

**IN THE PUNJAB AND HARYANA HIGH COURT AT  
CHANDIGARH**

208

**CWP-29073-2017 (O&M).  
Date of Decision: 21.09.2023.**

**M/S BANSAL CONSTRUCTION COMPANY**

.. Petitioner

Versus

**STATE OF PUNJAB AND ETC.**

... Respondents

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

Present: Mr. Abhishek Singla, Advocate, and  
Mrs. Anchal Singla, Advocate,  
for the petitioner.

Mr. Rohit Bansal, Sr. D.A.G. Punjab  
for respondent No.1

Mr. R.S. Bajaj, Advocate,  
for respondents No.2 to 4.

**VINOD S. BHARDWAJ, J. (ORAL)**

Prayer in the present writ petition is for seeking issuance of directions to the respondents to release the payment of security amount of Rs.15,42,409/- qua the various works allotted to the petitioner which have been satisfactorily executed.

Learned counsel for the petitioner contends that the petitioner who is an MCL contractor had been awarded various works by the Municipal Corporation, Ludhiana. All the said works were successfully executed by the petitioner and no defect/deficiency either in the workmanship or as per the specifications was noticed or conveyed to the

petitioner. The payments of the bills were released to the petitioner after due scrutiny, approval and verification of the bills submitted by the petitioner. However, the security qua all the agreements had not been released to the petitioner. The details of the security amount outstanding was tabulated as under:-

| <b><i>Sr. No.</i></b> | <b><i>Particulars/Work allotted</i></b>                                                                                                                                                  | <b><i>Balance Amount</i></b>                                          | <b><i>Security</i></b> |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|------------------------|
| <i>1</i>              | <i>Supply and laying PC on roads marked D, E in Jawahar Nagar after removal of encroachment in Ward No.50<br/>(F &amp; CC No.6378 dated 6.5.2011)<br/>Work order issued on 3.6.2011.</i> | <i>Rs. 2,33,217/-</i>                                                 |                        |
| <i>2</i>              | <i>Supply and laying PC on roads of Jawahar Nagar near Chawla Floor Mill.<br/>(F &amp; CC No.6377 dated 6.5.2011)<br/>Work order issued on 2.6.2011.</i>                                 | <i>Rs. 47,186/-</i>                                                   |                        |
| <i>3</i>              | <i>Rectification of sewer trenches and laying BM &amp; PC in Rajouri Garden, Part A.<br/>(F &amp; CC No.6370 dated 6.5.2011)<br/>Work order issued on 7.6.2011.</i>                      | <i>Ist Bill – Rs.2,37,212/-<br/>IInd Bill – Rs.68,769/-</i>           |                        |
| <i>4</i>              | <i>Overlaying 25 mm thick (Av.) PC in Punjab Mata Nagar.<br/>(F &amp; CC No.4248 dated 9.9.2010)<br/>Work order issued on 13.10.2010.</i>                                                | <i>Ist Bill – Rs.4,13,716/-<br/>IInd Bill – Rs.85,853/-</i>           |                        |
| <i>5</i>              | <i>Laying 50 mm BM and 20 mm PC in Mahavir Enclave (Part-B).<br/>(F &amp; CC No.6361 dated 6.5.2011)<br/>Work order issued on 7.6.2011</i>                                               | <i>Ist Bill – Rs.63,099/-<br/>2<sup>nd</sup> Bill – Rs.1,75,394/-</i> |                        |
| <i>6</i>              | <i>Supply and laying prevrik carpet on Gandhi Colony Gurcharan Park.</i>                                                                                                                 | <i>Rs.2,17,963/-</i>                                                  |                        |

|  |                    |                       |
|--|--------------------|-----------------------|
|  | <b>Grand Total</b> | <b>Rs.15,42,409/-</b> |
|--|--------------------|-----------------------|

Learned counsel contends that the above said security amount has not been released despite numerous representations, thus, compelling the petitioner to prefer the present writ petition. ,

A short reply has been filed by way of an affidavit of Dharam Singh, Superintendent Engineer (B&R), Municipal Corporation, Ludhiana, wherein he has made a reference to the provisions of the Punjab Municipal Account Code, 1930 and the averments raised therein are extracted as under:-

*“3. That Punjab Municipal Account Code 1930-VII. 3A, clause 26.4 is very clear regarding refund of security which is reproduced as under:*

*"Lapse of Security :- A security deposited under rule 19.8 and 26.3 or deposited under the provisions of any other rules or bye laws of the ULB shall lapse and be credited to the Municipal fund, if it remains unclaimed for more than 3 complete accounting years after it has become due. A security thus lapsed to the ULB, shall not be re-paid unless the ULB is satisfied that the security was actually received, carried to credit of Municipal fund as lapsed and is now claimed by the person, who would have drawn it anytime before the lapse. The repayment of the security shall be recorded in the remarks column of the register of deposits (Form GEN-41) in order to ensure that a lapse deposit is not paid more than once."*

By placing reliance on the same, it is submitted that the request for refund of security has to be submitted within a period of 03 years by the contractor and that the request was submitted by the petitioner for the first time on 21.11.2017. The claim made in para No.2, sub para a, b and c, is

time barred and that claim made in para No.2 sub para (d) and (f) has already been processed. It is thus mentioned that the sanction was obtained from the Commissioner on 07.02.2018 and the security amount of Rs.10,44,043/- has been released vide two Cheques bearing No.013064 dated 24.04.2018 and 013074 dated 24.04.2018.

Learned counsel for the petitioner does not dispute the deposit of the above said amount against the security payments due by the petitioner. He, however, contends that the respondents were not justified in deducting the balance amount of Rs.4,93,366/- and that they are liable to release the same as well. He contends that reliance of the respondents on the provision extracted above and quoted to have been part of the Punjab Municipal Account Code, 1930, is an incorrect reliance and that the provision is in fact a provision from the Accounts Manual notified by the respondents in the year 2017 under the Punjab Municipal Account Code 1930. The works in question having been executed much prior to the Account Manual and the above said clause 26.4 notified thereunder, the same does not come in operation against the claims made by the petitioner. It is further submitted that even if the aforesaid clause is construed to be applicable to the claim of the petitioner, yet, the respondents have misread the said clause. The above said clause does not empower the respondent Municipal Corporation to forfeit the security deposit and that it only adds certain guidelines/procedure to be followed for release in the form of carrying out a check as to whether the security has been repaid and also to record a satisfaction as to whether the security is being released to the correct person or not. The forfeiture having not been authorized even under the said clause, the reliance on the said clause is misplaced. A further

reference is made to the clause XIII.6 of the Punjab Municipal Code, 1930 which is extracted as under:-

*“XIII.6. Security for performance of contractors. - (1) When a tender has been accepted under the provisions of rule XIII.4, the contractor shall be required to deposit, within ten days of the receipt of intimation that his tender has been accepted, in cash or currency notes or Government securities such sum as together with his earnest-money which will make up a sum equal to one-tenth of the amount of his tender, as security for the due performance of his contract, provided that all securities so deposited shall be formally pledged to the committee, and the committee may in the case of any work or any class of work require that, instead of the security money being deposited in advance, one-tenth of the amount of every running bill payable to the contractor during the course of the execution of the work may be deducted and retained by the committee until the amounts so deducted and the earnest-money deposited under the provisions of rule XIII.3 together make up a sum equal to one-tenth of the amount of the contractor's tender.*

*(2) The security deposited under the provisions of sub-rule (1) shall, if it is cash or currency notes, be deposited in the name of the committee along with the earnest-money deposited under the provisions of rule XIII.3. by the contractor in question in the Post Office Savings Bank, or in such other bank as the committee, with the approval of the [Deputy Commissioner] [or Sub-Divisional Officer within his jurisdiction as the case may be, in respect of a Municipal Committee of the second class or third class, as the case may be], may direct and such security and any sum deducted under the provisions of sub-rule (1) shall be retained by the committee for six months after*

completion of the work, and shall then be returned to the contractor, together with any interest that may have accrued thereon, unless in the meantime the work has been found to be defective or not up to specification and the contractor has not remedied such defect or failure to comply with the specification, in which case such security or sum deducted shall be retained until such defect or failure has been remedied.

(3) *In no circumstances shall an advance be made to a contractor for any work to be executed for Corporation or the Committee as the case may be.*

4. Notwithstanding anything contained in the foregoing rules the security deposited by the contractor for the supply of material in connection with a work to be executed by the Corporation or the Committee, as the case may, departmentally as mentioned in rule XIII.2 shall be refunded forthwith after the contractors complete the supply strictly in accordance with the conditions of the contract, the supply is accepted as such by the Corporation Engineer or the Municipal Engineer, as the case may, and taken on his book.”

*(Emphasis supplied).*

It is thus submitted that none of the provisions of the Punjab Municipal Account Code, 1930 or the Account Manual, 2017 empower the respondent to forfeit the security or not to refund the same and that in the absence of any enabling provision the respondents have unjustly enriched themselves by retaining this amount for no valid reasons and without any legal cause.

I have heard the learned counsel appearing on behalf of the parties and have gone through the substantive provisions relied upon by them.

I find myself in agreement with the contentions raised by the petitioner that clause 26.4 of the Accounts Manual does not entitle the respondent to forfeit the security amount and only prescribes the checks to be followed before the release of such security amount. Further, a reference to clause XIII.6 of the Punjab Municipal Account Code, 1930, mandates that the obligation is upon the Municipal Corporation to release the security amount upon successful execution of the work. It would thus be a travesty of justice in case the respondents are allowed to capitalize on their own lapse of not releasing the security amount deposited, the work having been successfully executed. The present petition is accordingly allowed. The respondent Authorities are directed to release the balance amount of security along with interest 6% per annum from the date of filing of the present petition till its final disbursement. An additional cost of Rs.22000/- is imposed upon the respondent Municipal Corporation, Ludhiana, for subjecting the petitioner to unwarranted litigation and for harassment. The said cost, however, be deposited with the PGIMER Poor Patients' Welfare Fund.

**September 21, 2023**  
**raj arora**

**(VINOD S. BHARDWAJ)**  
**JUDGE**

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