

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-27863-2023

Reserved on: 06.02.2024

Pronounced on: 30.04.2024

M/s Palbro Home Luxuries

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Sanjay Majithia, Senior Advocate, with
Mr. Sumit Sinha, Advocate,
for the petitioner.

ARUN PALLI, J.

- 1) The facts that are required to be noticed are limited.
- 2) The ESI, Hospital, Amritsar, had invited sealed tenders for the year 2009-10, to provide fire fighting equipments. The petitioner, who participated in the tendering process, was found to be technically compliant and its price bid was accepted by the Committee constituted for the said purpose. Resultantly, vide communication dated 30.06.2009 (P-4), it was awarded the contract. Whereupon, the petitioner continued to provide the fire fighting equipments and render the required services to the Hospital (respondent No.3). And vide communication dated 20.07.2009 (P-5), it requested the Hospital to clear its bills for the work it had already carried out, with an assurance that balance works, such as, hooter and training of hospital staff, would also be done, at the earliest. The said communication was followed by a reminder/representation dated 09.11.2009 (P-6). But to no avail. Accordingly, the petitioner was constrained to approach this Court vide CWP-6520-2010, which was

disposed of by a Division Bench, on 08.04.2010, with a direction to respondent No.1 therein to decide the representation the petitioner had submitted, in accordance with law. But, yet the authorities failed to pass any order in compliance thereof. Whereafter, the petitioner purportedly submitted a joint representation, vide Annexure P-9 (undated), with M/s Tamanna Nursery and Gulati Builders, who too, in response to the same tender, were awarded contracts for different works. Further, the petitioner also alleged to have served the respondents with a legal notice dated 18.05.2013 (P-11), as also a representation dated 14.06.2014 (P-12), but none was responded to. Hence this petition:-

“Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ of Mandamus to direct the respondents to disburse the payment according to accepted tender amount as the petitioner had competed the tender work in stipulated 9 Months.

AND

This Hon’ble Court may issue also a writ of Mandamus directing respondent No.1 despite directions from this Hon’ble Court in CWP No. 6520 of 2010 titled as M/s Palbro Home Luxuries versus State of Punjab and Others decide on 08.04.2020 vide Annexure P-7 and CWP No.1456 of 2010 titled as “Tamanna Nursery vs. State of Punjab and ors.” decided on 28.05.2010 Annexure P-8 had directed respondent No.1 to decide the dispute but the named respondent No.1 failed to take any action and visits and representations of the petitioner went unheeded and ignored. Consequently the amount of work done which was for Rs. 5,47,000/- be directed to be paid to the petitioner forthwith along with interest.”

3) We had heard learned Senior counsel for the petitioner and perused the records.

4) Concededly, even in the earlier petition (CWP-6520-2010), filed by the petitioner, it had prayed for a Mandamus, commanding the respondents to release the requisite amount in lieu of the works it had executed:-

“Civil writ petition under Article 226/227 of the Constitution of India for issuance of the writ in the nature of Mandamus to direct the respondents to release the amount to the petitioner for the successful completion of the work in terms of the Tender Notice dated 04.06.2009 (Annexure P-1) allotted to the petitioner vide allotment letter dated 30.06.2009 (Annexure P-2).

And further direct the respondents to allow the petitioner to maintain the equipments in terms of the conditions contained in the allotment letter dated 30.06.2009 (Annexure P-2).”

5) It is not disputed either, as indicated above, the earlier petition filed by the petitioner was disposed of by the Division Bench on 08.04.2010, only with a direction to respondent No.1 therein to consider and decide its representation, in accordance with law, within a period of 45 days from the receipt of a certified copy of the order. Since the earlier petition was disposed of almost a decade and a half ago, and if the said order was not complied with, we were of the view that in all probability, the petitioner must have approached this Court, by filing a contempt petition. Accordingly, upon research, it was discovered that petitioner had, indeed, filed a contempt petition (COC-1655-2010). And consequently, the order dated 23.08.2010, vide which the said contempt petition was dismissed, being not maintainable, was retrieved from the records (Document Management System):-

“The petitioner has installed fire fighting equipments at ESI Hospital, Amritsar. The writ petition filed by the petitioner was disposed of with a direction to respondent No.1 to decide the representation (Annexure P-4). It was not pointed out by the petitioner that ESI Hospital is managed by a statutory authority i.e. Employees State Insurance Corporation established under the Employees’ State Insurance Act, 1948 and not by the State Government.

In view of the said fact, the direction given by this Court is incapable of implementation, as the State Government has no control over a Hospital established under the Employees’ State Insurance Act, 1948.

Consequently, the present contempt petition is dismissed as not maintainable.”

6) A bare analysis of the order, referred to above, reveals that Contempt Court not only dismissed the contempt petition, but also observed that the Division Bench had disposed of the petition with a direction to respondent No.1 (State Government) to decide the representation submitted by the petitioner. Whereas, it was never brought to the notice of the Court that ESI, Hospital, was managed by a statutory authority, i.e. Employees State Insurance Corporation, established under the Employees’ State Insurance Act, 1948. Therefore, the direction issued by this Court was incapable of being implemented, for the State Government had no control over a Hospital established under the said Act.

7) We consider it necessary and are, rather, impelled to record, at this stage, that the fact with respect to filing of the contempt petition by the petitioner was/is deliberately suppressed in the present proceedings. Thus, besides the order dated 08.04.2010 (*ibid*), post dismissal of the contempt petition on 23.08.2010, the petitioner, in any

case, could not maintain this petition. Further, nearly a decade and a half has gone by since dismissal of the earlier petition as also the contempt petition, filed by the petitioner in the year 2010. Therefore, in the given circumstances, the only and the inevitable conclusion that could be reached: the petition at hand is not only bereft of merits but also lacks bonafides.

8) Accordingly, the petition is dismissed. However, subject to costs of Rs.5,000/-, to be deposited with the Punjab & Haryana High Court Bar Association Lawyer Family Welfare Fund. And, an acknowledgment in this regard be also submitted with the registry within two months from the date of this order.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

30.04.2024
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No