IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207 **CWP-37010-2019**
Date of Decision : **May 26, 2023**

SAHIBJIT SINGH SANDHU & ANR .....Petitioners

VERSUS

STATE OF PUNJAB & ORS .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. R.V.S.Chug, Advocate for the petitioners.
Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR. J.(Oral)

1. It is not disputed amongst the contesting parties, before this Court, that the present petitioners had successfully executed the works, as became allotted to them. The said execution of works by the present petitioners occurred on 11.4.2005. However, the security amount comprised in a sum of Rs.60,78,387/- had become deposited by the present petitioners, before the agency concerned, vide challan No.73 dated 25.8.2005. It is further apparent on a reading of the reply, on affidavit, furnished to the present petition by the respondent-State, that a no objection certificate, was issued to the petitioners on 26.7.2010, but with a rider, that recovery, if found and detected by the auditing agency, thus would be realized from the said amount of security, as became deposited by the present petitioners.

2. Further-more, it is also mentioned in the reply on affidavit, that since the petitioners, did not liquidate the relevant installments, within the stipulated period of time, thus thereby they violated condition No.2 of the agreement, condition whereof has been extracted hereinafter.

> "2. Mode of payment of contract money-The contractors shall deposit the balance contract money for the first year of the contract with the Mining Officer, Patiala & S.A.S., Nagar (Mohali) in equal quarterly installments in advance on the 15th July, 15th October and 15th January. The contract money for the subsequent years of the contract shall be paid by the contractors in advance in equal installments on the 15th April, 15th July, 15th October and 15th January in each year."

3. Consequently, it is contended that in terms of condition No.2 of the contract, as became executed amongst the petitioners, and, the respondent, the petitioners are liable to pay interest @ 18% p.a. for the relevant period relating to delayed payments of such installments. Therefore, it is further spelt in the reply on affidavit, that after deducting the above amount of Rs.8,46,613/-, thus from the security deposit(Supra), thereby only a sum of Rs.60,78,387/- becomes the outstanding disbursable security amount to the present petitioners.

4. However, the learned counsel for the petitioners submits, that since the petitioners earlier accessed this Court through theirs filing a writ petition No.23022 of 2018, and, that thereon the hereinafter extracted order become passed:-

> "Learned counsel for the petitioners states that despite the fact that mining contract has been concluded successfully, the respondents are not releasing security amount although numerous representations have been made in this regard.
>
> We, therefore, without commenting on the merits of the claim set up by the petitioners, dispose of the instant

> petition with a direction to the respondents to consider and decide the representation made by the petitioners by passing a speaking order, as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of this order.
>
> Disposed of.".

5. However, he submits that the respondent concerned, through the passing of impugned order Annexure P-5, has declined to the petitioners, the relief of interest to be levied, on the delayed payment, and, or refund of the above amount of security. Therefore, the petitioners are led to re-access this Court to thus make a challenge to Annexure P-5.

6. Though in the reply on affidavit furnished to the petition, it has been stated, that in terms of Clause 19 of the contract, which became executed between the parties, clause whereof becomes extracted hereinafter, there is a mandate against the security deposits rather carrying interest. Therefore, it is contended, that the impugned order Annexure P-5 is a validly made order, and, that the petitioners are not entitled to levying of any interest, thus on the delayed releases of the security amounts (Supra) to them.

> "Security deposit shall carry no interest-The security deposited by the contractors shall not carry any interest. It shall be refunded to the contractor within three months from the date of expiry or sooner determination of the contract."

7. Learned State counsel has vehemently argued, that in case the petitioners are aggrieved from the drawing of Annexure P-5, thereupon they may endeavoure to institute a civil suit, before the

jurisdictionally competent Civil Court concerned, thus for theirs therein claiming a declaration that the said condition is void, and, unreasonable, and, that the interest on the delayed payment of security, is to be added or levied on such delayed payment of security.

8. However, for the reasons to be assigned hereinafter, the above made argument made before this Court, by the learned State counsel is rejected. The reason being that since there is no dispute about the makings of completest satisfactory execution of the awarded works by the petitioners, rather, the dispute being limited to an interpretation being made to Clause 19. As such when otherwise, this Court can well make an interpretation of Clause 19. Therefore, it would be extremely harsh, and, oppressive, thus for the petitioners being yet relegated to a civil remedy, in as muchas, theirs being directed to institute a civil suit before the Civil Court concerned, thus for thereby the learned Civil Court concerned, making an interpretation of the said Clause, which even otherwise can be done by this Court, in the exercise of writ jurisdiction.

9. The understanding of or the interpretation to be meted to, Clause 19, is that, the embargo against claim of interest on delayed payment of security, is applicable only when the security amount is refunded to the contractor(s), thus within three months rather from the date of successful execution of works awarded to them. The above signification, as assigned to the relevant clause, emanates from a wholesome reading of the said clause reveals. The relevant clause has two components. In the first component, there is a mandate against the

security deposited by the contractor(s) carrying any interest. However, in the second component, there is a mandate upon the agency awarding works, to the contractor(s) concerned, thus to ensure that the security amount is refunded to the contractor(s) within three months from the date of successful completion of the works or the determination of the contract or whichever is earlier. The above two components as carried in Clause 19, though but are obviously carried in two segments, yet both the segments of Clause 19, thus have to be read harmoniously. The first component though bars the contractors to claim interest on security. However, the said segment, when becomes accepted by the contractor or the claimant, thereby the acceptance thereof, by the claimant of the said segment, of Clause 19, thus bars the claimant or the contractor, from claiming interest on the security amount. However, since as above stated, there is also a second segment to Clause 19, and, which, but is to be read harmoniously with the first segment(Supra). Since thereins a mandate is carried that the security amount shall be refunded to the contractors within 3 months from the execution of the works or determination of the contract whichever is earlier. Therefore, on a combined reading of both the segments, the necessary inference which becomes sparked, is that, though there is an estoppel against the contractor claiming interest on security, but there is also corresponding obligation, upon the respondent concerned, to ensure that the such an estoppel against the contractor, is ensured to remain alive, thus upon the said security amount being released within 3 months, from the date of successful completion of works or determination of the contract whichever is earlier. The above manner of making a purposive, and, harmonious interpretation of the two segments, and, with corresponding obligations becoming created thereunders upon each of the contracting parties, is also, with holistic purpose, that the State or the executing agency concerned, does not delay the releasing of security beyond 3 months. If it does so, then though in the initial component of Clause 19, there is an estoppel against the contractor, against claiming interest but the said estoppel, has a tenure of only 3 months, but the rigor of the said estoppel, becomes relaxed rather upon the respondent concerned, failing to comply with the corresponding obligation cast upon it, in the second segment, in as muchas, its failing to within three months of successful execution of works, thus release the security deposit to the contractor.

10. However, since there has been a procrastinated delay, since 23.1.2020 upto the release of the security amount to the petitioners, hence in the month of January 2020, but yet without any interest being levied thereons. Therefore, the above elongated delay in the releasing of the security deposits to the petitioners, and that too without any interest, being levied thereon, resultantly requires that the impugned order be quashed.

11. Consequently, this Court, upon, making the above interpretation to the relevant clause, thus becomes constrained to award to the present petitioners interest @ 7% p.a. from 2010 upto January 2020, on the security deposit, as becomes released to the petitioners. The

said component of interest be forthwith remitted into the saving bank account(s) of the petitioners.

12. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

May 26, 2023 **(KULDEEP TIWARI)**
ajay-1 **JUDGE**

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No