

PUBLIC GRIEVANCES COMMISSION
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
I.P. Estate (near ITO), Vikas Bhawan, M-Block, New Delhi-110110
Tel Nos. 011-23379900-01 Fax No.011-23370903

Order under Para 2(B) of the PGC Resolution No F.4/14/94-AR dated 25.9.97

Grievance No. PGC/2017/DJB/17

Date of hearing: 13.02.2019

Complainant : Sh.Varun Kataria - Present

Respondent : Chief Executive Officer,
Delhi Jal Board,
Through Sh. Mukul Bhandola, S.E
Sh. Sudhir Gupta, A.E.
Sh. N.K. Sharma, AE(Vig.) Civil.
Sh. K.C. Malhall A.E. - Present.

1. Brief facts of the case

1.1 Shri Varun Kataria had filed a complaint in PGC on 25.4.2017 against Delhi Jal Board for non-release of outstanding payments for undertaking the work of Trenchless renovation of water rising mains through spray epoxy resin and rapid setting polymeric lining system in PSC/MS/CI rising mains.

2. Facts emerged during the proceedings.

2.1 An ATR has been received from Shri Bansh Raj, Director(Finance & Accounts) of the respondent stating that DJB has considered to release the payment of 3rd party inspection charges. The payment of Rs.55.00 lac minus interest on mobilization advance which was part of the contract amounting to Rs.4,89,266/- has been released on 12.2.2019.

Since the matter is pending with CBI, other claims of the agency can not be entertained unless any communication is received from CBI. The relevant documents are also not available in the Division.

It was further stated that delay in payment is not attributable to Delhi Jal Board. It is due to complaint against the firm and matter being pending with CBI.

There was no provision of interest in the Contract Agreement so interest cannot be paid.

Director(Finance) further intimated that it would not be possible for him to be present in person in the Commission due a pre-scheduled meeting of Exit Conference with Principal Accountant General(Audit), Delhi and has requested for exemption.

2.2 An ATR has also been filed by EE(C) Dr.X, of the respondent stating that it has been decided that 10% interest on balance mobilization amount shall be recovered as per Contract Agreement. Regarding release of 10% interest on the amount due to the complainant from the date of submission of his claim in the year 2007, the same is not payable as there is no such provision in the Contract Agreement.

Accordingly, the demand for releasing the balance amount on account of 3rd party inspection amounting to Rs.55,00,000/- minus the interest on mobilization advance as per CA amounting to Rs.50,10,734/- i.e. 4,89,266/- has been sent to Finance vide demand No.10 (2018-19) of EE(C) Dr.X for plan works on 10.1.2019 and will be released as soon as the funds are transferred to the Division by the Finance.

The remaining amount withheld on account of EOT and miscellaneous accounts can be processed only after getting the relevant original documents from CBI.

1.3 The Commission on the last date of hearing had apprised the respondent department that it is well settled law that even if interest is not part of contract, the contractor can legitimately claim the interest as held by the Hon'ble Supreme Court of India in Civil Appeal No.1403 of 1986 decided on 12.12.1991 in the case titled "Secretary, Irrigation Department, Govt.of Orissa & ors. Vs. G.C.Roy and Ors. It was held by the Apex Court that ***"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a***

case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes as to interest as such to the arbitrator, he shall have the power to award interest.”

1.4 Seeking a legal opinion despite having mandatory position of Hon'ble Supreme Court is contemptuous and legal opinion should have been taken in the light of such judgment. Also, the legal opinion was never shown to the Commission.

1.5 At this stage, the complainant expressed his willingness to seek relief by way of arbitration proceedings in this case and will request the Competent Authority for appointment of an Arbitrator to recover his outstanding dues. Executive Engineer, DJB stated that the matter will be examined whether there is any arbitration clause in the Contract Agreement and proceed accordingly once a formal request from the complainant is received to appoint Arbitrator. He also stated that the complainant may file a request for appointment of an Arbitrator which will be decided by the Competent Authority as per contract agreement/rules.

1.6 The Commission opined that whether the arbitration clause is part of the contract agreement or not, there is no limitation for the complainant to go for an arbitration case to recover his outstanding dues/interest, if both parties mutually agree.

2. Directions

2.1 The Commission holds the view that since the contractor's money is lying with DJB with no fault on the part of the complainant, as the contract was never completed because of CBI investigation in which the contractor had no role to play, the request of settling dispute through arbitration should be considered mutually and appointment of arbitrator should also be done by the Chief Executive Officer, Delhi Jal Board & complainant mutually.

2.2 With the above observations, case is disposed in the Commission.

**(MRS. MADHU SHARAN)
MEMBER(PGC)**

No. PGC/2017/DJB/17

Dated:

Copy to:

1. The Chief Executive Officer, Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase-II, Karol Bagh, New Delh-110005.
2. Director (Vigilance), Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase-II, Karol Bagh, New Delhi-110005.
3. Sh. Bans Raj, Director(Finance), Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase-II, Karol Bagh, New Delh-110005.
4. The Superintendent of Police, Central Bureau of Investigation, Anti Corruption Unit -IX, Block No.4, 3rd Floor, CGO Complex, Lodhi Road, New Delhi-110003.
5. Chief Engineer (Drainage Project), Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase- II, Karol Bagh, New Delhi- 110005.
6. S.E. (Drainage Project), E&NE, Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase-I, Karol Bagh, New Delhi-110005.
7. The Director (F&A) & Nodal Officer, PGC, Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase-II, Karol Bagh, New Delhi-110005
8. Member(Drainage) Delhi Jal Board, GNCT of Delhi, Varunalaya, Phase-II, Karol Bagh, New Delh-110005.
9. Sh.Varun Kataria.