

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-13393-2018 (O&M)
Date of decision: 19.03.2024

M/s Anant Ram (Government Contractor) MCG, resident of village
Bhondsi, Gurugram (Haryana)

...Petitioner

VERSUS

Municipal Corporation, Gurugram and another

...Respondents

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

Present :- Mr. Deepam Raghav, Advocate for the petitioner.

Mr. Prateek Mahajan, Advocate and
Mr. Vasu Gupta, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for issuance of direction to the respondents to release the payment for the works executed by the petitioner and qua which the payment is not in dispute.

2. A written statement on behalf of respondent No.1 had been filed through the Executive Engineer-I and Executive Engineer-II, wherein they have given details of the payment released in favour of the petitioner.

The same are extracted as under:

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7. That in reply to the para 7, it is submitted that work in the name of renovation of Ground floor and construction of First floor of Brahman Chaupal in village Gurugram was

allotted to M/s Anant Ram Contractor vide letter No.EE-II/IMCG/9008 dated 13.09.2013 (Annexure P1) with the restricted amount of Rs.24.03 Lacs. During execution of work all items as mentioned in the DNIT were not executed by the petitioner. No bill giving details of work done has been submitted by the petitioner. Payments for work as recorded in the measurement book have already been made to the petitioner. The executed work had been recorded in the measurement book No.811 page-141 to 1456 (1st running bill), measurement book no.811 Page No-2 to 37 (2nd running bill), measurement book no.810, page No.102 to 122 (3rd & final bill) by Junior Engineer, checked by the then Assistant Engineer.

Following payments had been made to the petitioner:-

1st Running bill 473379 /-

2nd Running bill 974091/-

3rd & Final bill 30491/-

Total 1477961/- including all deduction etc.

The above payment had been made as per actual quantity of the material and work executed by the petitioner.

8. That in reply to the Para 8, it is submitted that work in the name of construction of boundary wall and Mayor office gate at Kadipur Store Gurugram was allotted to the petitioner.

Rest of the averments are wrong and denied. As per record, work was completed in tune of Rs.19,63,090/- against agreement amount of Rs.20.95 Lacs and as per the execution of work, payment has already been made to the petitioner and no more amount is due to the petitioner.

9. *That in reply to para 9, it is submitted that work in the name of construction of pathway from gate No-1 to gate No-2 in the premises of Government Senior Secondary School, near Civll Hospital, Ward No.18 was allotted to petitioner vide letter No.EE-VII/MCG/2016/ 1126 dated 06.01.2016. After execution of work by petitioner, the bill was prepared of complete executed work for amounting to Rs.9124951/- and same was paid to the petitioner. Nothing is due of the petitioner. It is wrong and denied that any wrong estimate was prepared by the Engineer.*

10. *That in reply to para 10, it is submitted that work in the name of construction of Parjapati Chaupal at Pataudi Chowk, Ward No-21, Gurugram was allotted to the petitioner. Payment in shape of two running bills has been made to the petitioner in tune of Rs.472019/- and 387886/- after making the deduction as usual and against non availability of sample report in tune of Rs.59768/- and 101994/- As per clause 10 of the agreement the necessary final bill is to be submitted by the petitioner. The same has not been submitted. As and when the final bill will be submitted by the petitioner, the same will be*

settled after necessary scrutiny.

11. That in reply to para 11, it is submitted that work in the name of misc work in Sec-15, Part-1, Ward no-18 was allotted to petitioner vide letter No. EF-WII/WCG/2016/25622 dated 26.08.2016 for amounting to Rs.22.72 lacs. After execution of work by petitioner, 03 no's bills were prepared of various amounting to Rs.1st running bill-640385/-, 2nd running bill-1059614/- and 3rd & final bill-572000/- (Total Rs.2271999/-) was paid to the petitioner, now nothing is due of the petitioner against the department i.e. MCG.

12. That in reply to para 12, it is submitted that a work in the name of misc work in Sec-15, Part-II, and ward No.17 was allotted to petitioner vide letter No, EE-VII/MCG/2016/24622 dated 26.08.2016 for amounting to Rs.22.72 lacs. After execution of work by petitioner, 03 no's bills were prepared of various amounting to Rs.1st running bill-640385/-, 2nd running bill-1059614/- and 3rd & final bill-572000/- (Total Rs.2271999/-) was paid to the petitioner, now nothing is due of the petitioner against the department i.e. MCG.

13. That in reply to para 13, it is submitted that a work in the name of construction of road with 80mm thick concrete paver block of various Street Laxmi Garden and Heera Nagar, ward No-19, Gurugram was allotted to the petitioner and after execution of work, payment for the work done has

already been released to the petitioner in the tune of Rs.1137746/-by way of two bills of Rs.803777/- and Rs.333969/- respectively. Now nothing is due of the petitioner against the department i.e. MCG.

14. That in reply to para 14, it is submitted that a work in the name of construction of Gali No.12, 12A road with interlocking tile paver block M-35 Surat Nagar Phase-I, Ward No7, Gurugram was allotted to petitioner with an agreement of Rs. 5.16 Lacs. Payment for the work done by the petitioner has been made in the tune of Rs.479947/- but paid Rs.349403/- by withholding Rs.87351/- for now availability of the sample report. The 2nd & final bill has been prepared as nil bill for releasing the withheld amount of the agency in the tune of Rs.87351/-. The necessary requisition and final bill in the token of receipt is to be submitted by the petitioner. As and when the final bill and requisition letter for releasing the payment will be submitted by the petitioner the same shall be settled after scrutiny.

15. That in reply to para 15, it is submitted that work of construction of road with RMC M-10 & 80mm thick interlocking tiles in pole Star Public School in Devilal Colony Ward No-9, Gurugram has been allotted to the contractor with agreement amount of Rs.6.19 Lacs. Payment for the work done by the petitioner has been made in the tune of Rs.344041/- but paid Rs.250463/- by withholding Rs.86132/-

due to non availability of the sample report. The final bill and requisition for releasing the payment has to be submitted by the petitioner. As and when the final bill will be submitted by the petitioner same will be settled after scrutiny.

16. That the contents of para no.16 is wrong and denied. It is wrong and denied that any such 2% security has been got deposited from the petitioner. The petitioner had deposited 2% EMD which is a mandatory amount to be deposited by all participant bidders. This earnest money is either to be adjusted against the security deducted from the running bill or refunded to the bidder on his request. The petitioner has neither given his consent for adjusting earnest money nor given any requisition for refund of earnest money. As and when claim is submitted, same will be settled as per rules.

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3. Learned counsel for the respondents contends that all the undisputed payments already stand released to the petitioner. He has not furnished bill pertaining to any other payment due to him and that he has also not filed any objection in relation to the amounts that have already been released. The same have thus been accepted.

4. Learned counsel for the petitioner on the other hand submits that there was no occasion for the petitioner to submit the final bills as no details with respect to the amount calculated for payment has been furnished by the respondents and that they have only given information of the amount that has been released by the respondents, without giving any reasons for

deduction/non-clearing of the entire bills or the amount withheld.

5. On a compound reading of the reply along with the averments contained in the present petition, it is evident that so far as the work of renovation of ground floor and construction of first floor of Brahman Chaupal in village Gurugram is concerned, the learned counsel for the petitioner claims that the tender was of Rs.24,03,000/- but only Rs.11,00,000/- has been released. Learned counsel for the respondents on the other hand has made an averment that a sum of Rs.14.77 Lakhs approximately stands released in favour of the petitioner on the basis of the actual quantity of the material and work executed by the petitioner.

6. In relation to the construction of boundary wall and Mayor Office gate at Kadipur Store, Kadipur, Gurugram, a sum of Rs.19,63,090/- qua the contract amount of Rs.20.95 lakhs has been released. So far as the tender of Rs.9,59,000/- for construction of pathway from Gate No.1 to Gate No.2 in the premises of Government Senior Secondary School, Ward No.18, as reflected in Para No.9 of the writ petition, it is informed that a sum of Rs.9,12,495/- (wrongly mentioned as Rs.91,24,951/- in the reply) has been released in favour of the petitioner. So far as the work of construction of Prajapati Choupal at Pataudi Chowk, Ward No.21, Gurugram (Haryana) is concerned, it is informed that the payment Rs.8,59,905/- has already been released after deductions and that the final bill has not been submitted by the petitioner so far. As and when the same would be submitted, the same shall be settled after necessary scrutiny. Similar explanations have also been furnished in relation to the other bills, and the same are not been adverted to since these details are extracted from the reply.

7. The payments are stated to have been released by the respondents on the basis of quantities measured by them. Any dispute with respect to the measurement of the actual work undertaken or the applicable rate for the said quantities is a question of fact which needs to be determined. The High Court would not ordinarily venture into determination of disputed questions of fact more so when the contract provides for settlement of such issues and disputes.

8. No material has been placed on record by the learned counsel for the petitioner on the basis whereof the release of the amount can be stated to be inappropriate or in violation of undisputed facts. The calculations having been approved by the respondents would not be gone into at this stage.

9. The present writ petition is accordingly disposed of at this stage with liberty to the petitioner to pursue his appropriate remedies in accordance with contract/law for release of the balance payment.

10. 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 the event of the petitioner availing such alternative remedies.

11. Disposed of with the liberty as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

19.03.2024
Mangal Singh

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