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**(2003) 10 P&H CK 0024**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 14888 of 2002**

Sanchit Industries

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

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**Date of Decision :** 28-10-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2004) 136 PLR 732

**Hon'ble Judges :** Swatanter Kumar, J;J.S. Narang, J

**Bench :** Division Bench

**Advocate :** M.L. Sarin, Rakesh Khanna, T.S. Dhindsa, Munshiwar Puri, Arun Walia, Dinesh Nagar, P.S. Patwalia, T.P.S. Chawla, Jatin Salwan, C.M. Munjal, A.A.G, Jagjit Singh, A.A.G., S.P. Gupta and Lisa Gill, for the Appellant;

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## Judgement

Swatanter Kumar, J.—These cases were heard by us on 23.10.2003, on which date, learned counsel for the parties, upon instructions from their respective clients, had agreed that this bunch of writ petitions could be disposed of by a consented order. We had heard learned counsel for the parties in that behalf and reserved the order.

2. In these writ petitions, the petitioners have challenged the demand notice dated 27.4.2001, letter dated 13.8.2001, demand notice dated 7.8.2002 and cost sheet, Annexure P7, P10, P15 and P16 respectively (reference to facts of Civil Writ Petition No. 16830 of 2001), the Punjab Small Industries and Export Corporation Limited (hereinafter referred to as the "Corporation"), has demanded enhanced amounts on account of additional costs of plots which had been allotted to the respective petitioners in terms of letter of intent, Annexure P2 to the writ petition.

3. According to the respondents, enhanced costs is being demanded after scrutiny and re-conciliation of the record, keeping in view enhancement of compensation awarded to the land owners by the Court, interest on different accounts as well as on account of certain developments and other charges.

While, according to the petitioners, nothing is due and payable to the respondents, inasmuch as they had paid the entire costs of plots demanded by the authorities in terms of Annexure P2, the letter of intent.

Thereafter also, some amounts have been paid by the petitioners and, in fact, they are entitled to refund of certain amounts.

4. There are serious questions which have been raised by the parties before us for determination in these writ petitions. However, implicacies and niceties of accounts, which may require prolonged examination of record and even may invite some evidence would be the matter which need not be examined by this Court in exercise of its power under Article 226 of the Constitution of India. Costing of the plots allotted in furtherance of the policy of the State and development and industrial growth in the State, unless quite contrary to law, would not normally be gone into by the Courts in exercise of such jurisdiction, but where controversies raised are substantial and are founded on record of the respondents themselves and the demand raised is allegedly contrary to the terms of the contract/letter of intent/letter of allotment, as alleged the Court can also not ignore the same in its entirety. Keeping these circumstances in mind Division Bench of this Court, vide order dated 7.7.2003 noticed and directed as under:-

"With the assistance of learned counsel, we have perused the annexures appended to the communication dated 13.8.2001 (Annexure P10) addressed by Punjab Small industries and Export Corporation Limited, to the petitioner. These amounts expressed therein are stated to have been further enhanced during the pendency of the instant writ petition. During the course of hearing, it was not possible for us to appreciate the relevance of various costs/charges which are being recovered from the petitioner. So as to appreciate the exact magnitude and tenor of the costs/charges which are sought to be recovered from the petitioner, we consider it just and appropriate to require the Managing Director of the Punjab Small Industries and Export Corporation Limited along with the Manager (Finance), to assist this Court on the issue noticed above. It would be open to the Managing Director to require any other senior officer also to be present in Court for the aforesaid purpose.

Adjourn for further consideration to 8.7.2003."

Thereafter vide order dated 8th July, 2003, the respondents were directed to file an affidavit in support of the costing. The affidavit filed by the respondents dated 28th July, 2003 was perused by the Court which suffered from patent inadequacies and thus vide order of the Division Bench dated 11th August, 2003, the respondents were directed to file further affidavit in light of the discrepancies noticed and the contentions raised by the petitioners. Further affidavit has been filed, which is nothing but a re-production of the earlier affidavit. After perusing the affidavit and hearing learned counsel for the parties, we are of the considered view that the matter requires examination in depth and that too by

the persons of expertise in accountancy and fixation of land costs. We are of the view that it would be appropriate that concerned experts/authorities who have framed the policy and are controlling implementation thereof in consultation of their finance secretariat, would be the best suited persons to examine the matter in its proper perspective and to come to a definite conclusion in regard to the validity, accuracy and otherwise of the demand raised by the respondents which has been challenged by the petitioners in these writ petitions.

5. Learned counsel for the parties made different suggestions and finally agreed, upon instructions from their respective clients, including Mr. S.K. Sandhu, I.A.S., Director of the Industries Government of Punjab, which are as under:-

(i) that a Committee shall be constituted, which shall be presided over by the Chief Secretary to Government of Punjab, Director, Industries, Government of Punjab, Principal Secretary to Government of Punjab, Department of Industries, Principal Secretary to Government of Punjab, Department of Finance, Managing Director of the Corporation shall be the members of this Committee. The Chief Secretary shall have the power and discretion to co-opt such other members, if, he, so considers it appropriate for the purpose.

(i). This Committee would hear, examine the record and pass appropriate orders in light of the observations made in this order as expeditiously as possible and in any case not beyond the time specifically promulgated in this order.

(iii) The petitioners personally or through their counsel can file precise claim before the Committee in the secretariat of the Chief Secretary on or before 6th November, 2003. The petitioners shall furnish copies thereof to the Secretary Industries and Managing Director of the Corporation, who, if necessary, can present their claim/demand/case before the authorities concerned in writing, not later than 10th November, 2003. The petitioners through their counsel in representative capacity (not more than three in all in number) and the respondents shall be heard by the Committee on 11.11.2003 and 12.11.2003. Hearing to commence at 11.30 A.M. The Committee shall pronounce its order and furnish the copy thereof to each of the petitioners on 30th November, 2003.

(iv) The order so passed by the Committee will not be given effect to for a period of two weeks, unless otherwise operation thereof is stayed or any such directions are issued by the Court of competent jurisdiction. The petitioners shall pay amount of additional costs, as determined by the Committee.

(v) Further on the basis of statements made and consent given by the parties, we consider it appropriate to make a reference to the matter which needs to be examined by the said Committee.

a. At the outset, we may notice that validity or otherwise of Annexure P2 letter of intent issued by the respondents to the petitioners in their respective cases, would not be a matter in question, its terms are binding on the parties to the lis.

b. The Committee shall examine whether in terms of the agreement between the

parties the additional costs, as demanded through the notices issued to the respective petitioners, can be charged or not.

c. Can respondents demand in addition on account of developments charges, unforeseen items, petty establishment, escalation for one year, maintenance charges, departmental charges etc.?

d. In terms of the award, the Corporation is not liable to pay interest on the enhanced compensation. Thus, can it demand the same from the petitioners (Reference to Annexure P16).

e. What is the justification for demanding different costs from different plot holders/allottees under the same scheme and particularly in the same sector.

f. As contended by the learned counsel for the petitioners, followings matters would make tremendous difference in costing, inasmuch as area has been wrongly included for which consideration has already been received by the Corporation.

1. the area of Air Force Station measuring 11.84 acres approximately has been added for the purposes of computation of costing to the disadvantage of the petitioners;

2. costing of commercial area particularly the parking area meant for benefit of the commercial complex (shopping-cum-offices block), has been incorrectly added in the demand of cost raised from the petitioners;

3. the area given to the P.S.E.B. has been incorrectly added to the costing of the petitioners;

4. it is also stated that an area of 8.84 acres referred to in paragraph 3 of the affidavit dated July 28, 2003 was acquired in an earlier notification, though its costing has been added on the current basis;

5. the cushion of 30 per cent which was provided by the respondents in the original price has neither been utilised nor accounted for in the demand now raised.

6. the respondents cannot charge 30 per cent on account of cushion again;

(vi) Now the amounts claimed in the notices are arbitrary, whether the petitioners are entitled to any concession, if not, reasons thereof.

6. The above consented terms are otherwise just and fair. We do not intend to limit the jurisdiction of the Committee and it must consider each aspect of the matter objectively and base its findings explicitly on the record available.

7. The above indicated matters have been specifically brought to our notice and require consideration by expert body. The Committee itself and the petitioners have the liberty to take assistance of experts including Chartered Accountant etc. The Committee would be at liberty to visit the area in question, if they so desire.

The Committee can also examine any other matter permitted to be raised by the petitioners or the respondents, but in no way effect the terms and conditions of the letters of intent. This order is primarily intended to determine the actual additional cost which the petitioners are liable to pay, if at all.

8. We are directing the Committee to adhere to the time schedule and pronounce its order, as indicated above, without fail. Prescription of short time schedule has been necessitated for the reasons that the respondents are demanding huge some and if they are actually due we see no reason why petitioners should delay and if the payments are not due, we see no reason that respondents should claim such demand and resume the plots allotted, which were allotted with an aim to develop the industrial growth of the State. Equity and law both demand expeditious disposal of such matters, particularly by the administrative authorities, who claim to have raised the demand on record. This costing shall now be the final costing which may be determined upto date, subject only to such other enhancement which may be resulting from the judgments which may be pronounced in pending Regular First Appeals in relation to acquisition of land of the claimants.

9. The above consented order is otherwise just fair and equitable. We dispose of all these writ petitions with liberty to the petitioners to challenge the order so passed by the Committee, if the same is adverse to their interest. The orders of resumption or any other adverse order passed against any of the petitioners, emanating from and in pursuant to the demand notices shall remain in abeyance till the decision of the Committee and the gestation period as prescribed aforestated. However, subject to (iv) above. We leave the parties to bear their own costs.

Copy, of the order be given dasti to the petitioners as well as the respondents.

Sd/- J.S. Narang, J.