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State of Punjab Vs. Parmar Construction Co. Engineers and Contractor's

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Court : Punjab and Haryana

Decided On : Sep-24-1996

Reported in : (1997)116PLR363

Judge : G.C. Garg, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2

Appeal No. : C.R. No. 3561 of 1994

Appellant : State of Punjab

Respondent : Parmar Construction Co. Engineers and Contractor's

Advocate for Def. : P.C. Markanda, Adv.

Advocate for Pet/Ap. : N.D.S. Mann, DAG

Judgement :

G.C. Garg, J.

1. Respondent herein entered into a contract for construction of Kundlu Syphen Aqueduct on the S.Y.L. Canal in the year 1985. Agreement was executed between the parties in March 1985. The contractor started work and according to it the work was completed in the year 1988 and payments as per terms of the contract were made. However, according to the respondent herein, certain payments were due

to it which were not made and this gave rise to a dispute. On the request made by the respondent, the matter was referred to the arbitrator which is admittedly pending adjudication.

2. The Vigilance Department of the State of Punjab perhaps on some information of its officers came to the conclusion that some excess payment had been made to the contractor in respect of the above contract. The Vigilance Department worked out the excess payment to the contractor in the sum of Rs. 34.39 lacs in respect of two contracts i.e. one for construction of Kundlu Syphen Aqueduct and the other for Loten Khad. On receipt of reference from the Vigilance Department, the Head of Department circulated that information to all other departments of the State Government for the purpose of effecting recovery of the amounts indicated in the circular. Faced with this situation, the respondent herein filed an application Under Section 41(b) of the Arbitration Act read with Order 39 Rules 1 and 2 and Section 151 of the Code of Civil Procedure in the Court of Additional Senior Sub Judge, Ropar seeking a restraint order against the present petitioners from giving effect to letter No. 2072-2141/PCC dated 29.10.1993, for effecting recovery of Rs. 34.39 lacs issued to various offices of the State of Punjab by the Executive Engineer, Lohand Construction Division, S.Y.L. Canal Project Punjab Ropar. This application was considered by the learned Subordinate Judge and he by his order dated 4.3.1994 allowed the same and restrained the State authorities to recover the amount in question during the pendency of the arbitration proceedings between the parties. It is this order of the Subordinate Judge which is the subject matter of this revision petition at the behest of the State Government.

3. Learned counsel for the parties were heard at some length and during the course of hearing, it transpired that the amounts found due from the respondent and sought to be recovered from it had been determined by the Vigilance Department without associating the contractor-respondent herein and without giving it an opportunity to show cause that the amount had been correctly paid by the department concerned to it in respect of the works executed by the construction-company. The claim of the State Government is that payment in the sum of Rs. 34.39 lacs had been made to the contractor in excess of its entitlement whereas case of the contractor on the other hand is that the payment had been

correctly made after the same had been sanctioned by the competent authority.

4. Mr. N.D.S. Mann, learned Assistant Advocate General, Punjab appearing for the petitioners could not by reference to any material placed on the record of this case or otherwise satisfy me that the amount allegedly paid in excess had been determined either by the department or by the Vigilance Department, after associating the contractor. Obviously the recovery of amount sought to be made from the respondent in pursuance of the decision of the Vigilance Department affects civil rights of the contractor. It is well settled that an order affecting civil right of a party must be passed at least, after affording to it an opportunity of being heard. This principle is by now well recognised. In the present case the amount sought to be recovered has been determined, may be by the department or the Vigilance Department, without associating the contractor from whom a heavy recovery of Rs. 34.39 lacs is going to be made. The demand made by the Department is, therefore, required to be quashed as the same has been worked out without associating the contractor. If the contractor had been afforded an opportunity to show cause, it may have shown good cause that nothing was due. The recovery is, therefore, quashed without going into the question as to whether the application moved by the respondent under section 41(b) of the Arbitration Act was or was not competent. Letter of recovery having been quashed, it having been issued without complying with the principle of natural justice, this revision has been rendered infructuous and deserves to be disposed of as such.

5. However, faced with the above situation, learned counsel for the respondent submitted that any person other than an officer of the Department may be appointed to consider the matter afresh and to determine the liability of the contractor, if any, after associating it. He has made this submission on the premises that officers of the Department should not be made a judge in their own cause as they have already issued instructions and determined the amount. On a consideration of the matter, I find no merit in the submission for more than one reason. Firstly, the letter for effecting recovery of Rs. 34.39 lacs was issued by the petitioners to other departments of the State of Punjab in October, 1993. At that time, Shri K.S. Sidhu was the Chief Engineer of the Construction Division of S.Y.L. Canal Project whereas Shri A.D. Dewan was the Superintending Engineer of the

said Circle. Both these officers have retired. The bias if any against the respondent contractor is attributable to those officers. Secondly, it cannot be expected that the new officer to whom the matter may be assigned, will toe the line of the officers who have since retired. The Chief Engineer, I am sure, will decide the matter afresh with an open mind and after hearing the respondent and by passing a reasoned order. It shall, however, be open to the Chief Engineer to either enquire the matter himself or assign the same to any other officer working under him or of any other department, but the officer to whom the work may be assigned, shall not be below the rank of the Superintending Engineer. The revision petition thus stand disposed of the above terms. No costs.

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