer-in-charge and the increase in the scope of the work was consequent upon the order passed by the Superintending Canal Officer and that he cannot be held liable for execution of the work merely on account of certain intra departmental lapses committed by the Engineer-in-charge. On the other hand, counsel for the respondent contends that as per Clause 10 of the work order No. 662

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dated 18.02.2021, the petitioner was required to execute the work in accordance with approved terms and conditions and that overall amount of running bill/final bill should not have increased to the tune of 16.77% above DTR. The relevant Clause thereof reads thus:-

*10. It must be ensured that overall amount of running bill/final bill will not increase **16.77%** above DTR. No payment for incomplete section of lining work will be made at any stage during the execution of work.*

16. Considering the arguments advanced by the parties, I do not find myself to be in agreement with the respondents and I am of the opinion that the order passed by the respondent deserves to be set aside for the following reasons:-

i) That the respondent-department has not disputed that the order dated 17.06.2021 was passed by the Superintending Canal Officer and it was by virtue thereof that the scope of the work was enhanced. The execution of the work is not disputed as having been not carried in accordance with the direction issued by the Superintending Canal Officer.

ii) It is the specific case of the petitioner that the work was executed under the overall directions/orders passed by the Executive Engineer and there is no denial of the same by the respondents even in the reply filed by them. As a matter of fact, the Executive Engineer-cum-Engineer-in-charge had himself sought revision of the estimates for laying the underground RCC pipeline due to increase in the scope of the work. There is no reference in any contemporaneous communication or document that the petitioner had carried the work without the instructions or directions of the

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Engineer-in-charge. If the case of the respondents were to be accepted, there was no reason as to why the Executive Engineer forwarded the case of the petitioner for revision of the estimates and for release of the payment for the increase in the scope of the work.

iii) Further, the Chief Engineer, MICADA, Haryana had also constituted a Committee of four Superintending Engineers of different Circles himself to examine the scope and they have submitted a report justifying the increase in the scope of the work. Even the said Committee has nowhere reported that the work in question was executed by the petitioner at his own level and without any directions of the Engineer-in-charge. There is no reason as to why the respondent-Department and/or the Committee so constituted of the Senior Officer ought not have recorded any discrepancies/unilateral change of the scope by the petitioner at his own level and without the approval and directions of the competent authority. Further, in the entire correspondence that had generated *inter se* within the Department and/or by the petitioner with the respondent-Department, there is no reference that the petitioner had unilateral executed the enhanced work at his own level and without any instructions having been issued by the Engineer-in-Charge.

iv) Further, Condition No. 16 and 23 of the terms and conditions of the work order vide which the work had to be undertaken mandate the same to be done under the supervision of the Executive Engineer Incharge of the work or his representative and also prescribes that the quantities of various items of works can be increased or decreased by the Engineer-Incharge and the Contractor is bound to execute the same at the approved

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rates of the respective items of work and no claim of the Contractor for extra payment shall be entertained on account of the change in the quantities. The relevant clauses reads thus:-

“16. The work will be done under the supervision of the Executive Engineer-in-charge of the work, or his representatives.

Xxxxxx xxxxxx xxxxxx xxxxxx xxxxx

The quantities of various items of work to be executed can be increased or decreased by Engineer-in-Charge and the contractor is bound to execute the same at the approved tendered rates of respective item of work and no claim of the contractor for extra payment shall be entertained on account of this change in the quantities.”

The above said terms and conditions do not specify that the Executive Engineer Incharge of the work had to seek prior approval of the competent authority before directing the Contractor to execute any work in any particular manner or before any increase in the scope of work. Rather, the mandate of terms and conditions was that the Contractor was bound to execute the work under the supervision of the Executive Engineer Incharge. The petitioner thus cannot be held liable for any breach/non-compliance of the departmental regulations by the Executive Engineer Incharge of the work.

v) Moreover, the terms and conditions of the DNIT or as per the work order did not mandate any prior approval for any change or increase in scope of work and it was not incumbent upon the petitioner to have asked for the prior approval before commencement of the work as any such

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demand would have entailed consequences for the petitioner.

vi) So far as the condition that the Contractor cannot demand any payment for the extra work undertaken, such a condition cannot be accepted as it is unconscionable and employer is bound to pay a Contractor for the works that have been got executed and recorded in the measurement books on the instructions of the employer. It is only that there can be no change in the rates at which the work was to be got executed, without the prior approval of the competent authority.

vii) The contention of the petitioner that the authorities i.e. Executive Engineer disregarded the administrative instructions and had not sought the prior approval cannot come to the detriment and prejudice of the respondents. The same may entail consequences for the officers under whose directions and supervision, the work was executed but the same cannot entail consequences for the contractor who executed the works on the directions and instructions of the officers/Engineer-Incharge.

viii) As per the basic contractual provision, any alteration or change in the scope of work gives rise to novated obligations, unless such a change is hit by the conditions that would render the contract in-executable. The Contract Act, 1872 further mandates under Section 64 and 65 thereof that even in a voidable/void contract, the advantage received by the person rescinding the contract must be restored or compensation be paid. Hence, the petitioner is entitled to receive the compensation for the work undertaken since it is not hit by Chapter II of the Contract Act, 1872.

ix) Even otherwise, the sequence of events around the increase in scope of work including order of the Superintending Engineer, the

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implementation thereof by Executive Engineer, the acceptance and acknowledgment of due and proper execution of work and also the independent assessment for making payment all give rise to a legitimate expectation that the petitioner was working under due authority and that payment shall be released. The respondents are estopped from now refusing to make a payment for an alien and after-thought cause.

x) The respondent-Department justifies its stand on the ground that the Officers at the level of the Superintending Canal Officers as also the Executive Engineer Incharge of the project had exceeded their powers in issuing directions for increase in the scope of the work resulting in overall increase beyond 16.77% and thereby causing financial loss to the respondent-Department, I am of the opinion that the same cannot be cited as a reason to withhold the payment of the petitioner although it may give valid grounds to the Department to seek recovery of the excess payment so made from the officers who were guilty of having violated the instructions/guidelines, if any, binding upon the officials of the Department.

17. Hence, while holding that the respondents are liable to defray the actual expenses as per the measurement book and at the rates as approved in the tender to the petitioner, the respondent-Department is also granted liberty to effect recovery of such loss, as may have occasioned to the Government as a result of an act which is an over reach of the jurisdiction or authority conferred upon the Engineer-in-charge or from such defaulting officers, in accordance with law.

18. The **petitions are hence allowed** in terms of observation made as aforesaid. The impugned **order dated 28.02.2023 is accordingly set**



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aside. Let the balance payment be released to the petitioner within a period of two months of the receipt of certified copy of this order failing which petitioner shall be entitled to interest @ 6% p.a. from the date of filing of the present writ petition.

19. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

MAY 02, 2024
Vishal Sharma

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