



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

CWP-30224-2022(O&M)

Date of Decision : 18.02.2025

SRI KRISHNA EDUCATION SOCIETY (REGD.)Petitioner
VERSUS

UNION OF INDIA AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. K.S.Dadwal, Advocate,
for the petitioner.

Mr. Sudhir Nar, Sr. Panel Counsel,
for respondent no.1.

Mr. Vipin Mahajan, Advocate,
for respondents no.2 to 4.

KULDEEP TIWARI. J.(Oral)

1. Through the instant writ petition filed under Article 226/227 of the Constitution of India, a prayer is made for quashing of demand raised by respondent no.4 vide letter dated 08.04.2022 (Annexure P-14), reply dated 08.06.2022 (Annexure P-18), which was made to the legal notice dated 11.05.2022 (Annexure P-16) and the communication dated 07.11.2022 (Annexure P-20), as well as letter dated 12.12.2022 (Annexure P-21).

2. The petitioner has made a further prayer, directing the respondents to adjust the amount which is payable by them, and refund the amount spent on construction, structural repairs as well as deposit of CLU money for passing the building plan, and also other charges which

are being raised by Municipal Council, Nangal, as per the terms and conditions of the lease deed.

3. At the time of issuance of notice of motion, a co-ordinate bench, on dated 23.12.2022, passed the following order:-

“Learned counsel appearing on behalf of the petitioner contends that the respondents are not giving the benefit of the structural repairs undertaking by the petitioner even though he was entitled to claim under the credit thereof and that issued the notice for termination of the lease. He further contends that the petitioner already has incurred much more expenditure i.e. to the tune of Rs. 3,77,00,000/- after the administrative approval of the respondents and that the said lease is being sought to be terminated on the alleged non-payment of the rentals to the tune of Rs. 63 lakhs only. He undertakes to pay all other requisite operational & Maintenance charges. Notice of motion.

Notice re: Stay as well.

Mr. Sudhir Nar-Senior Panel Counsel appears and accepts notice on behalf of respondent No.1-Union of India and prays for some time to complete instructions.

Adjourned to 16.05.2023.

In the meanwhile, the recovery of the amount pursuant to the recovery notice shall remain stayed till the next date of hearing subject to the petitioner depositing a sum of Rs. 10 lakhs with the respondents within a period of 04 weeks from today.”

4. Upon notice, learned counsel for respondent no.2 to 4 caused appearance, and filed their written statement, furthermore, learned counsel appearing on behalf of respondent no.1-UOI, today submits that he does not want to file reply, as no relief has been claimed *qua* Union of India.

5. Learned counsel for respondents no.2 to 4, at the very outset, draws attention of this Court towards the terms of contract, as appended herein, as Annexure P-2, which carries an arbitration clause at no.35, which is extracted hereinafter:-

“35. ARBITRATION CLAUSE: “Except where otherwise provided in the contract all matters, question, disputes or differences whatsoever, which shall at any time arise between the parties hereto, touching the construction, meaning, operation or effect of the contract or out of matter relating to the contract or of the matters relating to the contract or breach thereof or the respective rights or

liabilities of the parties whether during or after completion of the works or whether before or after termination, shall after written notice by either party to the contract be referred to C&MD, National Fertilizers Ltd., for appointment of Arbitrator.

The arbitration Proceedings shall be governed by the Arbitration & Conciliation Act, 1996. The Arbitration and Conciliation (Amendment) Act, 2015 or any further statutory modification or enactment thereof and the rules made there under.

If the arbitrators to whom matter is referred, vacates his/her office by any reason whatsoever then the next arbitrator so appointed by the authority referred above may start proceedings from where his predecessor left or at any such stage he may deem fit”.

It is agreed by and between the parties that in case a reference is made to the Arbitrator or the Arbitral Tribunal for the purpose of resolving the disputes/differences arising out of contract by and between the parties hereto, the Arbitrator or the Arbitral Tribunal shall not award interest on the awarded amount more than the rate of SBI PLR/Base rate as applicable to NFL on date of award of contract.”

6. He further submits that petitioner has also moved an application for appointment of an arbitrator, before the competent authority, i.e. C&MD, National Fertilizer Limited, therefore, the instant petition filed before this Court, is a misconceived motion, and the petitioner ought to have invoked the arbitration clause (*supra*).

6. In view of the above arguments, learned counsel for the petitioner submits that the petitioner is ready to invoke the arbitration clause (*supra*), if, in case, the interim direction issued by this Court vide order (*supra*), may ordered to be remain intact, till the interim application for grant of interim relief, so to be preferred, is not decided by the arbitrator concerned.

7. Though this Court has no hesitation to observe that the instant petition is a misconceived motion. Therefore, the instant petition

is **disposed of** accordingly. However, in case the petitioner files an appropriate application for appointment of an arbitrator as per the arbitration clause (*supra*) before C&MD, National Fertilizer Ltd., within 15 days from today, the latter concerned, shall, after considering the contract/agreement and arbitration clause appoint an arbitrator, within 15 days thereafter.

8. In the eventuality of the appointment of an arbitrator, in case the petitioner within 30 days thereafter, files a claim before the arbitrator alongwith an application for the interim stay/relief, the arbitrator shall decide such application in accordance with provisions of arbitration clause no.35 (*supra*).

9. Until the arbitrator, so to be appointed, decides the stay application, the interim stay/relief granted by this Court shall remain in operation.

10. It goes without saying that arbitrator, shall decide the claim alongwith the application for stay, independently, on the basis of the merits of the matter, without getting prejudice from the interim order (*supra*) passed by this Court.

11. All pending application(s), if any, also stand **disposed of** accordingly.

February 18, 2025
dharamvir

(KULDEEP TIWARI)
JUDGE

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