

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27814-2023
Reserved on: 06.02.2024
Pronounced on: 30.04.2024

Tamana NurseryPetitioner

Versus

State of Punjab and othersRespondents

CWP-24049-2023

Gulati BuildersPetitioner

Versus

State of Punjab and othersRespondents

**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 petitioners.**

ARUN PALLI, J.

- 1) For learned Senior counsel for the petitioners submits that the matter in issue in both these petitions is identical, these are being disposed of by a common order and judgment. However, the facts are being derived from **CWP-27814-2023.**
- 2) The facts that are required to be noticed are limited.
- 3) The ESI Hospital, Amritsar, had invited sealed tenders for the year 2009-10, to provide landscaping and horticulture services. 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. Accordingly, vide communication dated

24.06.2009 (P-4), the petitioner was awarded the contract. For, it would be relevant to point out, the works the petitioner was assigned with, per instructions issued by the Headquarter, were categorized as special repair works, and to award any contract in this regard, approval/sanction from the State Medical Commissioner, ESI Corporation, Chandigarh, was mandatory. Whereas, the petitioner was awarded the tender/contract by Dr. Jotinder Mandher, the then Medical Superintendent, at her own level, by misusing her authority. Resultantly, pursuant to the decision of the Hospital Development Committee, dated 23.11.2009 (P-7), the contract assigned to the petitioner was cancelled. And being aggrieved, the petitioner approached this Court vide CWP-1456-2010, assailing the cancellation of contract and also prayed for a direction to the respondents to clear its bills for the work it had already executed. However, this Court was of the view that the disputed question of assessment of the value of work alleged to have been executed by the petitioner could not be determined in the writ jurisdiction. Accordingly, the said petition was disposed of, vide order and judgment dated 28.05.2010 (P-8), relegating the petitioner to avail any other alternate remedy, in accordance with law. But, the Principal Secretary, Health and Family Welfare, Punjab, was also directed to examine the claim of the petitioner within a specified time. However, the petitioner was granted liberty that in the event, it was not satisfied with the decision so taken, it could take recourse to any other alternate remedy. Thus, the limited grievance that the petitioner has is: despite repeated representations (P-10 and P-13), as also the legal notice dated 18.05.2013 (P-12), the respondent authorities were served

with, no formal decision, in compliance to the order dated 28.05.2010 (*ibid*), has been taken. Hence this petition:-

“Writ Petition under Article 226/227 of the Constitution of India for quashing the cancellation order Annexure P-7 dated 23.11.2009 as the work tender allotted to the petitioner was cancelled in violation of Rules; the work having been allotted strictly by following proper procedure or in the alternative ignoring order Annexure P-7 dated 23.11.2009 disbursing the payment according to accepted tender amount as the petitioner had completed 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-1456 of 2010 titled as Tamanna Nursery versus State of Punjab and Others decide on 28.05.2010 vide Annexure P-8 had directed respondent No.1 to decide the dispute but the name 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.18.90 lakhs be directed to be paid to the petitioner forthwith along with interest.”

4) We had heard learned Senior counsel for the petitioners and perused the records.

5) As indicated above, the petitioner had even earlier approached this Court vide **CWP-1456-2010**. And, in context of the limited issue, that is sought to be raised before us, we consider it expedient to refer to the relief the petitioner had prayed for, in the earlier petition:-

“Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of the writ or directions or orders especially in the nature of Certiorari quashing the letter (Annexure P-4) dated 23.11.2009.

And it is further prayed for the issuance of a writ in the nature of mandamus to the respondents to allow the petitioner to smoothly complete the services allotted to it up to the period 31.03.2010 as per letter 24.06.2009 (Annexure P-2) and further direct the respondents to clear the bills submitted by the petitioner for the already performed substantial part of the contract granted to it vide Annexure P-2.”

6) Similarly, as indicated earlier, analysis of the order dated 28.05.2010 (*ibid*) would reveal that value of the works, the petitioner claimed to have executed till cancellation of the contract, was Rs.19,00,000/-. Whereas, the specific case set out in defence by the respondent authorities was that the works performed by the petitioner merely valued Rs.2,00,000/-. And the said amount was even disbursed to the petitioner during the pendency of the said petition. Accordingly, the Division Bench concluded that since dispute regarding actual value of the work purport to have been executed at site could not be conclusively determined in the proceedings under Article 226 of the Constitution, the petitioner was relegated to avail an alternate remedy. However, as the then counsel for the petitioner suggested that without prejudice to the rights of the petitioner to avail an alternate remedy, the matter, in the first instance, could be examined by the competent authority, the Court required the respondents to examine its claim and take a decision:-

“5. We are of the view that disputed question of assessment of value of the work cannot be gone into in writ petition and the petitioner has to take any other

alternative remedy. However, learned counsel for the petitioner suggests that without prejudice to any other alternative remedy, the matter may be looked into by the Principal Secretary, Health and Family Welfare, Punjab in the first instance and if the petitioner is not satisfied with the decision so taken, it can take any other remedy.

6. *Learned counsel for the State has no objection to the matter being considered by the Principal Secretary, Health and Family Welfare, Government of Punjab, as proposed by learned counsel for the petitioner.*

7. *Accordingly, we dispose of this petition with a direction that Principal Secretary, Health and Family Welfare, Government of Punjab will look into the claim of the petitioner in accordance with law within three month from the date of receipt of a copy of this order. If the petitioner will not be satisfied with the decision so taken, it will be at liberty to take any other alternative remedy in accordance with law.”*

7) Thus, *ex facie*, the petition at hand is centered on the same cause of action and the relief that is being prayed for is also identical, as was sought in the earlier petition. Therefore, we wonder, as to how, once this Court declined to interfere in the earlier proceedings, the petitioner could still file this petition. Concededly, the order dated 28.05.2010 (*ibid*), has since attained finality. Therefore, in our opinion, the present petition is not even maintainable. And as regards the grievance of the petitioner that in spite of the explicit directions issued by this Court, the respondent authorities failed to consider its claim and pass necessary orders, the same is equally misconceived and erroneous. For the earlier petition was disposed of as back as on 28.05.2010, 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 **(COCP-2026-2010)**, which, however, was dismissed vide order dated 15.11.2010. The said order was retrieved from the records (Document Management System). And, analysis thereof shows that the Contempt Court observed that the Division Bench declined to interfere in the matter and had, rather, relegated the petitioner to avail an alternate remedy. And in so far as the direction to the respondent authorities to examine the claim of the petitioner, the same being more by way of a concession than any right, no case was made out for initiation of contempt proceedings:-

“xx xx xx xx
xx xx xx xx

The present contempt petitions have been filed by the petitioners alleging that the Principal Secretary, Health and Family Welfare, Punjab has not examined the claim of the petitioners in terms of the directions of this Court and, therefore, there is willful disobedience to the order passed by this Court.

After hearing learned counsel for the petitioners, I do not find that any case for initiation of contempt proceedings is made out. This Court has found that the disputed question of assessment of value of the work cannot be gone into in writ petition. In view of the said fact, the direction to the Principal Secretary, Health and Family Welfare, Punjab, to look into the claim of the petitioners is more by way of a concession rather than any right. If the petitioners have any legal and subsisting claim, they have a right to seek remedy from the appropriate Forum, but to assert that non-examination of the claim by the Principal Secretary, Health and Family Welfare, Punjab, discloses contempt is not tenable.

In view of the above, both the contempt petitions are dismissed.”

8) 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 28.05.2010 (*ibid*), post dismissal of the contempt petition by this Court on 15.11.2010, 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.

9) Accordingly, both the petitions are dismissed. However, subject to costs of Rs.5,000/- each, 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