

## Minutes of Meeting of Empowered Standing Committee

A Meeting of Empowered Standing Committee (ESC) constituted under clause -23 of contract agreement was held on dated 09.05.2019 at 11.00 AM under the Chairmanship of Secretary Water Resources Jaipur, to decide the disputes in case of "Construction of balance work of Agria feeder including Pucca work chain 0 to tail Tehsil-Amet District-Rajsamand (Executive Engineer, Water Resources Division, Rajsamand Agreement No. 07/2012-13)".

The following committee members were present in the meeting :-

1. Sh. Narendra Sharma, Joint L. R. representative of Pr. Secretary, Law Department, Jaipur.
2. Sh. P.D. Verma, Chief Accounts Officer (FD Exp-III), representative of Addl. Chief Secretary, Finance Department, Jaipur.
3. Sh. Amarjeet Singh Meharada, Chief Engineer, Quality Control & Vigilance, Jaipur (authorized as Addl. Secy. cum Chief Engineer, Water Resources, Jaipur).
4. Sh. Bhuvan Bhasker, Addl. Chief Engineer W. R. Zone, Udaipur.

On behalf of the respondent, Executive Engineer, Water Resources Division, Rajsamand was present and on behalf of Claimant Choudhary Enterprises, Vijaynagar (Ajmer) Prop. Shri Deshraj Choudhary with his counsel Sh. Manphool Choudhary was present in the meeting.

Committee heard arguments put by claimant contractor in support of their claims and counter arguments of respondent department.

### **Brief description of work and disputes/claims-**

The work of construction of balance work of Agria feeder including Pucca work chain 0 to tail Tehsil-Amet District-Rajsamand was awarded to Choudhary Enterprises, Vijaynagar (Ajmer) by Executive Engineer, Water Resources Division, Rajsamand amounting to Rs. 66,05,245/- (13.13% above G-schedule) vide order No. 7628-37 dt. 13.09.2012. The stipulated date of commencement and completion of work was 23.09.2012 and 22.05.2013 respectively.

The contractor executed work for Rs. 18,93,034/- and accordingly 1<sup>st</sup> running bill was paid on 30.03.2013.

The contractor failed to complete the allotted work and thus action under clause 2 and 3 of the agreement was taken against him vide Addl. Chief Engineer, WR Zone, Udaipur letter No. 17068-69 dt. 31.07.2015 imposing of penalty of Rs. 660525/- under clause 2 and also invoked clause 3(c) of the agreement.

Aggrieved by this order the claimant contractor approached Hon'ble High Court, Jodhpur through a writ petition No. 9357/2015, which was dismissed on 10.01.2017. Then he filed a civil suit No. 05/2017 and 09/2017 before ADJ, Rajsamand, wherein a temporary

injunction was issued on 07.07.2017 in favour of claimant contractor restricting the department from recovery of penalty under clause 2 and 3 till the final disposal of the suit.

**Submission by the parties-**

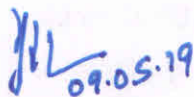
Choudhary Enterprises, Prop. Deshraj Choudhary, Vijaynagar (Ajmer) representing the claimant contractor submitted that they could not complete the allotted work due to hindrances created by the local villagers, basically demanding land compensation and throughway across the excavated feeder channel. The claimant contractor further submitted that all his machinery and manpower was available at site camp upto stipulated completion dated, for which he also demanded compensation. The allotted work could not be completed due to reasons not attributable to him and thus order dt. 31.07.2015 imposing penalty of Rs. 6,60,525/- under clause 2 should be quashed.

Executive Engineer, Water Resources Division, Rajsamand countered these submissions and pointed out that a civil suit pertaining to some disputes and on same grounds is already pending with ADJ, Rajsamand (now transferred to Commercial Court, Udaipur). He further submitted that as per Hon'ble High Court, Jodhpur order dt. 10.01.2017, the claimant contractor should have approached ESC under clause 23 of agreement for resolution of disputes, but instead he filed a civil suit before ADJ, Rajsamand. Executive Engineer, Water Resources Division, Rajsamand further argued that as per clause 51 of agreement legal remedy in the form of civil suit is available only "after the completion of proceedings under clause 23 of this contract". ADJ court is a higher legal forum against ESC constituted under clause 23 of agreement and thus ESC is not empowered to decide upon the claims, in light of pendency of civil suit before Hon'ble Civil Court.

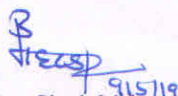
**Decision-**

After carefully examining the facts and arguments forwarded by both the parties the ESC is of the opinion that as a civil suit pertaining to same subject matter, disputes and claims has been filed by claimant contractor which is still pending before ADJ, Rajsamand Court (now transferred to Commercial Court, Udaipur), prior to submitting application before ESC under clause 23 of agreement, the claimant contractor can not press his claims before this committee at this stage.

In light of above the claim application is hereby dismissed.

  
09.05.19

(Bhuvan Bhasker )  
Addl. Chief Engineer  
Water Resources Zone,  
Udaipur

  
9/5/19

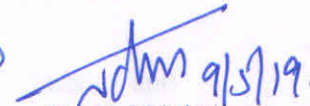
(Amarjeet Singh Meharada)  
Chief Engineer cum Addl.  
Secretary,  
Water Resources  
Rajasthan, Jaipur

  
9/5/19

(Narendra Sharma)  
Joint L.R.  
Representative of Pr.  
Secy. Law Department,  
Rajasthan, Jaipur

  
9/5/19

(P D Verma)  
CAO (FD Exp-III)  
Representative of ACS,  
Finance Department,  
Rajasthan, Jaipur

  
9/5/19

(Naveen Mahajan)  
Secretary  
Water Resources,  
Rajasthan, Jaipur