
Vs.

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Ms. Sunint Kaur, AAG, Punjab.

In short, the petitioner gave the highest bid of Rs.62 crores in the auction dated 29.07.2011 which was accepted. The petitioner was to deposit 10% of the auction price at the time of fall of hammer, 15% within 30 days and 75% in five equated half yearly instalments. The letter of intent was issued to the petitioner within 7 days and letter of allotment within 90 days thereafter. The petitioner deposited a sum of ₹3.2 crores at the fall of

the hammer apart from ₹5 lakhs given as participation money in auction and another sum of ₹90 lakhs on 30.07.2011. However, he found that the project was not viable due to non-availability of infrastructure and non-feasibility of the project. Thus, he made a request to the official respondents to refund the money deposited by him but his request was not accepted rather a show cause notice was issued to him on 03.08.2011 to pay the balance amount or face the consequence of forfeiture. The amount was forfeited and the said order of forfeiture was challenged by the petitioner by way of CWP No.19593 of 2011 – Nirankar Singh v. State of Punjab and others which was decided on 10.07.2012 by a Single Bench of this Court, while burdening the petitioner with costs of ₹10 lakhs which was ordered to be deducted from the amount forfeited by the respondents and the remaining amount was ordered to be refunded preferably within a period of six months. The order of the learned Single Judge dated 10.07.2012 was challenged by the respondents by way of Intra Court Appeal bearing LPA No.1252 of 2012. At the time of issuance of notice, operation of the order of the learned Single Judge dated 10.07.2012 was stayed. Ultimately, on 30.09.2013, the appeal was dismissed by the Division Bench. Thereafter, the petitioner issued notice to the respondents for payment of the amount directed by the learned Single Judge. The said amount was paid in two instalments, i.e. ₹3.95 crores on 20.03.2014 and ₹5 lakhs on 09.06.2014 even after filing of contempt petition bearing COCP No.1210 of 2014 decided on 25.11.2014. The petitioner has now come up in this writ petition with prayer for payment of interest alleging that the respondents have made the payment after about six months even from the date of dismissal of their

appeal insofar as ₹3.95 crores is concerned and about nine months regarding payment of ₹5 lacs.

Learned counsel appearing for respondents No.2 and 3 has vehemently argued that the petitioner does not deserve any amount of interest as it has not been ordered by the learned Single Judge. Rather the learned Single Judge had only issued a direction that the said amount of ₹4 crores shall be paid to the petitioner preferably within a period of six months. There was no concrete direction that the amount has to be paid within a period of six months and, therefore, the delay cannot be attributed to the respondents who had challenged the order of learned Single Judge in appeal in which stay was granted by this Court. It is also submitted that the entire payment has now been made to the petitioner. In this regard, he has relied upon a decision of the Supreme Court in the case of **Union of India and others v. Orient Enterprises and another, AIR 1998 Supreme Court 1729** and a Single Bench judgment of this Court in the case of **Harnek Singh v. State of Punjab, 2008(1) Service Cases Today 375.**

On the other hand, counsel for the petitioner has relied upon a decision of the Supreme Court in the case of **Indian Council for Enviro-Legal Action v. Union of India and others, 2011(3) R.C.R. (Civil) 779** to contend that the respondents could not have retained the payment of their amount a minute after the dismissal of their appeal. It is also submitted that the words “preferably within a period of six months” were used by the learned Single Judge with an expectation that the respondents would make the payment at least within a period of six months. It is also submitted that the petitioner is not asking for the interest from the date the amount was

deposited or from the date the order of the learned Single Judge was passed rather he is asking for the interest from the date when the appeal filed by the respondents was dismissed and that order had attained finality as there was no further litigation in this matter at the instance of the respondents. It is also submitted that it is a case of unjust enrichment and undeserved gain on the part of the respondents who had illegally retained the amount to the tune of ₹4 crores of the petitioner.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The facts are not much in dispute. The only issue to be decided is as to whether the petitioner is entitled to the interest at least from the date when the appeal was dismissed? The learned Single Judge had found that the petitioner is entitled to refund of the amount forfeited by the respondents but he imposed costs of ₹10 lacs on the petitioner at that time. He had directed the respondents to release the payment to the petitioner expecting that it would be done immediately but it was observed it may preferably be paid within a period of six months. Instead of making the payment, the respondents chose to file appeal against the order of the learned Single Judge in which the Division Bench granted them stay of the operation of the order of learned Single Judge. Thus, the clock stopped ticking at the time when the stay was granted by the Division Bench but ultimately the appeal was dismissed by the Division Bench on 30.09.2013 upholding the order of the learned Single Judge and the respondents to the reasons best known to them did not assail the validity of the order of the Division Bench any further. From that period onwards, the legitimate expectation of the

petitioner started for getting refund but the respondents did not refund the money till 20.03.2014. For six months continuously, the amount which belongs to the petitioner was used by the respondents. Had this amount been returned immediately after dismissal of the appeal and the petitioner had invested the said amount then the petition would definitely got some kind of return which may be assessed in terms of interest.

The decision in the case of **Union of India and others (supra)** relied upon by the respondents is in a case where there was an issue regarding refund of custom duty. The Hon'ble Supreme Court, while interpreting the provisions of the Customs Act, 1962, opined that since there was no provision for payment of interest, therefore, the respondents therein i.e. Elephants Oil and Vanaspati Industries was not entitled to interest. Since it was not provided in the Statute, therefore, the writ was not maintainable for the payment of interest. In the second case relied upon by the respondents, i.e. **Harnek Singh's case (supra)**, the issue was regarding payment of interest and the Court had observed that it is barred by principle of res-judicata. The res-judicata would come into being if the issue is already decided. If the issue of interest was not decided by the learned Single Judge in the earlier writ petition i.e. CWP No.19593 of 2011, then it was available to the petitioner for seeking refund of interest as well.

On the other hand, the decision rendered in the case of **Indian Council for Enviro-Legal Action (supra)**, can be relied upon because in that case, the Supreme Court has held that “it is the bounden duty and obligation of the Court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the Court.” Since the

petitioner became entitled for the refund of his entire amount, as soon as the appeal was dismissed by the Division Bench on 30.09.2013, it was incumbent on the part of the respondents to have made the payment suo-motu instead of waiting for the petitioner to serve legal notice upon them asking for the payment. Fortunately, for the petitioner's, good sense appears to have prevailed upon the respondents, who made the payment on 20.03.2014 to the extent of ₹3.95 crores but still they retained ₹5 lakhs for which the petitioner had to resort to the proceedings of contempt in COCP No.1210 of 2014 after which the respondents paid the remaining amount of ₹5 lakhs. It is not a case where the petitioner is asking for interest from the date, the amount was deposited with the respondents. It is the case where the petitioner is asking for interest from the date he became eligible for refund by the order of the Court. The petitioner has been fair enough to exclude the period during which the order of the learned Single Judge was stayed by this Court and is only making a request for payment of interest from the date, the Division Bench dismissed the appeal filed by the respondents.

Thus, keeping in view the facts and circumstances of this case, I am of the considered opinion that, in the given facts and circumstances, narrated hereinabove, the petitioner is entitled to interest @ 12% to be paid on the amount refunded to the petitioner, to be calculated from 30.09.2013 to 20.03.2014 on ₹3.95 crores and from 30.09.2013 to 09.06.2014 to be calculated on ₹5 lakhs. The amount is directed to be paid to the petitioner as soon as possible, preferably within a period of three months from the date of receipt of certified copy of this order. It is made clear that if the amount

is not paid, the petitioner is free to file an application for invoking the provisions of the Contempt of Courts Act, 1971.

August 18, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No