

No.3/2/2018-4FB1/1008
GOVERNMENT OF PUNJAB
DEPARTMENT OF FINANCE
(FINANCE BUDGET 1 BRANCH)

Dated, Chandigarh the 13th December, 2019

To

- i) All Administrative Secretaries to Government of Punjab.
- ii) All the Heads of Departments of the State of Punjab
- iii) All the Commissioners of Divisions,
- iv) All the Dy. Commissioners & District and Sessions Judges
- v) The Registrar, Punjab & Haryana High Court, Chandigarh
- v) The Secretary, Punjab Vidhan Sabha.

Subject:- Guidelines For Proper Handling of Litigation Relating To Payments To Government Contractors

Madam/Sir,

The Government has been facing litigation on account of issues relating to payments to Government Contractors. Resources both monetary and manpower are being spent on account of avoidable litigation with regard to such cases. The Hon'ble High Court has also observed that circuitous route of multiple litigation for release of contractual dues is being followed by Government Contractors.

2. In pursuance to the guidance given by the Hon'ble Punjab and Haryana High Court in COCP No. 1643 of 2019 titled Prem Chand Goel, V. Jaspreet Talwar, IAS and Ors. vide its order dated 20.08.2019 and the legal advice of the Advocate General, Punjab. These guidelines are being issued in continuation of the Finance Department Policy Regarding Payment to the Contractors No. 10/82/2017-2FE4/1151555 dated 23/01/2018 so that the Administrative Departments properly handle litigation in such matters.

3. The ADs should adhere to the following while handling legal matters pertaining to Government Contractors:

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I. Firstly, whenever a **legal notice/representation** regarding release of alleged contractual/payments is received by a Department, it **should be responded to expeditiously**.

II. Secondly, **while responding/replying to representation (s) legal notice (s)**, the following should be kept in mind and ideally must form part of such reply issued by the Department:-

a) The provisions/general conditions/clauses of the contract executed between the parties, especially provisions relating to the manner in which payments are to be made and/or withheld, format of presentation of bill if any, interest accrual on such payments/dues if any, the preferred and agreed mode of dispute redressal etc., should be mentioned.

b) If the Department does not agree with any or all the claims as made in the legal notice/representation, the Department **should pass a speaking order** on all the issues raised in the representation and accordingly, accept partially or reject all such claims.

III. A **direction/order/judgment of the Hon'ble High Court** wherein the Department has been asked to "consider" or "re-consider" the claims/payments/dues of the contractor, must not be read nor interpreted to mean that the claims/payments/dues ought to be necessarily released. To "consider" or "re-consider" claim/dues/payment means that after examining the facts of the case, **the Department may still come to a conclusion that it is liable to be rejected**. Thus, the Department always can always reject a claim/payments/due, if, on facts found unwarranted. However, **a speaking order should be passed** in such a case.

IV. **Bringing Alternative Remedy Clauses to the notice of Hon'ble High Court:** It is also pertinent to note that when the Government Contractors/Petitions do come in writ petitions seeking directions to consider their representation for release of money claims/dues, it is imperative that the **Department brings such alternative remedy clauses to the notice of the Hon'ble High Court and avail the right to be heard** before passing of any orders/judgment disposing of the case. This should be examined in the light of the following:

A remedy sought by a Government Contractor/Petitioner in contractual matters under Article 226 of the Constitution of India is **ordinarily not maintainable on account of the Rule of exhaustion of alternate remedies**.

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There are only three contingencies/exceptions in which this rule would not apply, as held by the Hon'ble Supreme Court in **Whirlpool Corpn. V. Registrar of Trade Marks (1998) 8 SCC1**,

- (i) Where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) Where there is failure of principles of natural justice; or
- (iii) Where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (**reaffirmed in Sanjana M. Wig v. HPCL (2005) 8 SCC 242**).

Thus, in the absence of invoking the alternative remedy (s) available i.e. under the arbitration clause in the contract executed with the Department or for that matter a civil suit for recovery of amounts along with interest; a Writ Petition would not be maintainable. It has further been held by the Hon'ble Supreme Court that a **public law remedy cannot be availed for enforcement of private rights in the contractual realm** unless the matter involves a public law question or a question arising out of public law functions of the Department.

Therefore, the only remedy available to the Government Contractors/petitions in contractual matters is by resorting to **either arbitration proceedings or a civil suit and not by a public law remedy** such as a writ of mandamus under Article 226.

V. Review application and/or Letters Patent Appeal: It is also advised that whenever such matters are being disposed off in the urgent list itself passing an *ex-parte* order having issued notice to state counsel during the course of hearing, **such orders ought to be challenged by way of review application and/or letters patent appeal.**

4. All the ADs should ensure that the above guidelines are followed meticulously and all out efforts are made to handle the representations well in time so that the litigation is avoided altogether. In case, any case is filed on this account proper action should be taken in time so that the State is adequately and properly represented to avoid any loss on such account.

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The Punjabi Version of these instructions will follow.

Yours faithfully,

Harwinder Singh
(Harwinder Singh)
Budget Officer
HS

Endst. No.3/2/2018-4FB1/1009

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the Chief Secretary to Government of Punjab for kind information please.

Harwinder Singh
Budget Officer
HS

Endst. No.3/2/2018-4FB1/1010

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the following for information and necessary action, please:-

1. Director, Treasury & Accounts, Punjab.
2. All District Treasury Officers and Treasury Officers.
3. PS/Secretary Finance, PA/ASF and PA/ITA
4. All Under Secretaries/ Superintendents, Finance Expenditure Branches and Finance Budget Branches with the directions to implement the above instruction in letter and spirit.
5. In-charge, TCS.

Harwinder Singh
Budget Officer
HS

Endst. No.3/2/2018-4FB1/1011

Dated, Chandigarh the 13/12/2019

A copy of the above is forwarded to the Accountant General (A & E), Punjab, and Principal Accountant General (Audit), Chandigarh for information and necessary action.

Harwinder Singh
Budget Officer
HS