

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

203-1 CWP-36852-2019

NIDHI GARG ... Petitioner
VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

203-2 CWP-36818-2019

DILBAGH SINGH ... Petitioner
VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

203-3 CWP-36854-2019

KULWINDER SINGH ... Petitioner
VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

203-4 CWP-37015-2019

VINOD KUMAR ... Petitioner
VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

203-5 CWP-37016-2019

AMIT GOEL ... Petitioner
VERSUS

STATE OF HARYANA AND OTHERS ... Respondents

203-6

CWP-37482-2019

ROHIT KUMAR

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

203-7

CWP-37484-2019

SIDHARTH JAIN

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

203-8

CWP-160-2020

UMESH MEHTA

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

A N D

202

CWP-36247-2019

Date of Decision: 10.02.2023

VERINDER PARTAP SINGH

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner(s).

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

A batch of nine petitions is being decided by a common order as the counsel for the petitioners submits that the issue involved in the present petitions is similar. For the facility of reference, the facts are being extracted from CWP-36852-2019.

The present petition seeks quashing of the order/letter dated 23.10.2018 (Annexure P-6) issued by respondent No.2 - The Chief Conservator of Forest (Protection), Haryana, whereby the earnest money deposited by the petitioner alongwith the application has been ordered to be forfeited.

Briefly summarized, the facts of the present petition are that the petitioner had applied for issuance of licence to set up and operate a Wood Based Industry under the category of Plywood Unit in Yamuna Nagar vide application dated 08.07.2017. Respondent-Authorities issued letter dated 28.07.2017 (Annexure P-2) as offer to grant licence as the petitioner was found eligible and was selected for grant of licence in the category Wood Based Industry, Plywood Unit. The petitioner claims that he submitted his unwillingness to accept the offer for a licence to set up and operate the Wood Based Unit vide his letter dated 24.08.2017 and also requested for refund of his earnest money of Rs.3,00,000/- paid alongwith the initial application dated 08.07.2017. It is averred that the respondents have, however, ordered the forfeiture of the said earnest money vide communication dated 23.10.2018 in violation of the conditions as contained in the offer-letter as well as the acceptance form attached with the offer-letter. Aggrieved thereof, the present writ petition has been filed.

Written statement on behalf of respondents No.1 to 4 had been filed through the Divisional Forest Officer, Yamuna Nagar, wherein it was stated that the Chief Conservator of Forest (Protection)-cum-Member Secretary, State Level Committee of Wood Based Industry, Haryana had issued the terms and conditions for applying new licences/registrations to set up Wood Based Industrial unit as per the notification/guidelines issued by the Ministry of Environment, Forest and Climate Change dated 11.11.2016. The terms and conditions of the noticed inviting applications dated 08.06.2017 were duly notified and were available on the website of the Forest Department and were made known to all members of general public. The submission of the application was after a period of about one month thereafter i.e. on 08.07.2017. Reference has been made to paragraphs No.8, 10, 11 and 12 of the terms and conditions as notified on 08.06.2017 to contend that once the letter of offer of licence has been sent, in the event the applicant does not intend to set up the unit, the earnest money is liable to be forfeited. He submits that the action of the respondents is in consonance with the terms and conditions duly notified in the notice inviting applications.

Replication to the said written statement was filed controverting the said submissions.

Before the arguments were heard, attention of the counsel for the petitioners was drawn to the Arbitration Clause No.25 in the letter of offer and it was put to him if he would like to take recourse to Arbitration. The counsel however, sought adjuration by High Court on the ground that there is no dispute qua facts and the dispute is about interpretation. On his refusal to go for arbitration, the matter was heard on merits.

Learned counsel for the petitioners submits that the respondent-Authorities issued the letter of offer to grant licence to set up Wood Based Industrial unit on 28.07.2017 and that the petitioner had submitted his response expressing unwillingness to accept the offer for the licence to set up and operate the Wood Based Industrial unit. The acceptance letter that accompanied the letter of offer to grant licence, in paragraph No.3 thereof, prescribes that in the event of an applicant conveying unwillingness to accept the offer for a licence to set up and operate the Wood Based Industrial unit, the amount of earnest money was to be refunded and an applicant could seek refund thereof. He submits that the respondents, by their own interpretation as per options of the acceptance letter are not applying clause paragraph No.12 of the terms and conditions dated 08.06.2017. The interpretation that the clause of letter of acceptance is to be applicable in respect of a category where a person is offered grant of licence to set up Wood Based Industrial unit in more than one category is thus an after-thought. It is contended that the clause of the acceptance letter however, does not specify any such category and that the same is wrongly being read in consonance with condition No.12 of the terms and conditions. He further submits that only the process fee was non-refundable and that the forfeiture of earnest money deposited, to the extent of 20%, would be disproportionate; harsh and irrational. The State cannot be the profiteer where a person expresses his unwillingness to set up a unit due to onerous terms and conditions prescribed in the letter of offer to grant licence to set up a Wood Based Industrial unit.

Controverting the arguments for the petitioner, State counsel places reliance on conditions No.8 and 10 to 12 of the terms and conditions as notified to the general public and available on-line. The petitioner, despite

being fully aware of the same, applied for grant of licence. Condition No.8 made it mandatory for an applicant to deposit the 20% of the amount in each category of Wood Based Industry towards earnest money alongwith non-refundable and non-adjustable processing fee. Once an applicant was successful and a letter of offer is issued to him, he was required to deposit the remaining 80% of the amount of one-time payment applicable to the relevant category within a period of one month. As per Condition No.11, if the applicant did not intend to accept the letter of offer, the earnest money deposited was liable to be forfeited and no money was to be refunded. Condition No.12 contemplated that where a person has been successful in more than one category, he was entitled to retain only one licence of his choice and the earnest money deposited in categories other than the category chosen by the applicant to retain, was to be refunded without interest. It is thus contended that all these clauses have to be read harmoniously. Since the petitioner was always aware of condition No.11, which rendered him liable to forfeiture of earnest money deposited in the event of non-acceptance of the letter of offer, therefore, the action of the respondent-Department cannot be said to be arbitrary, illegal or irrational. It is further submitted that insofar as the letter of acceptance accompanying the letter of offer is concerned, the same was merely a format and cannot override the terms and conditions notified on 08.06.2017 and made fully known to the general public. The petitioner now intends to take benefit of the possible alternative interpretations of the aforesaid clause No.3 alongwith the letter of acceptance. It is further submitted that having participated in the entire process despite being aware of the terms and conditions, he cannot at this stage contend that the same are harsh or amount to unduly penalizing an applicant for not establishing a Wood Based

Industry. It is also argued that the terms and conditions as notified on 08.06.2017 are also not a subject matter of challenge in the present writ petition and in the absence of any challenge thereto, there can be no reading down of such provisions.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The issue that arises for consideration in the present batch of petitions relates to interpretation and construction of various terms and conditions notified by the respondent-Department alongwith the clause as contained in the acceptance form appended alongwith the letter of offer.

Before proceeding with the issue in hand, it would be necessary to extract the relevant terms and conditions that have been relied on by the respective parties:

Terms and conditions for applying for new licence/registration to set up Wood Based Industrial Unit:

Condition No.8: Applicant has to deposit 20% of the amount of 'one time payment' being charged in each category of WBI in the form of 'Earnest Money'. In addition to Earnest money, each applicant has to pay a non refundable, non adjustable Processing Fee."

Condition No.10- 'On being successful to receive a license either through draw of lots or otherwise, the applicant will be issued a "Letter of offer". Each successful applicant on receipt of a letter of offer has to deposit the remaining 80% amount of one time payment applicable to the relevant category of WBI alongwith a "Letter of Acceptance within a period of one month from the date of issue of "Letter of Offer". The prescribed proforma for letter of acceptance will be provided alongwith the letter of offer.

Condition No.11 - 'If upon receiving a letter of offer, the applicant does not want to accept the offer, then the earnest money deposited for the category in which the applicant is being offered a license, will be forfeited and no refund will be made. If the acceptance letter from the applicant to whom Letter of offer has been issued is not received within a prescribed one month period then it will be construed as rejection of offer by the applicant for which he will only be responsible'.

Condition No.12 - In case of Terms and successful applicants in more than one category either through draw of lots otherwise or through both, he or she has to retain only one license in the category of his choice. In such cases earnest money deposited in categories other than the retained one, will be refunded without interest.

Further, the relevant Clause-3 of the letter of acceptance reads thus:

“3. I hereby convey my unwillingness to accept the offer for a license to set up and operate a WBI Unit under the category Plywood Unit. I also request that I may be re-funded the amount of earnest money paid at the time of submitting the application.”

Before proceeding to analyze the import of the aforesaid terms and conditions and Clause No.3, it is well settled position in law through various judicial pronouncements that while interpreting the 'terms and conditions' of contract/statute, all the clauses have to be read collectively and meanings have to be assigned to them according to the harmonious and conjoint reading thereof. No such interpretation should be adopted which may render any other clause a nullity or nugatory. The Hon'ble Supreme Court of India held in the matter of **Bank of India Versus K. Mohandas**, reported as **(2009) 5 SCC 313** as under:

“28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.

29. In **Ottoman Bank of Nicosia v Ohanes Chakarian**, AIR 1938 Privy Council 26, Lord Wright made these weighty observations:

“.....that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it.”

30 In **Ganga Saran v. Firm Ram Charan Ram Gopal**, AIR 1952 Supreme Court 9, a four Judge bench of this Court stated:

“Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say afterwards, it is unnecessary to refer to what the parties have said about it.”

31. It is also a well-recognized principle of construction of a contract that it must be read as a whole- order to ascertain the true meaning of its several clauses and the words of each clause should be Interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. [(The North Eastern Railway Company v. L. Hastings) (1900 AC 260)].

Emphasis Supplied”

It is not in dispute that the terms and conditions, notified pursuant to the notification of November, 2016 and dated 08.06.2017, were available on the on-line portal and the general public had been duly notified about the same.

The petitioner had submitted his application under the aforesaid terms and conditions after being fully aware of the same. Condition No.8 prescribes that 20% amount is to be deposited towards earnest money as one-time payment in the category of Wood Based Industry. Additionally, a non-refundable and non-adjustable process fee was also required to be paid as has been specified in Condition No.8. Condition No.10 mandates an applicant to deposit remaining 80% amount of one-time payment within a period of one month from the date of issuance of letter of offer, which is accompanied by a draft of the letter of acceptance. The prescribed proforma for letter of acceptance was issued alongwith the letter of offer to grant licence. Condition No.11 specifies that if upon receipt of letter of offer, the applicant does not wish to accept the offer, the earnest money deposited for the category in which the applicant was being offered a licence was to be forfeited and no refund towards the same was to be made. Condition No.12 addressed the exceptionality where an applicant was granted letter of offer in more than one category, either through draw of lots or otherwise. He/she was entitled to retain one category of licence only and in all other categories, the earnest money was liable to be refunded. Evidently, the petitioners fall under condition No.11 where they refused to accept the offer. Resultantly, the earnest money deposited by them alongwith the application became liable to be forfeited. The submission of the petitioners that since the letter of acceptance accompanying the letter of offer in a prescribed form stipulated refund of the earnest money, hence, they are entitled to the refund thereof, cannot be accepted as such acceptance would render the Condition No.11 unenforceable, nugatory and meaningless. The same would lead to a situation where every person would be entitled to claim the refund of entire earnest money by opting to not accept the letter of offer. The terms and

conditions having been made known to an applicant prior to submission of the application itself, it cannot be perceived that the petitioners-applicants were not aware of the said terms and conditions. No better right can enure in favour of the petitioners merely on account of a clause contained in the letter of acceptance appended with the offer letter. Such clause cannot override the terms and conditions that were fully made known to all the persons who had participated in the process.

Clause 11 of the Terms and Conditions is rather specific to a situation where a successful applicant does not want to accept the offer and provides consequence thereof.

The letter of acceptance provides various clauses that are to be tick marked. By necessary inference, an acceptance seems inherent in it. The same clause would also be applicable to the tick marked where the applicant falls under condition No.12 and is eligible for refund without interest. The said clause No.3 of the "Acceptance letter", thus cannot be made applicable to both the situations and has to be interpreted and applied to a situation where it is contemplated in the terms and conditions. Clause 12 of the Terms and Conditions rather gets attracted naturally and without doing violence to any other clause of the Notice inviting applications. The interpretation offered by the employer thus is probable and reasonable. The same thus deserves to be accepted on first principles. It is also a well settled principle that employer's understanding and interpretation of a clause has to be given primacy.

The same now leads to the issue as to whether the condition of forfeiture of 20% of the amount submitted as earnest money is harsh, onerous and ought to be set aside?

The said submission cannot be accepted at this stage for two reasons- firstly, the petitioners participated in the entire process seeking licence to set up a Wood Based Industry after being fully aware of the terms and conditions of the Department. Having been apprised of the same and having participated despite being fully aware of the terms and conditions, it does not lie in the mouth of petitioners to say that the said terms and conditions are harsh and onerous. It is for the employer/the agency to prescribe the terms and conditions under which it offers licence to a person willing to set up a Wood Based Industry. A person who is aggrieved of the terms and conditions is at liberty to approach the Court at the first instance and raise a challenge to the conditions on all the grounds that are available to a person as per law. However, after having participated in the entire process despite being aware of the same, the petitioner cannot thereafter impugn the said terms and conditions when it applies to his prejudice.

Secondly- the aforesaid contention cannot also be accepted for the reason that the terms and conditions as notified on 08.06.2017 are also not a subject matter of challenge in the present set of petitions. The legality of these provisions thus cannot be examined in the absence of any challenge raised by the petitioners.

In any case, even during the course of the arguments, the counsel for the petitioners has failed to refer to any statutory provision with which the aforesaid terms and conditions may be alleged to be in conflict. In the absence of any such conflict or repugnancy with the statutory provisions or the Regulations framed thereunder or any provisions of the Constitution of India, the conditions cannot be set aside merely because the petitioners, in their wisdom, feel that the aforesaid conditions amount to imposing harsh and

onerous penalty. High Court, in exercise of its powers of judicial review does not re-write the terms of the contract between the parties and substitute its sensibility for the requirements of the authority.

In view of the foregoing reasons and the position in law, I am of the considered opinion that the present petitions are devoid of merits and orders passed by the respondents ordering forfeiture do not suffer any illegality, perversity or improper appreciation of the terms and conditions.

The petitions are accordingly dismissed.

Photocopy of this order/judgment be placed on the files of other connected cases.

10.02.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No