

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

270(1 & 3)

CWP-26562-2021 &
CWP-26569-2021

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)

Since common issue arises in both these writ petitions, the same are being decided by a single order, with the consent of the parties. Facts are, however, extracted from CWP-26569-2021.

Learned counsel for the petitioner contends that the petitioner is a registered Class-I contractor of the Municipal Corporation, Gurugram and was enlisted with the Public Health Department of Haryana. It is contended that various works/projects were allotted to the petitioner by the Municipal Corporation, Gurugram including the work of "The Development And Augmentation of Water Supply, Sewer, Storm Water, Drain and Operation and Management (O&M) of total infrastructure for a period of five years at village Dundahera, District Gurugram" vide allotment letter No.EE-III/MCG/2023/2914 dated 02.04.2013 with a total project for a sum of Rs.1350.34 lacs. The

said work was completed to the satisfaction of the Engineer Incharge. He contends that various running bills were paid to the petitioner, however, the final bill was not released despite completion of the abovesaid work by petitioner on 31.05.2015. Alongwith the wrongful withholding of the final bill, the security amount of Rs.61,32,052/- was also wrongfully retained by the respondents. The petitioner, however, discharged his obligations qua the abovesaid works as per the tender conditions, but only 75% of the (O&M) for some period work was released to the petitioner and the balance amount was withheld for no valid reasons. The details of the payment that remains pending and as reproduced in the table are reproduced as under:

Sr. No.	Particulars of payment	Amount due	Amount received	Amount Outstanding	Date of Completion	Date of payment	Delay in making payment	@%	Amount
1.	Payment of final bill passed and paid	5798986/-	5798986	--	31.05.2015	30.07.2019	50 M	12%	2899495/-
2.	Security deposit	6132052/-	6132052/-	---	31.05.2015	13.11.2019	53M 12D	12%	3270840/-
3.	(O&M)								
i)	O&M from 01.06.2015 to 30.06.2016	3414029/-	Nil	3414029	31.05.2015	Nil	13M	12%	309570/-
ii)	Unpaid Interest on O&M from 01.07.2016 to 30.06.2020	3414029/-	Nil	3414029/- Ibid 3(i)	31.05.2015	Nil	48M	12%	1638735/-
iii)	O&M from 01.07.2016 to 28.02.2019	6135815/- (75%)	6135815/-	Nil	31.05.2015	20.03.2019	31M	12%	1283300/-
iv)	O&M from 01.03.2019 to 30.06.2019	3178586/- (25%)	3178586/-	Nil	01.03.2019	26.07.2019	4M	12%	127140/-
v)	O&M from 01.07.2019 to 30.04.2020	2166239/- (RECEIVED LATE)	2166239/-	Nil	01.07.2019	10.06.2020	11M	12%	170760/-

Learned counsel for the petitioner contends that numerous requests were submitted by the petitioner between 2016 and 2017 for releasing the said dues, however, the same were not released to the petitioner, whereupon the petitioner had to prefer a Civil Writ Petition No.4867 of 2017 before this Court for release of the said payment alongwith interest. Vide order dated 09.03.2017, the said writ petition as disposed with a direction to the respondents to decide the claim of the petitioner within a period of three months and in the event of petitioner being found entitled to any amount, the same be released to him expeditiously.

No decision was, however, taken by the respondents despite the said directions issued by this Court, whereupon a COCP No.1816 of 2017 was filed by the petitioner. The said COCP was dismissed by this Court by passing an order dated 15.03.2019 (Annexure P-9) while noticing that a speaking order had to be passed qua five of the works done by the petitioner and that certain payments towards four of the works has already been made and some balance amount is left and the said balance amount, if cleared by the Vigilance Department, was also to be released in favour of the petitioner within a period of four weeks from the date of order i.e. 15.03.2019. While passing the said order, the petitioner was granted liberty to file representation to bring out the discrepancies, if any, in the payments made by the respondents.

It is contended that insofar as the issue of withholding the due payment on account of pending vigilance inquiries is concerned, the same were initiated on the basis of complaint made by one Aseem Takyar before the Lokayukta and that all the pleas/allegations levelled by Aseem Takyar were denied by the State and that the said Aseem Takyar had instituted one writ

petition before the High Court bearing No.15391 of 2015. The said writ petition was withdrawn by Aseem Takyar and as such, there was no vigilance inquiry which could be said to be pending with respect to the works executed by the petitioner. The measurement of all the said works was carried out by the Competent Authority and at no point of time, there was any complaint with respect to the nature or quality of the works executed or the invoices raised by the petitioner. It is further contended that the respondents had originally withheld an amount of Rs.1,19,31,038/- but released an amount of Rs.57,98,986/- on 30.07.2019 and the security amount of Rs.61,32,052/- was also released.

Learned counsel for the petitioner contends that the intermediated payments for the operation and management for the years 2016-2021 as mentioned in the table have neither been released nor has any explanation been put forth by the respondents.

I have perused the entire record and it is noticed that the said reply is wholly vague, evasive and non-specific. It seems that the said reply has been filed without any application of mind.

The present writ petitions are accordingly disposed of with a direction to the Commissioner, Municipal Corporation, Gurugram to examine the claim of the petitioner and to pass a speaking order thereupon with respect to all pending dues of the petitioner after granting an opportunity of hearing to the petitioner, within a period of three months of the receipt of certified copy of this order.

In the event, any amount is found due and payable with respect to the claim raised by the petitioner, the same shall be released positively within a period of two months thereafter.

While deprecating the tendency of filing of evasive replies which has unnecessarily burdened the Courts, the Executive Engineer, Municipal Corporation, Gurugram is burdened with costs of Rs.25,000/- in each case. Let the costs be deposited with the District Legal Services Authority, Gurugram. The Department shall be at liberty to initiate recovery proceedings from the erring official(s)/officer(s)

Petitions stands disposed of accordingly.

Photocopy of this order be placed on the file of another connected case.

MARCH 14, 2024
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(VINOD S. BHARDWAJ)
JUDGE

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