
(2012) 01 SHI CK 0144
In the High Court Of Himachal Pradesh
Case No : CWP No. 6316 of 2010-G

Laxmi Dass

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 01 SHI CK 0144

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

Justice V.K. Sharma, J.—The petitioner is a Government Contractor. In March, 2007, he was awarded a contract to the tune of Rs. 1,86,432/-in respect of "restoration of rain damages to plinth protection, side drain and replacement of CGI sheet, roofing of Block No. 16 and 17 at U.S Club, Shimla".

2. Admittedly, a part of the awarded work to the tune of Rs. 1,33,462/-was carried out by the petitioner. However, the payment was delayed allegedly due to the reason that respondent No. 3, who was Junior Engineer-in-charge of the said work at the relevant time, was in the meantime promoted as Assistant Engineer and had left without handing over the measurement book to his successor.

3. Against the above backdrop, though the petition has been filed on the following substantive prayers, yet at the time of hearing, the claim is restricted only qua prayer (ii), as in the meantime the payment of the work done has already been made to the petitioner by respondents No. 1 and 2:-

i) That the Respondent No. 1 and 2 may be ordered to be directed to release the payment of petitioner for the work done by him as per the award letter dated 19.3.2007 (Annexure P-1) after preparing the running bill as required by the respondents.

ii) That the personal responsibility of Respondent No. 3 may be ordered to be fixed for not handing over the Measurement Book of the work carried by the

petitioner despite the service of notice Annexure P-3.

4. In reply, respondents No. 1 and 2 have set up the following averments vide para 2 of the preliminary submissions and paras 2 to 7 on merits:-

Preliminary Submission:

2. That the petitioner is not competent to file and maintain the present writ petition on the ground that petitioner being a registered Govt. Contractor had signed a contract agreement No. 437 of 2007 to carryout the work for restoration of rain damages to damaged plinth protection, side drain and replacement of CGI sheet roofing of block No. 16 & 17 at U.S. Club Shimla. The petitioner while signing the contract agreement had also entered into an arbitration agreement agreeing to refer all disputes relating to or out of the execution of work to the sole arbitrator of a person to be appointed by the Engineer-in-charge/Chief Engineer under the provision of Arbitration Act, 1996 or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this act. Thus based upon these facts and circumstances when attestation in remedy is already available the present writ petition without exhausting said remedy is not maintainable. As such the same deserves its dismissal in the interest of justice on this ground alone.

On merits:

Para 2 to 5:

That in reply to these paras it is submitted that the petitioner is a registered Govt. Contractor. But it is denied that the working of petitioner as a Govt. Contractor is satisfactory to the officers in the department as in the aforesaid matter under dispute, the work for the Restoration of rain damages to damaged plinth protection side drain and replacement of CGI Sheet roofing of block No. 16 & 17 at U.S. Club, Shimla was awarded to the petitioner by the respondent No. 2 vide award letter dated 19-03-2007 for Rs. 1,86,432/- only. The same is annexed as R-1 and the said work was not completed by the contractor as per the contract agreement No. 437 of 2006-07 signed between the petitioner and respondent No. 2. The following material from the department store was issued to the petitioner against the awarded work:

(i)

Cement 100 Bag @ 148/- P. Bag (Vide Challan No. 185 & 186)

Rs. 14800/-

(ii)

CGI Sheet 0.690 mt. @ 61750/-P.mt. 0.63 mm

Rs. 42608/-

(iii)

PGI Sheet 0.198 mt. @ 61750/- P.mt.

Rs. 12227/-

Total

Rs. 69,635/-

The petitioner was required to complete the work within two months. But the record entry recorded by the Junior Engineer-in-Charge i.e. respondent No. 3 in the M.B. No. 3251 page 70 & 71 shows that only work amounting to Rs. 54,741/- was executed by the petitioner against the awarded amount of Rs. 1,86,432/-. Thus as per the record entries the petitioner had executed only about 25% of the awarded work and the cost of material which stand issued to the petitioners comes to Rs. 69,635/- copies of the Indent No. SD-II-U.S. Club/ 07-224 of 5/07 and indent No. SD-II-U.S. Club/ 07/224 annexed as Annexure R-2 and R-3 which shows that the aforesaid material was issued from the department store to the petitioner on the requisition of respondent No. 3 who was the Junior Engineer-in-charge of the work has also prepared the running bill amounting to Rs. 1,32,632/- out of which Rs. 71,080/- as a recovery of material and 10% security plus income tax from petitioner and Rs. 62,552/- is the net amount payable to the petitioner. The copy of MBs entries along with bill is annexed as Annexure R-4. Respondent No. 2 further undertakes that the payment of said amount is to be made to the petitioner by the replying respondents.

Para-6:

That the contents of this para are admitted to the extent that during 7/2007, respondent No. 3 Sh. R.C. Dhiman was promoted to the post of Assistant Engineer and the charge of his section was taken over by Sh. S.D. Gautam, but it was not possible for the new incumbent to prepare the running bill of the petitioner since the measurement recorded by respondent No. 3 had not been got test checked at site by the respondent No. 3 at that time from the then Assistant Engineer. The information under RTI Act was sought by the petitioner from the respondent No. 2 vide letter annexed as Annexure R-5. The reply to this application was also sent to the petitioner vide office letter so annexed as Annexure R-6.

Para-7:

That in reply to this para, it is admitted that a copy of legal notice addressed to the respondent No. 3 (Sh. R.C. Dhiman) was endorsed to the office of replying respondent No. 2. In response of this the respondent No. 2 directed Sh. R.C. Dhiman, who is respondent No. 3, vide letter No. SD-III-CG-Tender/ 2009 -6052-53 dated 13-07-2009 annexed as Annexure R-7 to submit the reply to the counsel of the petitioner.

5. Respondent No. 3 has taken the following stand by way of preliminary

objection No. 2 and para 5, 6 and 8 on merits:-

Preliminary Objection:

2. That the writ petition is a gross abuse of the process of this Hon''ble Court and is based on imaginary facts. The writ petition involves disputed questions of fact which would not be gone into by this Hon''ble Court while exercising jurisdiction under Article 226 of the Constitution of India.

On merits:

5. In reply to para 5 of the petition it is denied that the petitioner had executed 80% of the work till May 2007 as alleged and as already detailed above even the cost of the work executed by the petitioner till 20.7.2007 was only about 71.58% of the total work. It is further submitted that in terms of the agreement for the work the bill for the work done was required to be submitted by the petitioner. It is denied that the petitioner requested the answering respondent to prepare the bill and in fact the answering respondent had been recording the measurements of the work done regularly in the knowledge of the petitioner, who had also been signing the measurement books in token of acceptance of the correctness of the measurements.

6. Para 6 of the petition is admitted to the extent that the answering respondent was promoted as an Assistant Engineer and posted at Arki. It is denied that the answering respondent had been taken away by the answering respondent as alleged. In fact the measurement books were handed over by the answering respondent to his successor and it was for the successor of the answering respondent to take further steps in the matter.

8. Para 8 of the petition as alleged is not correct and in reply thereto it is submitted that in terms of the contract conditions the running bills were to be submitted by the petitioner and only thereafter the same were to be verified by the answering respondent. In the present case, however, no bill was submitted by the petitioner but the answering respondent still prepared a bill on the basis of the measurements recorded in the measurement books and accepted by the petitioner. It is emphatically denied that there is any anarchy as alleged.

6. I have heard the learned counsel/learned Senior Counsel/learned Dy. Advocate General on behalf of the parties and gone through the record.

7. Though the respective contentions on behalf of the parties with regard to delayed payment are at variance with each other, yet it is apparent from the information supplied to the petitioner under the Right to Information Act in the form of Annexure R-6, particularly the information contained against column Nos. 4 and 8 thereof that delay in payment was owing to the reason that on promotion respondent No. 3 had not supplied any details about the work carried out by the petitioner to the successor Junior Engineer. It is further apparent from Annexure R-7 that when the petitioner served a legal notice upon the department, a copy thereof was sent by respondent No. 2 to respondent No. 3

calling upon him to send para-wise reply to the quarter concerned under intimation to him. However, respondent No. 3 has not shown as to what follow up action was taken by him in this regard.

8. The records reveal that the work was partially carried out by 20.7.2007. The payment was made to the petitioner only somewhere in the year 2011, during the pendency of the writ petition. Thus, it is manifest that there has been delay in making payment to the petitioner on the part of the respondents, entitling the petitioner for payment of interest on account of delayed payment.

9. In view of the above, the petition is allowed with a direction to respondents No. 1 and 2 to pay interest to the petitioner @ 9% per annum on the net amount payable, that is, Rs. 62552/-from the due date to the date of actual payment within three months from the date of production of copy of this judgment by the petitioner before respondents No. 1 and 2/competent authority. However, it shall be open for respondents No. 1 and 2/competent authority to fix liability, if any, for the delayed payment on the concerned officials/officers of the department including respondent No. 3 and proceed to recover the amount of interest as above from them.

10. The petition stands disposed of in the above terms.