

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 63 of 2017**

M/s Jalwa Stone Crushing Industries, a partnership firm duly registered with the Registrar of Firms and Societies having its office at Bazar Para, Pandharia (Kabirdham) C.G. and represented through its partner Mr. Khushal Chand Jain, aged about 65 years, S/o Late Shri Phool Chand Jain, r/o P.O. & village Pandharia (Kabirdham) C.G.)

----Applicant/claimant**Versus**

State of C.G., through -

1. The Secretary, Public Works Department, C.G. Raipur.
2. The Executive Engineer, P.W.D. (B&R) Division Kawardha (Kabirdham) CG

---- Respondents

For Applicant	:	Mr. Ashok Mishra, Advocate.
For Respondents	:	Mr. Chandresh Shrivastava, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/04/2019**

(1) This Civil Revision under Section 19 of the C.G. Madhyastham Adhikaran Adhiniyam, 1983 (henceforth "Adhiniyam, 1983") is directed against the part of the order dated 10.11.2016 passed by Arbitration Tribunal by which a condition of furnishing surety in favour of respondent No. 2 has been imposed against the petitioner.

(2) Learned counsel appearing for the petitioner would submit that learned Arbitration Tribunal has passed an award of Rs. 26,85,417/- along interest @ 6% per annum in favour of the petitioner but the condition of furnishing surety in favour of respondent No. 2 has been inserted while passing the award, which is uncalled for as no counter claim was filed by the State before the Arbitration Tribunal and, therefore, part of order, by which condition of furnishing surety in favour of respondent No.2, is liable to be set aside.

(3) On the other hand, counsel for respondents/State would support the impugned order.

(4) I have heard learned counsel appearing for parties, and considered their rival submissions made hereinabove and also went through the record.

(5) Learned Arbitration Tribunal, after hearing the parties, concluded that respondents ought not to have withheld and retained the security deposit and directed for refund of the security deposit but simultaneously in paragraph 15 recorded that some excess amount has been paid to the petitioner, therefore, while passing the order such a condition {16(iii)} has been imposed upon the petitioner, which states as under :-

“16(iii) The award amount shall be paid to the petitioner only on furnishing a surety by the petitioner in favour of respondent No. 02 to his satisfaction to the effect that whenever the petitioner shall be held liable for refund of money to the respondents, the petitioner shall refund the amount to the respondents within a month from the date of demand made by the respondents failing which the petitioner shall be liable to refund the amount with interest at the rate of 9% p.a.”

(6) In the considered opinion of this Court, as respondent/State did not make any counter claim for excess amount alleged to have been paid to the petitioner, therefore, no relief could have been granted to the State in reference case filed by the petitioner, therefore, learned arbitration Tribunal has committed illegality in furnishing of surety in favour of respondent No. 2 so far as excess amount is concerned. Thus, the part of the order as contained in paragraph 16(iii) is liable to be set aside.

(7) For the forgoing reasons, the appeal is allowed. Part of the award by which the condition of furnishing surety in favour of respondent No. 2 as mentioned in para 16(iii) of the award is set aside. Award is modified to the above extent. Rest of the conditions mentioned in the award shall remain intact.

(8) No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

