



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

204

CWP-4371-2017 (O&M)

Date of decision: 12.09.2024

Gulshan Rai Jain-II, Contractor

...Petitioner

VERSUS

State of Haryana and others

...Respondents

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

Present :- Mr. Karan Bhardwaj, Advocate for the petitioner.

Mr. Suneel Ranga, DAG Haryana.

Mr. A.S. Talwar, Advocate and

Mr. Ishaan Vashishth, Advocate for respondent No.6.

Mr. Vaneet Soni, Advocate for

Mr. Deepak Sabherwal, Advocate for respondents No.2 to 5.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present petition is for directing respondent No.2 to release the payment of Rs.3,50,000/- to the petitioner along with interest @ 18% per annum from the due date till the date of actual payment.

2. Briefly summarized facts of the case are that the petitioner-Firm is a 'AA' Class Government Contractor, Builder and Engineer and was allotted the work of construction of 129 Ground Floor + 129 First Floor and Second Floor Flats for the EWS including internal public health and electrical installation services in Housing Board Colony, Sector-52, Gurgaon by respondent No.2-Housing Board Haryana on 26.11.2009. The scope of the work was changed to construction of 83 Ground Floor + 83 First Floor + Second Floor Flats in Sector-52 Gurgaon and 57 Ground Floor + 57 First Floor and Second Floor Economic Weaker Section Flats in Sector-42 Gurgaon. Thus, 22 additional flats were to be constructed and the work was



to be executed in two different Sectors as against the work in one Sector as per the original contract. The change in the scope of work was confirmed vide letter dated 10.02.2010. The work was to be completed upto 25.05.2011 but the date of execution of the work was extended upto 28.02.2012. The work was satisfactorily completed whereupon the final bill was submitted by the petitioner. An amount of Rs.11,50,000/- was however illegally withheld on 16.08.2012 from the final bill. Various representations were submitted by the petitioner objecting against the illegal withholding of the said amount and specifically pointing out that a security deposit of Rs.1,31,03,849/- was already lying with the respondent-authorities for removal of any defects in the execution of work during the defect liability period of one year and as such the running bills furnished by him could not be withheld. After a lot of persuasion and submission of various representations, an amount of Rs.8 lakhs was released to the petitioner on 25.04.2013 but the balance amount of Rs.3,50,000/- was withheld. The petitioner thereafter submitted further representations and reminders to the respondents for releasing the balance amount of Rs.3,50,000/- but no action was taken thereupon. A legal notice dated 10.06.2014 was hence sent by the petitioner to the Chief Administrator, Housing Board, Haryana, giving complete details and the illegality in withholding of the payment. A reply to the legal notice was sent giving reason for withholding of the amount on account of the material necessary for the electrical work being not supplied by the petitioner. The matter was however later discussed with by the Chief Administrator, Housing Board, Haryana in the presence of respondent No.6-



Mr. N.K. Paruthi, Executive Engineer, Housing Board, Haryana against whom allegations of demand of money had been levelled (the same are not being pressed at this stage since the said respondent is informed to have retired). Additionally, the Superintending Engineer as well as the Executive Engineer (HQ) and Executive Engineer (Gurgaon) were also present. The Chief Administrator, Haryana State Agricultural Marketing Board accordingly passed an order to the following effect:-

“Issue No.II An amount of Rs 8 50.lacs was withheld from the final bill due to pending loose Electrical items from the agency. Assistant Engineer (E) has recommended on 17.04.2013 to release the withheld amount of loose material. Executive Engineer, Gurgaon released Rs.5.00 Jacs, but withheld Rs. 3. 50 lacs. When the contractual agency raised the issue again and again, Executive Engineer, Gurgaon got the list of balance material signed from the Assistant Engineer (E) and ASDE (E) on 30.09.2013 The SDO and Xen were called in person and the SDO asserted that nothing was outstanding against the contractor and he had been forced to write that material was outstanding against the contractor He firmly stated that the contractor had already handed over the requisite material.

The Xen failed to clarify the grounds on which the payment had been withheld. Neither he supported his submission with some inspection report or copy of stock



register et on the basis of which it could be presumed that material was short.

In view of above, the action of the Xen to withhold this payment was not legal The payment is being released. The action needs to be taken against the Xen for his illegal and irregular act.

Sd/-
22.07.2015
Ramesh Krishan
CA, HBH.

xxxx”

3. It is thus evident that a specific finding was recorded by the Chief Administrator, Housing Board, Haryana that the withholding of the amount by the Executive Engineer was illegal. A direction was also issued to release the said outstanding amount forthwith and recommendation was made for taking action against respondent No.6-Executive Engineer for wrongly withholding the said payment. The above said decision dated 22.07.2015, taken by the Chief Administrator, Housing Board, Haryana was also approved by the Government i.e. Additional Chief Secretary, Housing. He contends that notwithstanding the specific decision in this regard, the pending payment had not been made thus compelling the petitioner to approach this Court.

4. Learned State counsel has placed reliance on the affidavit filed by the Mr. Shrikant Walgad, Principal Secretary, Housing Board Department, Government of Haryana and has argued that even though the amount of Rs.3,50,000/- was payable to the petitioner against the works



Sector-52, Gurgaon, however, the said amount has been adjusted towards the outstanding amount to be recovered from the petitioner to the tune of Rs.1,22,500/- for the works executed at Narnaul and Rs.2,27,500/- for the works executed at Bahadurgarh. Reference was also made to Clause 29 of the contract which allows the Board to set off any other sum found to be due to the Board from the Contractor in respect of his contract of any other work order. The relevant extract of the said affidavit reads thus:-

“That it is an admitted fact that an amount of Rs 3.50,000/- is pending to be paid to the petitioner against the work of Sector 52 Gurgaon, but the said amount has been adjusted towards the pending outstanding towards the petitioner i.e. 1,22,500/- at Narnaul and 2,27,500/- at Bahadurgarh in pursuance to clause 29 of the contract which is reproduced for the kind perusal of this Hon'ble Court.

"Any excess payment made to the contract inadvertently or otherwise under this contract or any account whatever any other sum found to be due to Board by the contractor in respect of his contract or any other contract or work order or on any account whatever, may be deducted from any sum whatsoever payable by Board to the contractor either in respect of this contract or any order of contract or any other account by any other department of the Government/Board /Corporations.”.



5. Relying on the above, it was argued by the learned State counsel that the petitioner-Firm has annexed two partnership deeds with all the works allotted to them and that they are one and the same entity. Consequently, adjustment in exercise of the powers under Clause 29 of the work allotment order was well justified, hence, the amount was withheld from the petitioner-Firm.

6. Since the above said short reply on behalf of respondents No.2 to 5 had been filed through the Principal Secretary of the Housing Board Department, hence, there was no need to file any separate reply on behalf of respondent No.1-State of Haryana.

7. A short reply had however been filed by respondent No.6, but as the action against respondent No.6 is not being pressed any further by the learned counsel for the petitioner, the same need not be adverted to.

8. It has been vehemently argued by the learned State counsel as well as counsel for respondents No.2 to 5 that the decision to set off the differential amount was fully justified and was in accordance with the terms and conditions of the contract. There was thus no illegality in the action of the respondents.

9. Rebutting the said arguments, learned counsel for the petitioner refers to the rejoinder. The relevant extract of the same reads thus:-

“3. That in pursuance to order for notice of motion as reproduced above, Sh. Shrikant Walgad, Principal Secretary to Govt. of Haryana, Housing Department filed a short-reply to the writ petition by way of an affidavit dated 23.03.2017.



The short reply by way of affidavit has been filed with twin ulterior motive to avoid crucial admission of undeniable facts stated in the civil writ petition and confine the issue rather to clarify the same for adjudication by the Hon'ble Court. This has been fully illustrated by citing specific Instances hereunder.

- i. The factum of 'due payment of Rs.3,50,000.00 was undeniable as it was a direct consequence of settlement of the final bill. Factually, at the time of payment of final bill of the said work an amount of Rs.11,50,000/- was withheld illegally by the Executive Engineer ignoring the fact that amount of more than one crore as security deposit was available with him to look after the defects if noticed during the defect liability period of one year from the completion of the work. After the expiry of defect liability period of one year, the security deposit and part payment 8,00,000/- out of the total withheld payment of Rs.11,50,000.00 was released to the petitioner firm on 25.04.2013. The Executive Engineer, Housing Board Haryana, Gurgaon refused to release the balance withheld amount of Rs 3,50,000/- on one pretext or the other by shifting stand without any valid cause or justification. On the basis of our representation the issue of withheld amount and its*



adjustment against the recoverable amount from another firm in the name and style of the petitioner firm was examined in depth by the higher authorities of the Board/Govt. After scrutiny of the record and hearing in person all concerned, Sh. Ramesh Krishan, the then Chief Administrator of the Board reached to the conclusion that the due payment of the petitioner firm was withheld illegally by the Executive Engineer. Accordingly, vide his note dated 22.07.2015 he submitted the case file to the ACS (Housing) with the proposal that the payment is being released and action needs to be taken against the Executive Engineer. The proposal of the Chief Administrator was approved instantly by the ACS (Housing). Accordingly, Chief Engineer of the Board vide his letter dated 30.07.2015 directed the Executive Engineer, Gurgaon to release the payment of Rs.3,50,000.00. As such a duty was cast upon Executive Engineer, Gurgaon to release the payment. It is worth mentioning here that proposal of adjustment of the said amount against the recoverable amount of another firm finds discussed on the file but the Chief Administrator and the State Govt ignored the same, at all, and ordered to release the payment. The order dated 30.07.2015 still exists and has been relied



upon by respondent no. 4 in his report to come to a conclusion that the amount was not released by respondent no.6 despite specific order by his superior officer on 30.07.2015 (Annexure P-5) for erroneous consideration on one hand the respondents are accepting the report Annexure P-11 and on the other side they are taking a stand that the amount has been adjusted. If this is the case then why the Vigilance Officer respondent no. 4 recommended lodging of prosecution against respondent no.6 under Prevention of Corruption Act.

- ii. *The said firms are separate legal entities, having their separate identities, separate offices, separate PAN Nos, separate Bank accounts, separate Service Tax/Sale Tax Nos. And separate partners save one or two common partners. All is perfectly legal and valid. The factum of two quite distinct, different and independent partnership firms in the same name and style of 'GulshanRia Jain-II' was well known to all concerned authorities of the respondent Housing Board Haryana. All authorities treated both the firms as such throughout and allotted work to the respective firm who participated in the tender process. The short affidavit fails to explain and establish as to how both the firms*



could be one and the same firm and that too suddenly and abruptly for the said adjustment of the due payments of the petitioner firm against disputed recoveries from another firm.

Be that as it may, the issue of alleged adjustment was rendered fully dead and defunct through a prolonged discussion and consequent conscious decision to release the payment. The proposed adjustment was certainly not agreed to rather ignored by the Govt. The order to release the payment were issued by the Chief Engineer, HBH vide letter dated 30.07.2015 on the basis of decision of the Govt. Both the firm are separate is evidently clear from the manner in which the adjustment was made by Sh.N.K.Pruthi vide letter dated 25.08.2015. The existence of two distinct and different firms is self evident from their respective partnership deeds appended with the short reply by way of affidavit. It is also worth mentioning that the respondent HBH made allotment of works rightly to the right firm by accepting its tender for that work. Assuming but not conceding that another firm appended the partnership of the petitioner firm with the tender documents along with its own, the same inadvertent error was cured by the respondent HBH by allotting the work who had



tendered by ignoring the other partnership deed. The alleged issue was thus duly settled at the appropriate time. The issue has been raised deliberately and intentionally just to divert the attention of the Hon'ble Court.

iii In fact the illegal adjustment was made by Sh. N.K. Pruthi i.e. respondent No. 6 as the representative of the petitioner firm refused to pay illegal gratification to him. The petitioner firm was constrained to lodge a complaint based on facts alone against respondent No.6. The requisite affidavits were also submitted in support of the complaint. Only thereafter, the complained was probed by the Secretary-cum-Chief Vigilance Officer of the Board. His report dated 15.06.2015 bears testimony to the contents of the complaint. It leaves not an iota of doubt that the suo motto act of respondent no. 6 making the adjustment was due to non fulfilment of his illegal demand. On the basis of various complaints received against Sh. N.K. Pruthi from the employees of the Board/public and charge sheets issued to him time to time, it has been established by the Inquiry Officer that he is a corrupt officer. He recommended that he is liable to be prosecuted by lodging a formal FIR under prevention of corruption Act against him and further Investigation by the State Vigilance Bureau. In sharp contrast



the affidavit dated 23.03.2017 is factually an attempt to scuttle the said report of the Secretary- cum-Chief Vigilance Officer of the Board rather than admitting the plain fact that no requisite follow up action till this Hon'ble Court Issued notice of motion vide order dated 03.03.2017, was taken by the respondent Board/Government.

4. *xxxx*

5. *That no work was allotted to the petitioner firm after the completion of the work involved in the instant writ petition by the respondent HBH. It is the petitioner firm alone which owes payment of Rs.3,50,000.00 as is the subject matter of the instant writ petition and another amounts arising out of the arbitral award dated 18.09.2014 in favour of the petitioner firm. The respondent HBH owes nothing from the petitioner firm. However, the following works were allotted to the another firm in the name and style of the petitioner firm by HBH:*

- i. *Construction of 204 No. Type A. Gr. II (Triple Storeyed) Flats including internal PH& EI Services in HBC, Sector- 9.Bahadurgarh.*
- ii. *Construction of 192 No. Type A, Gr. C (Triple Storeyed) Flats including internal PH & EI Services in HBC, Sector- 9. Bahadurgarh.*
- iii. *Construction of 252 No. (Four Storey) Type-B Houses*



including internal PH & EI Services in IIIIC, Sector-8, Jind.

- iv. *Construction of 117 Nos.EWS Group-1 (Triple Storeyed) Flats for BPL Families including internal PH & EI Services in HBC, Sector-60, Sonipat.*
- v. *Construction of 741 Nos. (247 x 3) T/S Group-B, EWS Flats including internal PH &EI Services in HBC, Sector 5, Hansi.*
- vi. *The scope of work of Sonipat at Sr. No. 3 was enhanced by adding 213 EWS (Triple Storeyed) Flats for BPL Families including internal PH & EI Services in HBC. Sonipat.*

Certain disputes/differences arose between the HBH and another said firm. The other firm sought arbitrations in all the aforesaid works. The respondent HBH has appointed arbitrators in four works only at the movement viz. For two works at Bahadurgarh, one work at Hansi and one work at Narnaul An arbitral award dated 03.03.2017 in favour of the said firm has been made by the Arbitrator. The arbitral proceedings in another three cases are not progressing and are at a standstill because of the indifferent approach of the respondent HBH. It has no other meaning that no alleged recoveries are due from the said firm by the HBH in absence of no arbitral award in favour of HBH. As



such as on date no recovery is due from the said another firm by the respondent Board by any means. It is worthwhile to add here that it is the self firm stand of the respondent Board that unless the disputed recoveries attains finality by a fiat of the court it is not recoverable from the same firm what to say of its recovery from altogether different another firm as per averments already made in the writ petition and not denied by HBH even in the short reply affidavit.

6. *That what a shocking short reply dated 23.03.2017 to the writ petition by way of affidavit it is! The affidavit of Sh. Shrikant Walgad, Principal Secretary to the Govt. of Haryana, Department of Housing, states just a cover up storey of farcical adjustment of the due payment of the petitioner firm against disputed payment alleged to be recoverable from another firm with the same name and style. It conceals the most material fact to mislead this Hon'ble Court that the decision by his predecessor on the office files (Annexure P-13) was to the contrary. The decision to release the payment was taken by ignoring proposed adjustment. In other words the proposed adjustment was not approved and was rather ignored by the Govt. It is obvious for being not on order. As such Sh. N.K .Pruthi, Executive Engineer, Gurgaon i.e. respondent No. 6 not only defy the order of his superior issued with the approval of the Govt. but also committed a*



grave irregularity by adjusting the due payment of the petitioner firm illegally. Further, the affidavit states nowhere that why proceedings by lodging FIR, were not initiated against respondent No.6 as per report of the Secretary-cum-Chief Vigilance Officer of the Board from 15.06.2015 till 22.03.2017. The respondent HBH refer the case of respondent No.6 to the State Vigilance Bureau for further investigation only after notice was issued in the writ petition. The reference is simply to pass the buck and rather to scuttle the requisite proceedings against the respondent No. 6. The reference is in fact is unprecedented in nature and form. It provides a long rope to respondent No. 6 as if he is a privileged officer of the HBH.

In the light of above submissions, the instant writ petition is liable to be allowed with relief as prayed for therein.”

10. Learned counsel for the petitioner contends that the aforesaid stand and vehement reliance on the same is grossly mischievous in as much as after the decision dated 22.07.2015 taken by the Chief Administrator, Housing Board, Haryana and approved by the Additional Chief Secretary, Housing, directing respondents to release the payment, the Executive Engineer (HQ) sent a letter to the Executive Engineer, Housing Board, Haryana directing him to release the payment to the petitioner. In response to the said letter, a detailed objection was submitted by respondent No.6



wherein he had raised the issue of the alleged adjustment that were to be made and that no amount was payable to the petitioner. A complaint about non-payment was again submitted by the petitioner, whereupon the matter was enquired into by the Internal Vigilance. The enquiry report, in the complaint made by the petitioner herein, was thereafter submitted by the Secretary-cum-Chief Vigilance Officer, Housing Board, Haryana. It was specifically noticed by the Secretary-cum-Chief Vigilance Officer, Housing Board, Haryana that the Executive Engineer had wrongly withheld that amount and that the act of the Executive Engineer was clearly in violation of the orders issued by the Head Office directing him to make the payment. It was also noticed that the officer was habitual of travelling beyond the ambit of Rules and Regulations and that the withheld amount being adjusted in the books of accounts of another firm is an act undertaken by the Executive Engineer on his own and without any directions/authority in this regard, in an attempt for causing harassment due to non-fulfillment of demand of illegal gratification. The Secretary-cum-Chief Vigilance Officer, Housing Board, Haryana infact proceeded to the extent of recommending registration of a case under the Prevention of Corruption Act against respondent No.6. The operative part of the aforesaid enquiry report reads this:-

“It emanates from the available records that an amount of Rs. 3,50,000/- payable to M/s Gulshan Rai Jain-II, Contractor was withheld out of his final bill by Sh. N.K. Pruthi. Ultimately, the competent authority from the Head Office, Housing Board Haryana, Panchkula issued directions



to release the withheld amount vide order dated 30.07.2015. But, instead of complying the directions issued by the Head Office Sh. N.K. Pruthi wrote a letter to the Chief Engineer vide letter no. 4027-29 dated 28.08.2015 stating that the withheld amount of Rs. 3,50,000/- payable to Sh. Gulshan Rai Jain II has been adjusted against + another work i.e. construction of 102 HIG, 90 MIG & 90 LIG Triple Storeyed flats in Sector-1 Narnaul and construction of 192 Type-A Group-C triple storeyed (actual 198 flats in HBC, Sector-9, Bahadurgarh. It was clearly in violation of orders issued by Head Office as he was directed to make payment, he was never given any authority or orders to adjust the said amount. The complainant has also asserted that this was in violation of the orders of the Head Office as well as both the firms executing these works are two different firms and no direction from Head Office was sought by Sh. N.K. Pruthi.

Sh. N.K. Pruthi in his reply dated 01.04.2016 has asserted that the action taken by him was correct and within the ambit of rules and regulations and the allegations levelled by the contractor against him are baseless and denied.

After careful perusal of the case, written statement of Sh. N.K. Pruthi, Executive Engineer and submission of complainant supported by an affidavit and the oral



submission made by both the parties; my findings are as under:-

- (i) M/s Gulshan Rai Jain-II, Contractor has constructed houses 129 G.F+ 129 F.F. & S.F. EWS Flats at Gurgaon (Actually 83 G.F. +83 F.F. & S.F. in Sector-52 and 56 G.F. + 56 F.F. & S.F. in Sector-42) for Housing Board Haryana.*
- (ii) It is a matter of records that an amount of Rs. 3,50,000/- out of the total payment of the contractor was withheld by Sh. N.K. Pruthi even after the clear cut orders issued from the Head Office to release the payment to the contractor. The withheld amount adjusted in the book of accounts of another firm on his own and without any direction/authority in this regard, it thus, seems to be done in an attempt for causing harassment due to non fulfilment of demand of illegal gratification. This was all done on the pretext of adjustment against some another work of the contractor without seeking prior advice and approval of competent authority.*
- (iii) It is worth mentioning that the contractor/company has made repeated attempts by way of personal requests to the officers of the Board and complaints on the CM Window i.e. Complaint No. 53500 dated 04.05.2015,*



Complaint No. 92336 dated 25.08.2015 and Complaint No. 102614 dated 05.10.2015 etc. The grievance of the complainant was not redressed even after repeated requests at different places and the very purpose of establishment of CM Window/Public Grievance through C.M. was getting defeated. Ultimately Worthy Chairman, Housing Board Haryana recommended to the competent authority to get the matter enquired through Chief Vigilance Officer of the Board highlighting that it is a "Circumvention of CM Grievance Redressal and Monitoring System".

The allegations levelled against Sh. N.K. Pruthi, smack of demand of illegal gratification, extraneous consideration and are duly supported by way of an affidavit. Numerous other complaints have also been received against the erring official regularly through ASC (Housing)/Hon'ble Chief Minister, Haryana/Hon'ble Chairman, Housing Board Haryana e.g., the details of which is given as under:-

<i>Sr. No.</i>	<i>Complaint Received and Registered in the office</i>	<i>Name of complainant</i>	<i>Diary No. & date</i>	<i>Remarks</i>
<i>1</i>	<i>C.V.O.</i>	<i>Sh. Ajay Jain, Partner M/s Gulshan Rai Jain-II.</i>	<i>Affidavit dt. 29.03.2016 (Annexure -III)</i>	<i>Bribery/ Illegal gratification</i>
<i>2</i>	<i>Hon'ble C.M. Haryana</i>	<i>Sh. Gulshan Rai Jain-II,</i>	<i>16.09.2015 (Annexure IV)</i>	<i>Illegal gratification</i>



		<i>Contractor</i>		
3	<i>Hon’ble C.M. Haryana</i>	<i>Sh. Gulshan Rai Jain-II, Contractor/ Sh. Ankit Jain</i>	<i>16.12.2015 (Annexure V)</i>	<i>Illegal gratification</i>
4	<i>Chief Administrator/ Chief Engineer</i>	<i>Sh. Gulshan Rai Jain-II, Contractor</i>	<i>729/10.02.2016 (Annexure-VI)</i>	<i>Illegal gratification</i>
5	<i>Chief Administrator/ CVO</i>	<i>Sh. Mahabir Singh</i>	<i>Affidavit dated 06.08.2015 (Annexure-VII)</i>	<i>Bribery case</i>
6	<i>Chief Administrator/ CVO</i>	<i>Sh. Raj Verma, Advocate, Counsel of Sh. Mahabir Singh</i>	<i>1034/14.03.2016 (Annex-VIII)</i>	<i>Bribery case</i>
7	<i>Hon’ble C.M. Haryana/ ACS (Housing)/ C.A. HBH</i>	<i>Sh. Triloki Nath Markandey</i>	<i>7110/24.02.2015 (Annex-IX)</i>	<i>Illegal gratification</i>
8	<i>ACS (Housing)/ CA</i>	<i>Supd. (Vigilance-I) for Chief Secretary to Govt. of Haryana Vigilance Department</i>	<i>821/09.10.2015 (Annex-X)</i>	<i>Illegal gratification</i>
9	<i>Hon’ble Chairman</i>	<i>The senior citizen of Housing Board Colony, Baldev Nagar, Camp Ambala & Kalka.</i>	<i>1630/28.04.2016 (Annex-XI)</i>	<i>Illegal gratification</i>
10	<i>Hon’ble Chairman</i>	<i>BJP Worker</i>	<i>1631/28.04.2016 (Annex-XII)</i>	<i>Illegal gratification</i>
11	<i>Hon’ble Chairman</i>	<i>BJP Worker</i>	<i>1632/28.04.2016</i>	<i>Illegal gratification</i>

			(Annex-XIII)	
12	Hon'ble Chairman	BJP Worker	1635/28.04.2016 (Annex-XIV)	Illegal gratification
13	Hon'ble Chairman, HBH	Sh. Triloki Nath Markandey (enclosures)	20.04.2016 (Annexure XV)	Illegal gratification
14	Hon'ble C.M. Haryana/ ACS (Housing)/ C.A. HBH	BJP Worker	4280/07.04.2015 (Annex-XVI)	Illegal gratification

RECOMMENDATION:-

The official Sh. N.K. Pruthi seems to be in a habit of official default at regular intervals which is clear from his personal office record. Many times in the past he has been charge sheeted and even suspended from service. There is influx of many complaints regarding demand of bribery, illegal gratification, dereliction of duty, criminal misconduct, mis-appropriation of property and disproportion of assets (as mentioned above in table). Since all these complaints involve serious allegations and some are duly supported by the affidavits which clearly mention the un-becoming conduct and criminal misconduct on his part. The gravity and seriousness of some of the allegations get covered under the Prevention of Corruption Act, 1988 which requires detailed and extensive investigation by a specialized agency. Therefore, in the light of the complexities of the issues and multitude of serious allegations it would be appropriate if a



case under the Prevention of Corruption Act, 1988 is got registered against the erring official and all the complaints mentioned above along with relevant records are sent to the State Vigilance Bureau for further detailed investigation.”

11. He contends that recommendations made in the aforesaid vigilance enquiry report are not disputed and have been acknowledged by the respondents, but notwithstanding the above said enquiry report specifically over-ruling the objection about set-off, the payment was still not made. He contends that the identity of the firms, against the dues whereof, the adjustment was being sought to be made, were different entities and they do not constitute a same body. The respondents also wrongly withheld certain payments due to the petitioner for other works against which arbitration proceedings were initiated and the arbitral award was passed in favour of the petitioner in relation to the work undertaken by him at Gurgaon.

12. During the course of consideration of execution petition No.2167 of 2019, an objection was taken again by the respondents about adjustment of the payments from the earlier works purportedly allotted to other partnership firm as have been referred to by the Principal Secretary, Housing Department, Haryana in the affidavit filed before this Court in the present proceedings. The said objection was dismissed by the Executing Court of Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurgaon in his order dated 12.11.2021. The operative part thereof reads thus:-



“8. *Having given my thoughtful consideration to the rival contentions and material available on the file, I am of the firm opinion that alleged recoverable amount from another firm of same name is not having the status of due amount as JDs are not claiming the said amount on the strength of any order/decreed of a competent court or an award of award made through due process of arbitration. In fact, DH is disputing that any such amount is due to JDs from the another firm of same name. In these circumstances, unless there is some order/decreed of competent court or arbitration award recognizing legally recoverable debt by the JDs from another firm of the same name, no adjustment can be made against the amount due to the DH qua the work done at Gurugram regarding which arbitration award dated 18.09.2014 has been passed and execution has been taken out for enforcement of the same. In any case, the record of the case shows that DH firm and other firm of the same name from which JDs are claiming recovery of amount of Rs.1,85,00,000/- are different and distinct entities and in these circumstances, right of JDs to adjust the amount in itself is questionable. Though JDs have sought to take shelter under Clause 29 of the Contract Agreement which provides for such adjustment but in my considered opinion, adjustment is possible only if the alleged recoverable amount has attained*



the status of due amount by dint of order/decreed of a competent court or arbitration award. It is not so herein. Even learned counsel for JDs on being asked during course of arguments on this aspect of the matter, was at loss of words and hence, it becomes absolutely clear that no adjustment could have been made by the JDs who do not even seem to have commenced any proceedings for recovery of alleged due amount from the other firms of same name. Merely saying that amount is due but without sanction of law, is not sufficient to confer right upon the JDs to go in for adjustment. In this view of the matter, it has to be observed that entire amount of the present execution is still due and outstanding and JDs can not be allowed to walk away just by taking the plea of adjustment. Objections are without merit and are accordingly dismissed.”

13. He submits that it was specifically observed by the Executing Court that there was no order passed by any competent Court for assessing and recovering any amount or for raising any demand and further that no competent authority had permitted/directed respondent No.6 to make an adjustment in terms of Clause 29. No such order has also been placed on record of this Court as to how and under what circumstances the aforesaid amount, claimed to be an amount due, has been arrived at despite the matter having remained pending for a period of 07 years before this Court. They have chosen to also ignore the fact that the above said objection had been duly



considered by the Chief Vigilance Officer and was found to be without any valid justification and authority. It is contended that the Principal Secretary while filing reply, has chosen not to advert to the above said report wherein the Housing Department has clearly ruled that the conduct of respondent No.6 claiming such an adjustment in exercise of the power under Clause 29 was illegal and without any jurisdiction.

14. I have heard the learned counsel for the parties at length and have gone through the documents relied upon by the counsel for the petitioner.

15. On consideration of the facts brought before this Court, I find that the conduct of the respondents is incomprehensible and deserves to be deprecated. Time and again the officers have been directing the release of the payment and after recording a specific finding that the deduction/withholding of the due payment to the petitioner was illegal and was not called for and that respondent No.6 had no authority to do so, yet, the same has not been released.

16. Surprisingly, the respondents have still chosen to take a stand of making an adjustment in the written statement despite such stand having already been held to be bad, in an internal investigation conducted by the Chief Vigilance Officer-cum-Secretary of the Housing Board Haryana himself in his report, which is neither discredited nor disputed.

17. I find that the affidavit filed by the Principal Secretary, Department of Housing, takes a stand contrary to the record and is intend to



take up an issue on which the Department had already taken a decision and had not found any favour. No order of adjustment of any outstanding dues in respect of the works pertaining to Narnaul and Bahadurgarh have been brought before this Court either along with the reply or at any stage later in point in time by way of an additional affidavit. It is not in dispute also that the objection in this regard was specifically also dismissed by the Executing Court, when such an adjustment was sought to be made in the amount payable to the petitioner herein, pursuant to an arbitration award in his favour.

18. The respondents despite having specifically noticed time and again that there was no order assessing the amount due and that respondent No.6 was not authorized to make any such adjustment in the absence of any specific direction/order in this regard or in the absence of any decision having been taken pertaining to the assessment of the amount due, however, they have still compelled the petitioner to approach the Court again and again for enforcing his rights and thus unnecessarily burdening the dockets of this Court. It is a clear case of an administrative inaction which has led to an oppression and undue harassment, apart from an unwanted litigation, being forced upon the petitioner.

19. **The present writ petition is accordingly allowed.** The respondents are directed to release the payment of Rs.3,50,000/- along with interest @ 6% per annum w.e.f. 22.07.2015 i.e. when an order for release was passed by the Chief Administrator, Housing Board, Haryana. Let this amount be released in favour of the petitioner within 03 months of a period



of receipt of certified copy of this order, failing which, the respondents would be liable to pay interest @ 9% per annum from the same date. Additionally, while deprecating the adamancy and unfair conduct of the respondents and having compelled an unwanted litigation, the respondent-Housing Board is burdened with a cost of Rs.1,00,000/- to be deposited with the Poor Patient Welfare Fund (PPWF) of Post Graduate Institute of Medical Education & Research, Chandigarh. The above said amounts may be recovered from the erring officials as per law alongwith the recovery of the interest liability fastened on the State exchequer.

(VINOD S. BHARDWAJ)
JUDGE

12.09.2024
Mangal Singh

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