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Chandigarh

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

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CWP-17626-2021

Date of Decision : February 21, 2025

M/S M.S. BROTHERS ENGINEERS AND CONTRACTORS

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Dheeraj Mahajan, Advocate for the petitioner.
Mr. Pardeep Bajaj, DAG, Punjab.
Mr. Sumit Jain, Advocate for respondent No.2 and 3.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, as cast under Article 226 of the Constitution of India, prayer is made for issuance of mandamus upon the respondents concerned to constitute the Standing Empowered Committee to adjudicate the claims, as raised by the petitioner on account of the fact that till date neither the Standing Empowered Committee has been constituted nor the claims has been considered on merits.

2. It is not in dispute that the work allotted to the petitioner way back on dated 17.12.2004 and the written contract was duly executed and the said work was alleged to have been completed on dated 28.2.2006. Thereupon the petitioner at belated stage, raised the dispute regarding non-payment of the amount for the work executed by him and also approached this Court for issuance of a directions upon the respondent concerned to

constitute the Standing Empowered Committee to adjudicate his claim. To lend vigor his submission (supra), the learned counsel for the petitioner draw the attention of this Court towards Clause 24 prescribing the procedure for redressal of the dispute. For apt decision of the instant case, Clause 24 is extracted hereinafter:-

“24. Dispute Redressal System

24.1 If any dispute or difference of any kind whatsoever shall arise in connection with or arising out of this contract or the execution of works or maintenance of the work thereunder, whether before its commencement or during the progress of works or after the termination, abandonment or breach of the contract, it shall, in the first instance, be referred for settlement to the competent authority within 45 days of arising of the dispute or difference, described alongwith their powers in the contract data, above the bank of the engineer. The competent authority shall within a period of 45 days after being requested in writing by the contractor to do so, convey his decision to the contract. Such decision in respect of ever matter so referred shall, subject to review as hereinafter provided be final and binding upon the contractor. In case the works is already in progress, the contractor shall proceed with the execution of the works, including maintenance thereof, pending receipt of the decision of the competent authority as aforesaid, with all due diligence.

24.2 Either party will have the right of appeal, against the decision of the competent authority to the Standing Empowered Committee within 90 days of decision of the competent authority if the amount appealed against exceeds 0.20 (zero point two zero) percent of the initial contract price.

24.3 The composition of the Empowered Standing Committee will be:

- I) One official member, chairman of the Standing Empowered Committee, not below the rank of Additional Secretary to the State Government.*
- II) One official member not below the rank of Chief Engineer; and*
- III) One non-official member who will be technical expert of Chief Engineer's or Superintending Engineer's level selected by the Contractor from a panel of three persons given to him by the employer.*

24.4 The Contractor and the employer will be entitled to present their case in writing duly supported by documents. If so requested, the Standing Empowered Committee may allow one opportunity to the contractor and the employer for oral arguments for a specified period. The Empowered Committee shall give its decision within a period of 90 days from the date of appeal, failing which the contractor can approach the appropriate court for the resolution of the dispute.

24.5 The decision of the Standing Empowered Committee will be binding upon the employer for payment of claims up to five percent of the initial contract price. The contractor can accept and receive payment after signing as "in full and final settlement of claims". If he does not accept the decision, he is not barred from approaching the courts. Similarly, if the employer does not accept the decision of the Standing Empowered Committee above the limit of five percent of the initial contract price, he will be free to approach the courts applicable under the law."

3. A perusal of the above Clause clearly illustrates that in case of any dispute or difference arise *inter-se* the parties then either of the parties at first instance be referred for settlement to the competent authority within 45 days of arising of dispute/difference. Thereafter the competent authority concerned shall within a period of 45 days convey his decision to the contractor. Such decision is final subject to review as per the provisions of the contract. Clause 24.2 prescribed that every party has the right of appeal against the decision of the competent authority to the Standing Empowered Committee within 90 days of the decision of the competent authority if the amount appealed against exceeds 0.20 percent of the initial contract price.

4. From the perusal of the instant petition, it is nowhere coming forth that the petitioner in pursuance of Clause 24.1 has ever raked up the dispute with the competent authority concerned. It is also not disputed that the entire contract amount has already been paid and the dispute, which raised

by the petitioner now is only with regard to the security amount of the contract.

5. The learned counsel for the petitioner submits that the scope of the contract was subsequently enhanced and the petitioner has also completed the enhanced work. The bill of enhanced work was duly processed, however, subsequently was not paid to the petitioner, whereas, these assertions are disputed by the respondents. In fact, the respondents have disputed the very existence of any approval from the competent authority for enhancement of the contract.

6. Since the issue, as raised before this Court is highly disputed questions of facts i.e. as to whether the scope of contract was ever enhanced and the same was duly approved by the competent authority concerned; whether the petitioner has completed the enhanced work and whether the petitioner within the stipulated period has ever approached the competent authority concerned by raising the dispute. Therefore, this Court while exercising its writ jurisdiction refrains itself to adjudicate the highly disputed questions of facts and declined to grant the asked for mandamus. However, liberty is extended to the petitioner to raise these issues before the learned Civil Court concerned. The issue of limitation shall remain open to be adjudicated by the competent Court/forum concerned.

7. **Disposed** of accordingly.

February 21, 2025
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No