IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

217 (Five Cases)

CWP-1116-2019 (O&M).
Date of Decision: 11.10.2022.

RAJASTHAN RAJYA VIDYUT KARAMCHARI SUPERANNUATION FUND TRUST

...Petitioner

Versus

THE GOVT OF PUNJAB THROUGH ITS PRINCIPAL SECRETARY AND ORS

…Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: Mr. M.S. Khillan, Advocate,
for the petitioner in CWP-1116-2019 and CWP-959-2019.

Mr. Vivek Salathia, Advocate,
for the petitioner in CWP-20741-2021.

Mr. Nitin Grover, Advocate,
for the petitioner in CWP-23812-2021.

Mr. Amandeep Singh Talwar, Advocate,
for the petitioner in CWP-4099-2022.

Mr. Vikas Mohan Gupta, Addl. A.G. Punjab.

Mr. Gaurav Mohunta, Advocate, with
Mr. Yashasavi Goyal, Advocate,
for respondent No.2.

Mr. Varun Mittal, Advocate,
for respondent No.2 in CWP-4099-2022 and
CWP-23812-2021.

Mr. Deepak Sabharwal, Advocate,
for respondent No.2 – PFC
in CWP-1116-2019.

Mr. I.S. Sidhu, Advocate,
for respondent No.3 in CWP-959-2019 and
CWP-1116-2019.

Mr. Pawan Kumar, Sr. Advocate, with
Mr. Surya Kumar, Advocate,
for respondent No.3 in CWP-20741-2021.

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VINOD S. BHARDWAJ. J (ORAL).

The present order shall decide a batch of five petitions as the counsel for the respective parties are *ad idem* that issue involved in the present batch of petitions is identical and that they can be decided by means of a common order. The details of the same are tabulated as under:-

Sr. No.	Writ Petition Number	Title	Respondent Number
1	CWP-1116-2019	RAJASTHAN RAJYA VIDYUT KAMARCHARI SUPERANNUATION FUND TRUST VS THE GOVT OF PUNJAB THROUGH ITS PRINCIPAL SECRETARY AND ORS.	Punjab Financial Corporation (Respondent No.2)
2	CWP-20741-2021	M/S GILL AND COMPANY PVT. LTD. EMPLOYEES PROVIDENT FUND V/S STATE OF PUNJAB	Punjab State Industrial Corporation Limited (Respondent No.3)
3	CWP-959-2019	RAJASTHAN RAJYA VIDYUT KARAMCHARI SUPERANNUATION FUND TRUST V/S THE GOVT OF PUNJAB THROUGH ITS PRINCIPAL SECRETARY AND ORS.	Punjab State Industrial Corporation Limited (Respondent No.2)

4	CWP-23812-2021	HUTTI GOLD MINES COMPANY LTD EMPLOYEES PROVIDENT FUND TRUST V/S STATE OF PUNJAB AND ANOTHER	Punjab State Industrial Corporation Limited (Respondent No.2)
5	CWP-4099-2022	BIRLA INDUSTRIES PROVIDENT FUND V/S STATE OF PUNJAB AND OTHERS	Punjab State Industrial Corporation Limited (Respondent No.2)

For the facility of reference, facts have been taken from CWP No.1116-2019 titled 'Rajasthan Rajya Vidyut Kamarchari Superannuation Fund Trust Vs. The Govt. of Punjab Through its Principal Secretary and Others.'

Briefly summarized, the instant batch of petitions has been filed for seeking issuance of directions to respondent No.1 viz the Government of Punjab and the respondent No.2 viz the Punjab Financial Corporation/PSIDC as the case may be, to fulfill their obligations in respect of the bond issued by respondent No.2 and duly guaranteed by respondent No.1 – State of Punjab vide letter of guarantee bearing No.17/7/05/41-B/2713 and 16/7/05-AS-3/2096 dated 13.12.2005 and 31.10.2006 respectively.

The petitioner, which is a Common Trust, was incorporated vide registration dated 13.03.2001 for all the 5 entities of the erstwhile Rajasthan State Electricity Board that had been unbundled leading to formation of 5 successor Companies after notification of the new Electricity Act, 2003.

That respondent No.2 i.e. Punjab Financial Corporation (PFC)/Punjab State Industrial Development Corporation (PSIDC) was facing financial crunch and intended to improve its financial health by restructuring its high cost borrowings. They thus issued bonds namely "**Issue-2006 – Series I**" offering an interest @ 7.85% per annum and "**Issue-2006 Series III**" offering interest @ 9.32%. The bond issue date was 18.01.2006 and 07.11.2006 respectively. The petitioner Trust applied for allotment of the bonds and was allotted the same in two different issues. The details of the said applications and allotment is tabulated as under:-

No. of Bonds (Face Value of Rs.1 Lakh each)	Bond	Date of Allotment	Name of Alottee	Face Value of total bonds
50	7.85% PFC bond Issue-2006 Series-I	01.06.2006	RRVK Superannuation Fund Trust	50,00,000/-
100	9.32% PFC bond Issue-2006 Series-III	01.12.2006	RRVK Superannuation Fund Trust	1,00,00,000/-
			Total	1,50,00,000/-

The maturity period of the bonds of both the Series was ten years with redemption at the end of each year commencing from the 6th year in the ratio of 20% each. As such, the last maturity date was 01.06.2016 and 01.12.2016 respectively.

Learned counsel appearing on behalf of the petitioner has submitted that a total amount due till 31.08.2018 was Rs.1,57,34,509/-. The detail of the said amount and its calculation has also been tabulated in the petition. It is submitted that when the respondent No.2

Corporation failed to repay the bonds on maturity, several representations and reminders were submitted with the respondents, however, the same was to no avail. Communication and correspondence inter se at the level of the Governments had also been initiated. A letter was sent by the Chief Minister, Rajasthan, on 18.01.2018 and the same was duly responded on 02.02.2018 as well as 04.05.2018 acknowledging the liability towards repayment of the bond amount along with interest.

It is contended by the petitioner that once the liability in question is undisputed and acknowledged and has become mature for payment, there is no reason why the respondent ought not to repay the maturity amount in terms of the bond duly guaranteed by respondent No.1.

He further submits that the bonds were guaranteed by the Sovereign and the obligation of the wholly owned Government Corporations needs to be discharged by the Government of Punjab. The rights of the Investors cannot be left at the mercy of the borrower. The fairness on the part of the Government to repay the amount on maturity defeats the very object behind a Sovereign guarantee.

It is further contended that a batch of writ petitions have earlier come up for hearing before this Court in CWP No.24188 of 2018 and others, decided on 18.11.2019 regarding the bonds issued by the respondent – PSIDC, wherein the State of Punjab was directed to pay the maturity amount to the petitioners therein within a period of 04 weeks from the receipt of certified copy of the judgment.

He further contends that the Hon'ble Supreme Court has held in the matter of ***State of U.P. Vs. Hindustan Unilevers Ltd. and***

others in Civil Appeal No.6126 of 2008, decided on 15.10.2008, that the very purpose of State Government guarantee is to ensure payment in case the federation was not able to make payment. Financial difficulties of the federation cannot be a ground for the State to say that they will not make payment of interest even though they had guaranteed the repayment with interest.

Acceptance of any such contention would defeat the very purpose of the guarantee. Anguish was also expressed by the Hon'ble Supreme Court on such a plea being taken by the State of Uttar Pradesh. The relevant extract of the said judgment reads thus:-

> *"5. Though several contentions were urged by the State Government and the Federation, when the matter came up today, the learned counsel for the State Government handed over a Pay Order for Rs.15,00,000/- (Rupees fifteen lakhs) to the learned counsel for respondent towards the refund of the principal amount. In regard to interest, the learned counsel for the Federation and the State Government submitted that as the Federation is under liquidation and as the State Government has paid the principal amount, the respondent should be relegated to other remedies in law for recovery of interest.*
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> *6. Such a contention is not tenable. The amount invested by first respondent belongs to the workmen of first respondent. The amount was invested in the bonds of the Federation in view of the express guarantee by the State Government that the same will be repaid with interest upto 15.5% p.a. The very purpose of the State Government guarantee is to ensure payment in case the Federation was not able to make payment. In the circumstances, the fact that the Federation is in financial difficulties cannot be a ground for*

the State Government to say that it will not make payment of interest, even though it had guaranteed the repayment with interest. If such a contention is accepted, the very purpose of the guarantee will be defeated. We are indeed surprised that such a plea is put forward on behalf of the State of Uttar Pradesh.

7. In the circumstances, we are of the view that the State Government should pay the interest also. However, on the facts and circumstances, we are of the view that interest should be paid at the rate of 14.9% p.a. for a period of five years from the date of deposit and thereafter at the rate of 9.5% per annum (which is equal to the minimum rate of interest that is payable by the first respondent to its workers on the provident fund dues). The above concession regarding interest is granted on the peculiar facts of these appeals. Three months' time is granted to the Government of Uttar Pradesh to pay the balance of interest."

Furthermore, the aforesaid judgment of the Hon'ble Supreme Court was also relied upon in the case of ***Pradeshiya Industrial Development Corporation Ltd. U.P. Vs. Hindustan Aeronautics Ltd. (Lucknow Division) and Ors. in Civil Appeal No.1467 of 2018, decided on 01.02.2018***. The relevant extract thereof reads thus:-

"6. Having regard to the submissions made by the learned counsel on both sides, we are of the view that as in the case of State Vs. Hindustan Unilevers (supra), this is also a fit case where this Court should invoke its discretion under Article 142 of the Constitution of India to do complete justice between the parties and to put an end to the entire litigations. Accordingly, in the peculiar facts of these cases, these appeals are disposed of as follows :-

> *i) The respondents shall be entitled to the contractual rate of interest as per the bonds, till the principal amounts were repaid.*
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> *ii) From that date, the respondents shall be paid interest at the rate of 11%.*
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> *iii) The payment shall be made positively within a period of three months from today.*
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> *iv) In case the payments are not made within the stipulated period, the respondents shall be entitled to interest at the rate of 18% and the officer(s) responsible for the delay will be personally liable for the same.*

Written statement on behalf of the respondent No.2 – Punjab Financial Corporation, has been filed and paragraph No.7 of the preliminary submissions reads thus:-

> *"7. That as the answering respondent is unable to pay amount to the bond holders in due time and there occurred a delay in repayment to the bond holders with respect to principal as well as interest amount, the Board of Directors of PFC in its meeting held on 06.11.2015 has taken a decision that even for the delayed period, same rate of interest (7.85% for Series I Bonds and 9.32 % for Series III Bonds) shall be paid on which such bonds have been issued. The same has been communicated to the petitioners vide various letters. The copies of the letters have already been annexed with the Civil writ petition as Annexure P 12(colly)."*

The relevant extract of the written statement filed by PSIDC is reproduced here-in-after below:-

"4. That, from time to time, PSIDC, but with the prior approval of State of Punjab, issued various bonds since 2005 till the year 2013. The answering respondent is herewith placing on record the details of outstanding amount against each bond, as on 31.07.2022 the default position of the Corporation towards the bondholders as on 31.07.2022 is Rs.456.85 crores (Principal Rs.328.25 crores and interest Rs.128.60 crores). The principal outstanding of Government guaranteed bonds is Rs.368.01 crores as on 31.07.2022. Thus, the total liability of the Corporation to the bondholders is Rs.496.61 crores (Principal Rs.368.01 Crores + Interest Rs.128.60 crores) as on 31.07.2022. In addition to it the Corporation has to pay delayed period interest to the bondholders whose bonds have been redeemed/are to be redeemed after the due date and who submit their consent for acceptance of delayed period interest as full and final settlement of their dues. Thus, the total liability of Corporation to the bondholders is Rs.600 crores approximately and the same is enclosed as Annexure R-2/2.

5. That it may be pertinent to mention here that all the bonds issued, as referred above, from time to time, were duly approved by the State of Punjab, Department of Industries and Commerce. In this respect, the answering respondent is hereby placing on record one complete copy of the information memorandum which was being issued for making private placement for investment in bonds and same is enclosed as Annexure R-2/3. A perusal of Annexure R-2/3 would reveal that the same were issued after Government of Punjab gave its approval and unconditional & irrevocable *guarantee for repayment of both principal as well as interest amount thereon.*

6. That, since the Corporation was facing financial crunch, from time to time, a request is being made to the State of Punjab for grant of funds, so that the financial crisis being faced by the PSIDC especially with respect to repayment to the bond holders could be overcome. The State of Punjab through Department of Industries and Commerce has provided grant in aid to the answering respondent in order to make repayment of the liabilities of the answering respondents towards its bond holders and in this process has paid an amount of Rs. 25 Crores in the financial year 2018-19, Rs. 22 crores for the year 2019-20, Rs. 17.38 crores for the year 2020-2021 and Rs.49 crores for the year 2021-2022 These grant-in-aids was disbursed to the answering respondent by the Government of Punjab, after a budgetary provision was made in the State Budget for the respective financial years. It may further be pertinent to mention here that the grant in aid of Rs. 17.38 crores was released by the State Government, after directions were issued by this Hon'ble Court in CWP No. 24188 of 2018 passed vide judgment dated 18.11.2019. Similarly, now for the financial year 2022-23, again State of Punjab has made budgetary provision of Rs. 250.00 cores to be provided to answering respondent as well as Punjab Financial Corporation and from the allocation of Rs. 250 crores, budgetary provision of Rs. 180 crores is expected to be released by the State of Punjab to the answering respondent, which shall be utilized only for the purpose of repayment to the bond holders. It is penitent to mention here that grant-in-aid of Rs.10.26 crore was released by the state government after directions were issued by the

> *Hon'ble Court in CWP No.27651 of 2017 passed vide judgment dated 26.03.2021.*
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> *7. The Board of Directors of the Corporation in its meeting held on 26.9.12, 25.2.14, 24.6.15, 25.7.17, 29.12.2018, 27.03.2019 and 16.08.2022 has approved the delayed period interest on 7.70% p.a., 7.80% p.a. and 9.32% p.a. (1st & 2nd Series), 9.32% p.a. 2009 1M Series and 9.43% p.a., 2009 2nd Series, 9.05% 2009 3rd series, 8.70% 2010 1st series, 9.05% 2010 2nd series, 9.70% 2012 1st series and 9.90 2012 2nd series and 9.90 2013 1st series PSIDC bonds respectively to the bondholders wherein bonds have been redeemed/are to be redeemed after the due date(s) and who have already submitted or will submit their consent for acceptance of delayed period interest, as full and final settlement, of their dues."*

A perusal of the aforesaid written statements filed by the respondent also show acknowledgement of the debt and the liability by the said respondent.

The matter was taken up on various dates for completion of pleadings and instructions. On resumed hearing of the case, learned counsel appearing on behalf of respondent No.2 – PFC, Sh. Deepak Sabharwal, Advocate, as well as Sh. Gaurav Mohunta, Advocate, appearing on behalf of PSIDC, on instructions from Law Officer Sh. Manjeet Singh and Senior Assistant Sh. S.K.Ahuja, have made a statement that maturity value of the bond shall be duly paid within a period of 03 months from the passing of this order along with interest and the benefits accrued as per the respective bond. He contends that in certain matters the maturity has not yet been attained and that as and when the said bonds shall attain maturity, the due amount along with applicable benefits as per the bond shall be disbursed in the above period.

In view of the aforesaid statement made at Bar by the counsel appearing on behalf of respondent No.2 which has been affirmed and reiterated by the State counsel, learned counsel appearing on behalf of the petitioners does not press the instant petitions, at this stage.

A reference is, however, also made to the judgment dated 03.12.2021, passed in CWP No.27651 of 2017 titled as "***Price Waterhouse Officers Provident Fund and others Vs. State of Punjab and others***," to contend that in similar circumstances, this Court had held that in the event the State does not repay the amount in the time bound manner, the petitioners – bond holders shall be entitled to interest @ 18% per annum.

The said question is, however, kept open at this stage. The petitioners would be at liberty to seek revival of the present petitions in the event the statement/undertaking given by the respondents is not honoured. The question of default/penal interest shall then be examined and appropriate orders will be passed thereupon.

Needless to mention that any other proceedings that may have been instituted by the respective parties in relation to the claim arising out of the aforesaid bond, the same shall be withdrawn by the respective parties and the amounts already paid shall be duly adjusted.

It is also made clear that in case the undertaking is not honoured by the respondents vis the State of Punjab as well as respondent No.2 on or before the timeline as undertaken today, the Chief

Secretary; the Principal Secretary/ACS (Finance), Punjab, as well as the Managing Director of PFC and PSIDC shall remain present in the Court to explain the reasons for delay and failing the same as to why the contempt proceedings be not initiated against them.

Petitions are disposed of accordingly.

A photocopy of the order be placed on the file of each connected case.

October 11, 2022 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No