

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-12915-2020 (O&M)
Date of decision: 08.01.2024

S.S. Enterprises ...Petitioner
VERSUS

State of Haryana and others ...Respondents

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

Present :- Mr. I.S. Pabla, Advocate for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Vishal Garg, Advocate for respondent Nos.3 to 5.

VINOD S. BHARDWAJ, J. (Oral)

Prayer in the present petition is for issuance of directions to the respondents to release the advance payment pertaining to 5 work orders i.e. installation of street lights in view of Clause 7 of the contract agreement dated 11.05.2017(Annexure P-10) as the payment in question has not been released despite completion of said work.

Learned counsel appearing on behalf of the petitioner contends that the Municipal Council had flouted e-tender for installation of LED street lights in different Municipal Wards of Bahadurgarh, District Jhajjar in the year 2017. The petitioner being eligible had applied for the bid and was awarded 8 jobs for installation of LED street lights in the different Wards of Municipal Council, Bahadurgarh. The petitioner claims that the work order was satisfactorily completed in time and that in view of the terms & conditions of the above said work order, the respondents were liable to

release the payment. It is contended that respondents were required to release the advance payment to the petitioner as per the Clause 7 of the contract agreement as the petitioner performed 100% work of 3 works orders and apportionate payment qua the remaining work order since substantial work has been completed. It is contended that it was on account of wrongful withholding of funds that caused financial constraints and the petitioner was not in a position to execute the remaining/balance tender.

Reply had been filed on behalf of the contesting respondents, wherein it was averred that wrong facts have been narrated by the petitioner and that the same deserves to be dismissed. It was contended that 50% payment with respect to 3 jobs i.e. job Nos. 298, 300 and 301 has already been released. The agency was required to repair and maintain those lights in functional position upto a period of 5 years from the date of commissioning of the same. The agency, however, failed to maintain those lights despite repeated complaints made by the Municipal Council, Bahadurgarh and left the other works incomplete which are hanging in uncertainty. It is further contended that the agency being defaulter is not entitled to the balance amount for its failure to remove defective/un-operational lights and to maintain the same for a period of 5 years and certain correspondence has also been made to the petitioner qua the same.

The petitioner, in his reply, averred that the stand of the respondents is vague and general and only to defeat the claim of the petitioner. It is averred that the petitioner is already willing to perform his part of the contract and that against bill of Rs.48,23,421/- submitted by him

only an amount of Rs.11,02,656/- has been released while the remaining amount has been withheld. It is also averred that the petitioner has never failed to discharge his obligation as per the work order and that the respondents have failed to point out any defective/un-operational lights during the currency of the contract. In the event of any theft/ clandestine of the lights installed, the petitioner cannot be bound to make good the loss sustained by the respondents and the obligations to maintain the property is on the part of the respondent-Municipal Council and such liability cannot be imposed upon the contractor.

As the parties were evasive in their replies as regards the total quantum of work executed, vide order dated 03.03.2023 the parties were directed to conduct a joint inspection of the works and thereafter, to ascertain the amount payable to the petitioner. In compliance thereof, learned counsel for the respondent-Municipal Council has handed over a copy of the joint inspection report, which is reproduced hereunder:

“xxx

Joint Inspection Report

”Name of work. Supply/installation/testing/commissioning of, LED street lights in ward 15, 16 M.C. Bahadugarh Job no. 298

-do-	17, 18	„	299
-do-	19, 20	„	300
-do-	21, 22	„	301
-do-	25, 26	„	303
-do-	27, 28	„	304
-do-	29, 30	„	305
-do-	31 & all main roads.	„	306

Agency:- M/s. S.S. Enterprises

Total no. of street lights to be installed
as per the agreement =1280 nos.
Total nos. of street lights (actually) the
agency could install = 831 nos.

As per the direction of Hon’ble High Court of Punjab & Haryana at Chandigarh. C.W.P. No. 12915 of 2020
Joint inspection carried out by the agency and representative of M.C. Bahadugarh during May, 2023. All available street lights were counted jointly by Sh. Vijay Kumar proprietor of S.S. Enterprises and Sh. Pawan Saini Electrician.
Total nos. of street lights found at site is 343 No. and all are in working condition.
Submitted for necessary action.

sd/-	sd/-	sd/-
Dal Chand Sharma	Arjun Kumar	Sandeep Kumar
Executive Engineer	Municipal Engineer	Junior Engineer
M.C. Bgarh	M.C. Bgarh	M.C. Bgarh
sd/-	sd/-	
Vijay Kumar	Pawan Saini	
S.S. Enterprises	Electrician M.C ..”	

A perusal of the same shows that as against total number of street lights to be installed pursuant to the work order were 1280, the total number of street lights which could have been actually installed by the petitioner as per the joint spot inspection report is 831. It is also noticed that all available street lights were counted jointly by the authorities and that only 343 street lights were found in working condition as on the date when the joint inspection was conducted. It is evident from a perusal of the same that if the street lights installed were counted as 831 against the total 1280 street lights and only 343 were stated to be found in working condition.

Apparently, the dispute in question relates to the balance street

lights i.e. 488 in number, actually installed being dis-functional. As per the terms of the contract, if there was any defective street light, the same was to be rectified by the petitioner during the period of 05 years which was a defect liability period. Undisputedly, a joint inspection was conducted in the month of May-2023 i.e. beyond the period of defect liability. Counsel appearing for the petitioner, however, contends that the petitioner is still ready and willing to perform his part of the obligation in terms of the work order issued to him qua the balance street lights to be installed on the same terms & conditions.

It is further contended that so far as non-functional street lights are concerned i.e. 488 in number out of 831 are concerned, if the said street lights are dis-functional on account of any defect, he shall also replace the same within a period of 02 weeks. In the event of defective/dis-functional lights being replaced by the petitioner within a period of 02 weeks as undertaken today, the respondent-Municipal Council shall release the undisputed payment with respect to 831 street lights that are admittedly installed by the petitioner. Further, if the respondents so decide they may call upon the petitioner to complete the remaining street lights i.e. 449 within a period of 02 weeks thereafter with a defect liability period of 5 years from the dated of installation.

Disposed of in above terms.

(VINOD S. BHARDWAJ)
JUDGE

08.01.2024

Mangal Singh

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