

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.461 of 2021

Plaintiff : Sardar Muhammad Ashraf D. Baloch Pvt. Ltd.
through: Syed Zaeem Hyder Advocate.

Defendants : Province of Sindh & another
through Mr. Shahriyar Qazi, Addl. A.G Sindh
alongwith Mr. Amjad Ahmed Memon,
Superintending Engineer/Project Director of
defendant No.2.

Date of hearing: 25.10.2021.

Date of announcement: 05.11.2021.

O R D E R:

By means of this order I intend to dispose of application bearing CMA No.9019/2021 whereby plaintiff sought following relief:

“This Hon’ble Court may be pleased to direct the defendant No.1 and / or Minister Irrigation, Government of Sindh to secure / separate an amount of Rs.985,875,545/- in the funds that shall be allocated to the same in the upcoming annual provincial budget of 2021 for the purposes of payment of the Plaintiff’s dues that have been verified by the Defendants themselves to be genuine. It is further prayed that this Hon’ble court may be pleased to also direct the Defendant No.1 to deposit these dues of the Plaintiff with Nazir of this court”

2. The back-ground of instant suit is that plaintiff filed the instant suit for the release of its lawful dues from the Defendant No.1 which are to be paid to the Plaintiff for the works it has carried out on the Malir Bund Project of the Defendant No.1. The Plaintiff has been pursuing its claims against the Defendant No.1 since 2015 which defendant no.1 has been avoiding on one pretext or another; initially during course of the said project the Plaintiff after completing a part of the same submitted its Bills / Interim Payment Certificate 01 [IPC] for payment of Rs.1,304,606,405/- after deduction of retention money and income tax. As per the normal norms and procedure, the

Defendant No.2 was to check the work and release the payment in accordance with law; however, the Defendant No.2 instead of making such payment issued a letter dated 04.09.2015 to the Plaintiff requesting them to stop all work at the said project affording any reason to the Plaintiff and the same was diligently complied by the Plaintiff. That the Plaintiff having already done part of the work and having issued an IPC-01, requested for the release of its due payment through letter dated 07.12.02015. However, the same was never replied. Thereafter the Plaintiff sent the Defendants a reminder letter dated 12.01.2016 and at this juncture, the Plaintiff was informed that some alleged inquiry is being conducted on the said project by the National Accountability Bureau (NAB). In the light of which, no payment can be released till the same is cleared from NAB authorities.

3. Consequently, the Plaintiff decided to approach the NAB authorities for redressal of their grievance. The Plaintiff was informed that there are many inquiries regarding land cases in District Malir, however, no such inquiry regarding the said project was pending before the NAB authorities. The same information was conveyed to the Defendants, who despite this, failed to release the payment to the Plaintiff.

4. In the interest of full disclosure, since the Defendants failed to release the aforesaid payment on such false pretext, the Plaintiff being aggrieved by the illegal and unjustified acts of the Defendants filed a constitutional petition bearing No.1804/2019 before the Hon'ble High Court of Sindh Hyderabad Circuit, *inter alia*, seeking a report from NAB if any inquiry was pending before them in relation to

the said project. That upon institution of the said case, the Director General NAB [respondent No.3 in the said petition] filed their comments to the memo of petition in which they categorically stated that they were conducting an inquiry on the allegation of illegal realignment of Malir River Protective Bund (North Side) but, the same was not converted into an investigation due to stoppage of work and the consultant being demobilized. It would not be out of place to point out that the Plaintiff is only seeking recovery of payment for the work carried out by the Plaintiff before the work was stopped. Subsequently, the Hon'ble High Court of Sindh, Hyderabad Circuit was pleased to dispose of the petition on 17.12.2019 on the statement made by the Special Prosecutor NAB and IO/Deputy Director NAB in the following terms:

“Further learned Special Prosecutor NAB and IO/Deputy Director NAB submit that at present petitioner is not required by NAB authorities in any inquiry/case and grievance of the petitioner as per prayer clause ‘A’ of his petition would be redressed in accordance with law.

Learned counsel for the petitioner has shown his satisfaction to above statement.

Instant petition is disposed of accordingly”.

5. In compliance of the said Order, a letter dated 3.01.2020 was issued by the Superintending Engineer to the Chief Engineer to forward the matter to the Secretary to constitute a committee consisting of technically sound engineers to conduct a verification of the IPC of the Plaintiff. In pursuance of the same, the Secretary vide letter dated 09.01.2020 issued to the Chief Engineer directed him to take the necessary action in accordance with law. Thereafter, vide letter dated 15.01.2020 a committee was constituted that comprised

of sound irrigation experts for such purpose. That said committee after conducting the physical verification, confirmed that work done on the said project till date amount to Rs.985,875,545/- [Nine Hundred and Eighty Five Million Eight Hundred Seventy Five Thousand Five Hundred and Forty Five Rupees]. The said survey report was sent to the Chief Engineer by the Defendant No.2 vide letter dated 29.01.2020 wherein the Defendant No.2 also confirmed that he had also visited the inspection and requested that the verified payment may be arranged to the Plaintiff for necessary compliance of he orders of the Hon'ble Court. Further the said report was also sent to the Hon'ble High Court through the same letter. The Defendant No.2 again wrote to the Chief Engineer vide letter dated 30.01.2020 and the same was sent to the Defendant No.1 as well. Thereafter, in pursuance of the above mentioned letter the Superintendent Engineer vide letter dated 10.02.2020 wrote to the Chief Engineer stating that the Committee has verified the IPC of the Plaintiff and authenticated net amount of Rs.985,875,545/- as genuine and that necessary action be taken. Upon the said letter the chief Engineer issued a letter dated 11.02.2020 to the Secretary Irrigation / Defendant No.1 categorically stating "The Superintendent Engineer Lower Sindh Drainage Circle Hyderabad has also inform that he visited site during joint inspection by the Committee and satisfied with their task recommended for arranging the calculated / authenticated net payable amount of Rs.985,875,545/- by the committee to redress the grievances of the petitioner so that necessary compliance of Hon'ble High Court of Sindh, Circuit Court Hyderabad. Even then, the Defendant No.1 failed to release the payment and cited covid 19 as a false pretext to thwart payment and

the reason why the same could not be secured in the budget that year. Thus, the Plaintiff had no other option but to move an application bearing CMA No.2725 of 2020 for contempt of court in the aforesaid disposed off petition. The said application was converted by the Hon'ble High Court of Sindh, Hyderabad Circuit into an application under Section 151 CPC.

6. The Defendant No.2 filed his reply to the said application, and in paragraph 4 of the same has admitted to the above mentioned facts that a physical survey was carried out on the project by the committee in which the work done by the Plaintiff was measured and recorded and after that an amount of Rs.985,875,545/- was certified / verified to be paid to the Plaintiff. It is of paramount importance to submit here that the report of the committee, the letters / correspondence of the Defendants and the technical details of the physical survey done have been submitted by the Defendants in CP NO.1804 of 2019 before the Hon'ble High Court of Sindh, Hyderabad Circuit and thus a part of court record from which the Defendants cannot rescind. Furthermore, in paragraph 5 of the said counter affidavit the Defendants submit “... *all the ground work and codal formalities have been fulfilled in accordance with law*” and reassured their commitment to pay the Plaintiff its lawful dues mentioned above. Therefore, now there is absolutely no pretext left for the Defendants to delay the release of such payment any further. However, the Defendants inspite of such verification and physical inspection and admission to pay the Plaintiff have still not paid the Plaintiff. Such conduct speaks volumes of the Defendants malafide to delay release of payment as much as possible. As a consequence of the delay in releasing the payment the Plaintiff business operations

are being seriously prejudiced, hence, no other alternative the Plaintiff filed the instant suit to claim its lawful dues against the Defendants, which are verified and admitted to be paid.

7. During pendency of the suit, it is claimed by the plaintiff that he has come to know that the annual provincial budget of the Province of Sindh is in its completion stages, in which the allocation of funds to be the Defendant No.1 shall be finalized on or about 26.05.2021. Therefore, it is absolutely imperative that the verified and admitted dues of the Plaintiff i.e. Rs.985,875,545/- are secured in the said allocation of funds to the Defendant No.1, otherwise the release of payment shall be prolonged unnecessarily till the next budget of 2022 and the malafide purpose of Defendants to delay release of payment shall be achieved, therefore, the plaintiff filed the instant application.

8. In support of this contention learned counsel urged that Plaintiff has got a very good case for grant of sought relief because following facts are not disputed:-

- a) the work was assigned to the plaintiff;
- b) the work was done by the plaintiff;
- c) the work was not stopped by plaintiff but it was got stopped because of some inquiry, initiated by NAB;
- d) the work, done by the plaintiff, was got verified by the official (s) themselves under directives of Honourable High Court of Sindh, passed in CP No.1804 of 2019;
- e) the plaintiff has been pursuing for its right to have the amount of the work, done by the plaintiff for more than **five (05) years;**
- f) the claim of the plaintiff was / is affirmed by the competent official of the department *itself* which, too, on report of the committee;
- g) the then defendant no.2 also affirmed visiting and inspecting the site; he in letter dated 29.01.2020 requested for arranging payment of verified amount;

Referring such recorded document (s), it has been pleaded that the plaintiff has *prima facie* case in his favour which justifies allowing of the request. He continued while arguing that balance of convenience also flows in favour of the plaintiff because his works on site is, *least*, not disputed. In the last, it was added that no harm or prejudice shall be caused to the defendant (s) if the application is allowed rather it shall help in securing the ends of justice as well will help in bringing an end to '**delaying tactics**' on part of the defendants.

9. In contra defendant No.2 contends that previous Project Director failed to produce essential documents i.e. [Pre Survey Level Book, Earth work compaction as well as other material rest report, site handing over and taking over certificates]. That in absence of the legal and codal formalities, the claim of Plaintiff will not be verified. The previous Project Director without having any authority and jurisdiction constituted committed illegally and verified the claim of Plaintiff [Rs.985,875,454/-] without having any jurisdiction and sent to Secretary Irrigation through Chief Engineer for approval. That in absence of above detailed documents the Chief Engineer Irrigation and Secretary Irrigation vide letter No.SO(IRC)AAG(HYD)(930)/2020 dated 26th June, 2020 has not satisfied with the claim of the Plaintiff and refused to accept the bogus claim of the Plaintiff. It is necessary to point out that the Chief Engineer Irrigation Department Kothri Barrage Region Hyderabad vide its Letter No.S-151/W-4/1420/2020 dated 13.07.2020 addressed to the Secretary, Irrigation Department, Government of Sindh, Karachi with the request to depute 3rd party for verification of claim of Plaintiff which was not verified from the record available with the office.

10. Heard and perused record.

11. What, *prima facie*, is floating on surface is that the claim of the plaintiff was verified by the then defendant No.2 which, *too*, on report of the '**Committee**'. Though, the defendant no.2 (successor) has disputed the competence of the then defendant no.2 while claiming that in absence of certain '*documents / records*' the claim of the plaintiff can't be verified / authenticated. The defendant no.2 while not disputing the claim of work, done by the plaintiff, claims that Chief Engineer, Irrigation Department also requested for verification of the claim of through *third party*. All these contention (s) of defendants' side, however, causes no denial to claim of the plaintiff *least* to extent that it (plaintiff) *did* work and that it (*plaintiff*) has not been paid the payment thereof. The quantum of the claim of the plaintiff though is disputed which, *too*, by disputing the defendants' own official record as well acts of the *responsible* official (s) of the department *itself*. The above case of the defendants' even does not cause any prejudice to the fact that *prima facie case* and *balance of convenience* both flows in favour of the plaintiff because entitlement of the plaintiff to receive the payment of *done* work is not disputed nor it has *ever* been claim of the defendants that it was the plaintiff *itself* who did the work at *its* own without legally authority (work-order etc).

Further, it is also matter of record that it had been the plaintiff *itself* which has been running from pillar to the pole for release of *its* due amount; despite recommendation for approval of verified claim (*though same disputed in instant lis*) the plaintiff has been keeping out of such entitlement which, *too*, by not referring the *fault* of

plaintiff but disputing the acts of officials *themselves* which, by now, is now floating on surface, therefore, the plea of the plaintiff that if the amount, *even if later determined through any course*, the payment thereof would be delayed by taking *plea* of non-availability of the **FUNDS**. I shall take no exception to the legal position that once the legal entitlement of one is determined the delay, if any, shall be a denial to such *determined* entitlement. Thus, I am inclined to agree that if the amount is not secured the plaintiff shall suffer irreparable loss because a *huge* amount of the plaintiff is claimed to have stuck which, *otherwise*, is causing serious prejudice to plaintiff's further business activities.

12. Since, *prima facie*, the plaintiff has shown co-existence of all three ingredients, so necessary to establish, for obtaining an *interim* relief, therefore, I am inclined to accept the instant application. Accordingly, the defendants are directed to ensure '**securing arrangement of amount of Rs.985,875,454/-** which shall be readily available for payment on *final* determination of claim of the plaintiff. Needless to add that since such securing arrangement of amount shall cause no harm / prejudice to the defendants but shall *surely* assure payment of an entitlement on its determination. The defendants shall deposit referred amount within three weeks with the Nazir of this court from the date of order.

CMA No.3730/2021 requires further hearing which shall be fixed on 03.12.2021.

J U D G E