IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.108 **Date of Decision: 07.07.2025**

1) CWP-33874-2024

Punjab Health System Corporation .... Petitioner

Versus

Matewal Cooperative Labour and
Construction Society Limited and another ... Respondents

2) CWP-33922-2024

Punjab Health System Corporation .... Petitioner

Versus

Matewal Cooperative Labour and
Construction Society Limited and another ... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Deepanshu Mehta, Advocate, for the petitioner.

Mr. Dheeraj Mahajan, Advocate, for respondent no.1.

TRIBHUVAN DAHIYA, J. (ORAL)

Common questions of law on similar facts arise for consideration in these petitions, therefore, the same are being decided together. For brevity, the facts are being taken from CWP-33874-2024 which has been filed *inter alia* seeking a writ of *certiorari* quashing the order dated 07.08.2024, Annexure P-1, passed by the second respondent/sole Arbitrator holding that issue no.3 *qua* maintainability of the claim preferred by respondent no.1/claimant cannot be treated as preliminary issue.

2. It is apparent on record that pursuant to the order passed by this Court, dated 09.05.2023, in ARB No.318 of 2022, the second respondent was appointed as the sole Arbitrator to decide disputes between the parties arising out of the contract/agreement dated 17.12.2015. During arbitral proceedings, the issues were framed, and the petitioner insisted that issue no.3, '*Whether the claim filed by the claimant is not maintainable in light of undertaking and principle of estoppel? O.P.R.*' needs to be considered and decided as preliminary issue. The Arbitrator considered the same and concluded that it cannot be treated as preliminary issue. The reasoning given is as follows:

> Annexure R-2 proves that claimant has specifically mentioned that work could not be completed as due payment was not made if respondents were responsible for delay in completion of work and payment was stopped without justification. In that situation undertaking given can be presumed to be given under coercion. To prove that undertaking has been given under coercion as payment was stopped unreasonably, claimant would have to lead the evidence. Claimant can prove that to get the payment released, he was compelled to give the said undertaking. Claimant has right to prove by leading evidence that said undertaking is erroneous and not binding on the claimant. In case claimant is afforded an opportunity to prove under what circumstances the said undertaking was given, only then it would be possible to decide as to whether said undertaking would operate as estoppel. Such rights to admission wrongly made or under what circumstances made can be proved only if an opportunity is given to the party who allegedly made the admission. While the admission is strong evidence, it is subject to scrutiny and can be challenged. Admission made under duress or coercion admissible in evidence.

3. Learned counsel for the petitioner has contended that the issue is of utmost importance and is required to be decided by the Arbitrator as preliminary issue. It is because after giving unconditional undertaking that it would not raise any claims regarding delays, additional expenses, etc., the respondent is estopped from raising the arbitral claim. Entire liability of the petitioner stands discharged as acknowledged by way of the undertaking, which obviates the need for arbitral proceedings itself. In support of the contention, he has relied upon law laid down by the Supreme Court in *National Insurance Company Limited* v. *Boghara Polyfab Private Limited*, (2009) 1 SCC 267.

4. Learned counsel for the respondent/claimant, on the contrary, contends that the petition is not maintainable as it has been filed against an interim order passed by the Arbitrator. The proceedings are continuing before him and the claimant has already tendered evidence; the same now stands adjourned for evidence by the petitioner. On merits, he contends that the claimant was forced to give the said undertaking under coercion, which cannot prevent it from raising claims before the Arbitrator. Issue no.3 is a matter of evidence which can only be considered after the parties have placed relevant material in that regard before the Arbitrator.

5. Heard.

6. As apparent on record, the Arbitrator considered the petitioner's contention as to whether issue no.3 can be decided as preliminary issue, and came to the conclusion that it cannot be done. The respondent/claimant has taken the stand that it was coerced into giving unconditional undertaking to the petitioner at the time of releasing due payments to it. But for the undertaking, the payment would not have been released. This fact can only be established by placing relevant material on record. Accordingly, there is nothing illegal or irregular about the view taken by the Arbitrator that, '*Since*

an opportunity to lead the evidence has to be afforded to claimant to prove under what circumstances undertaking was given so all the issues shall be decided together. Accordingly issue no.3 cannot be treated as preliminary issue'.

7. Further, it is well settled and a reference can be made to the law laid down by the Supreme Court in *Bhaven Construction through Authorised Signatory Premjibhai K. Shah* v. *Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and another*, 2022(1) SCC 75 that, arbitral process is to be interfered with under Article 226/227 of the Constitution only in exceptional and rare cases; for instance, where one of the parties has been left remediless under the statute or a clear 'bad faith' has been shown by either of them. No such situation arises in the instant case calling interference by this Court. The petitioner has the remedy of filing objections against the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, after passing of the final award, wherein it will be at liberty to raise all the pleas.

8. Still further, reliance placed by learned counsel for the petitioner on *National Insurance Company Limited* case (*supra*) is also misplaced. Although it has been held that it is desirable for the Court and not for the Arbitrator to decide the preliminary question whether the liability of the respondent/company/department has been validly and voluntarily discharged by an undertaking given by the claimant, however, that stage is already over as the Court has appointed the Arbitrator vide order dated 09.05.2023, which is not under challenge. Besides, the Supreme Court has deprecated the procedure of obtaining full and final discharge/settlement vouchers from private contractors by the government departments/ corporations at the time of making final payments, as unfair and illegal.

9. In view of the discussion, there is no ground to interfere with the impugned orders, and the petitions stand dismissed.

10. A photocopy of this order be placed on the connected file.

(TRIBHUVAN DAHIYA)
JUDGE

07.07.2025
Maninder

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