HIMACHAL PRADESH
PUBLIC WORKS DEPARTMENT

No.PW-CTR-29-43/80-81/2001 - 19550 - 19656 Dated:- 29/11/2012.

From:

Engineer-in-Chief,

To

The Superintending Engineer,
3rd Circle, HPPWD, Solan, HP.

Subject:- In the matter of Arbitration between Shri Vinod Sahni Govt. Contractor, Sahni Niwas, House No.-67 , Officers Colony, Rajgarh Road , Solan, HP 173212 and Executive Engineer, Kasauli Division, HPPWD Kasauli, District Solan for the work C/o Balance work Chachi Barotiwala road via Gunai in District Solan HP Km. 0/0 to 11/550 (Phase-I) (SH:- Providing 900 mm dia RCC Hume Pipe culverts at various RDs between Km. 0/0 to 11/550 alongwith construction of wing walls, construction at RD 0/695, 1/445, 1/865, 2/109, 4/550, 7/770, 9/630, 10/450 and 1 Nos 6 mtr span RCC slab culvert at RD 2/195 (NABARD work) – Agreement No. 46 of 2001-02.

Reference :- Your letter No. 7396-97 dated 19.09.2012

The case for seeking permission of the Govt. for filing civil suit/ execution petition has been examined in this office and following observation are made:-

1. Against the counter claim no-1 the arbitrator has not entertained the amount of Rs. 3,07,135/- (compensation under clause-2) on the plea that the said forum has no jurisdictions in that regard. The plea of the arbitrator is not convincing for the reason that the supreme Court of India in the case of Vishwanath Sood V/S state has clarified that any dispute under clause -2 (or any other clause where some specific authority has been mentioned) is to be adjudicated by the concerned Superintending Engineer which means that the arbitrator has no jurisdiction to adjudicate to any dispute arise under clause -2. Once a disputes under clause -2 has been decided and compensation determined by the Superintending Engineer (whose decision final & Binding) that amount becomes a recovery or sum due from the contractor(like any other claim) and must be awarded by the arbitrator except where either the claim has not been determined by the Superintending Engineer or some appeal is pending against Superintending Engineer's decision in the High Court or the compensation levied by the Executive Engineer has not been appeal against before the Superintending Engineer and the limitation is not over. In other words compensation determined by the Executive Engineer /Superintending Engineer where no appeal is pending and limitation of one year is over that decision takes finality and should be awarded by the arbitrator as a sum due from the contractor. In case the dispute s/claims are to be decided /settled by the civil court then the very purpose of Arbitration & Reconciliation Act gets defeated.
In view of the above, objections should have been filed under section 34 before the competent court within four months which has not been done for which an explanation is required from your office.

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2. In your letter you have also mentioned that the contractor has also filed the objections under section 34 ,therefore you should avail this opportunity to claim the amount of compensation by filling appropriate reply.
3. Since the contractor has already agitated matter in the civil court, therefore, the award of the arbitrator has not yet achieved finality, therefore, filing civil suit /execution petition may be too premature.

You are also advised to discuss the above matter with the District Attorney as per the above observations and appraise this office of the action taken

Engineer-in-Chief
HPPWD, Shimla-2.

Copy to :-

1. All Zonal Chief Engineers, HPPWD, for information.
2. All Superintending Engineers, HPPWD/ and Superintending Engineer, Arbitration Circle,- HPPWD, Solan, HP to take note of contents of para-I and all Executive Engineers be advised to contest the cases accordingly.
3. The Executive Engineer Kasauli Division for information .**He is directed to explain the reasons for not agitating the award passed by Ld Arbitrator disallowing the compensation under clause 2 within the limitation period of three months .**
4. Copy to Nodal Office (IT) for putting the above as department web.site.

CE(S2) Shimla.

29.11.12

Engineer-in-Chief,
HPPWD, Shimla-2.