

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

270-2

CWP-26565-2021
Date of Decision: 14.03.2024

RAJESH KUMAR

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Dalip Kumar Tuteja, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No.1 to 3.

Mr. Navneet Singh, Advocate for
Mr. Pravindra Singh Chauhan, Advocate
for respondents No.4 and 5.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for directing the respondents to pay interest at the rate of 12% per annum to the petitioner on the delayed payments as well as to pay the balance amount adjudged by respondent No.5 vide memo (Annexure P-3) and bill (Annexure P-4) alongwith above rate of interest. A challenge has also been raised to the memo dated 10.09.2019 (Annexure P-11) issued by respondent No.5 whereby the respondents have arbitrarily reduced the claim of the petitioner to the extent of 5% of the total outstanding amount.

Learned counsel for the petitioner contends that even though the respondents had recommended the case of the petitioner for release of the balance payment Rs.43,59,318/-, however, they arbitrarily released the payment only to the tune of Rs.11,84,845/- without assigning any reason. Hence, the present petition has been filed.

Consequent upon the notice, reply has been filed on behalf of respondents No.4 and 5 wherein it has been stated as under:

"10. That immediately the case for clearance of pending dues towards the petitioner was put in the departmental pipeline and after going through all the channels, complete payment for interlocking of M-35 grade tiles work had been disbursed to the petitioner.

*11. That it may kindly be considered that as per tender conditions, a cap of Rs.477.71 lacs was there in the approved amount of the project by the government vide letter dated 31.07.2015. 5% above the maximum limit would have been the capped amount upto which the petitioner could have been paid which would have amounted to approximately Rs.500.88 lakhs. However, the petitioner admits to having received Rs.4,88,57,528/-. The remaining amount of Rs.12,36,925/- was made on 16.09.2019. Copy of proof of payment dated 16.09.2019 is attached herewith as **Annexure R-2** for the kind perusal of the Hon'ble Court.*

*12. That however total payments to the Petitioner to the tune of Rs.5,00,94,453/- have been made in terms of the provisions related to the PWD code of deviation and variation on administrative approval amount as provided in Clause 9.5 of the technical sanction. Copy of the technical sanction and conditions contained therein is attached herewith as **Annexure R-3**. Thus, no grievance otherwise also remains to be raised by the petitioner."*

The abovesaid reply filed by respondents No.4 and 5 is clearly non-responsive and does not deal with any of contentions raised by the counsel for the petitioner and also does not give any explanation as to how and under what circumstances, the assessment of the final payable bill has been done. Seemingly, the amount has been approved without adverting to the works

undertaken and/or the assessment thereof by the Competent Authority while recommending the payments.

The said order does not stand to reasons and is accordingly set aside. The respondents are directed to pass a fresh order after assigning reasons for the said reduction, within a period of three months of the receipt of certified copy of this order and after granting an opportunity of hearing to the respective parties.

Needless to mention that in the event any amount is found due, the same shall be released forthwith without any delay and within a period of two months thereafter.

Considering that ministerial orders have been passed by an officer in the rank of Superintending Engineer in the office of Municipal Corporation, Gurugram without any application of mind and the same has even been filed before this Court without explaining any reasons for such reduction, costs of Rs.20,000/- is imposed upon respondents No.4 and 5 to be deposited with the District Legal Services Authority, Gurugram. The department would be at liberty to take appropriate action for seeking recovery of the said amount.

Petition stands disposed of accordingly.

MARCH 14, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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