CHIEF EXECUTIVE OFFICER AND VICE CHAIRMAN GUJARAT MARITIME BOARD

v.

ASIATIC STEEL INDUSTRIES LTD AND ORS.

(Civil Appeal No. 3807 of 2020)

NOVEMBER 24, 2020

[INDIRA BANERJEE AND S. RAVINDRA BHAT, JJ.]

Interest:

Contract for shipbreaking – By Maritime Board – To the respondent-Company – Earnest money deposited on 08.11.1994 – Upset premium paid on 22.03.1995 – Awardee of contract (respondent No. 1) sought refund of contract amount @ 10% interest per annum from the date of remittance – Board agreed for the refund but without interest – Writ petition by the awardee seeking refund with interest @ 12% per annum – High Court allowed the petition directing the Board to pay interest @ 10% on earnest money and @ 6% on the principal amount from 08.11.1994 to 19.5.1998 – Appeal to Supreme Court – Held: Since respondent No. 1 had paid only earnest money on 08.11.1994 and rest of the amount was paid later – Therefore, interest on the entire amount is directed to be paid from 22.3.1995 (not from 08.11.1999) to 19.5.1998.

Dismissing the appeal, the Court

HELD: 1. The contemporaneous situation, and the correspondence between respondent No. 1 and the Board after the entire amount was deposited, reveals that other concerns approached the court seeking refund of their principal amounts, with interest, which forced the Board to take a decision and comply. The final decision by respondent No. 1 demanding refund was later, in May, 1998. In the meanwhile, the other concerns, which had bid successfully for three plots had approached the court (in 1995) and the Board had decided to refund the amounts with one years' interest. Respondent No. 1, therefore, for reasons best known to it, approached the court for refund and interest, first by filing a suit in 2001. [Para 31][386-D-F]

A **2. It is clear from the Board's conduct that it never responded to the letters written by respondent No. 1 at least, no reply has been placed on record. Even request of respondent No. 1 for permission to carry-out the necessary clearance work at the cost of the board, was not responded to - either positively or negatively. Further, whenever any bidder approached the court** B **complaining that the plot allotted was unusable, the Board decided, mostly contemporaneously, to refund the amount, even with interest. In the case of respondent No. 1, however, when the demand was made for refund on 19.05.1998, the Board did not act, forcing the company to approach the court, firstly through a** C **civil suit which was later withdrawn, and then in a writ petition. [Para 35][387-G-H; 388-A]**

3. The conduct of the Board betrays a callous and indifferent attitude, which in effect is that if respondent No. 1 wished for its money to be returned, it had to approach the court. This was D **despite its knowledge that at least three other identically placed entities had asked for return of money and, upon approaching the court, were refunded the amounts given by them promptly. In view of these facts, nothing prevented the Board from deciding to refund the amount, without forcing respondent No. 1 to approach the court. [Para 40][391-F-G]**

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4. The Board's action is entirely unacceptable. As a public body charged to uphold the rule of law, its conduct had to be fair and not arbitrary. If it had any meaningful justification for withholding the amount received from respondent No. 1, such justification has not been highlighted ever. On the other hand, F **its conduct reveals that it wished that the parties should approach the court, before it took a decision. This behavior of deliberate inaction to force a citizen or a commercial concern to approach the court, rather than take a decision, justified on the anvil of reason (in the present case, a decision to refund) means that the** G **Board acted in a discriminatory manner. [Para 37][388-D-E]**

5. The High Court had directed payment of interest for the entire period (i.e. starting from 08.11.1994 and ending on

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19.05.1998). However, it is evident that respondent No. 1 had not paid the entire amount on 08.11.1994; in fact the sum of $1,153,000 /- i.e. the principal consideration, excluding the earnest money deposit, was deposited on 24.03.1995. Therefore, the impugned judgment erred in directing payment of interest on the entire amount from 08.11.1994; instead, the direction to pay interest on 3,61,20,000/- shall operate with effect from 22.03.1995 to 19.05.1998. [Para 41][391-H; 392-A-B]

Dilbagh Rai Jarry v. Union of India **(1974) 3 SCC 554: [1974] 2 SCR 178;** *Gurgaon Gramin Bank v. Khazani* **(2012) 8 SCC 781 : [2012] 8 SCR 225 ;** *State of A.P. v. Pioneer Builders* **(2006) 12 SCC 119 : [2006] 6 Suppl. SCR 571 – relied on.**

Union of India, Tr. Dir. of IT v. M/s Tata Chemicals Ltd. **(2014) 6 SCC 335 : [2014] 3 SCR 298;** *P.P. Abubacker v. Union of India* **AIR 1972 Ker 103 – referred to.**

Case Law Reference

[2014] 3 SCR 298	**referred to**	**Para 13**
[1974] 2 SCR 178	**relied on**	**Para 38**
AIR 1972 Ker 103	**referred to**	**Para 38**
[2012] 8 SCR 225	**relied on**	**Para 38**
[2006] 6 Suppl. SCR 571	**relied on**	**Para 39**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3807 of 2020.

From the Judgment and Order dated 24.07.2015 of the High Court of Gujarat at Ahmedabad in SCA No. 3945 Of 2001.

Siddharth Bhatnagar, Sr. Adv., Gursharan H. V., Nakul Mohta, Ms. Misha Rohatgi Mohta, Milind Kumar, Avishkar Singhvi, Nipun Katyal, Aditya Sidhra, Dhruv Surana, Shishir Deshpande, Advs. for the appearing parties.

A The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. Leave granted. With consent, the appeal was heard. This appeal is directed against a judgment of the High Court of Gujarat dated 24.07.2015. The respondent (hereafter "Asiatic Steel") had filed a writ B petition before the High Court seeking refund of contract consideration of 3,61,20,000/- paid by them to the appellant (hereafter "the Board"). The High Court allowed the writ petition, in view of its earlier interim order, and directed the Board to pay interest for the period from 08.11.1994 to 19.05.1998. The brief facts that arise for consideration are as follows.

C 2. The Board issued a tender notice on 02.08.1994 for allotment of plots at Sosiya (near Bhavnagar, Gujarat) for ship-breaking of 'very large crude carriers/ultra large crude carriers' (VLCC/ULCC). Asiatic Steel made the highest bid, which was accepted and confirmed by the Board on 08.11.1994, for 3, 61, 20,000/- (hereafter the 'Principal'). D Asiatic Steel was allotted Plot V-10. The bid payment was made on 22.03.1995 in foreign currency, to the tune of $1,153,000, while the earnest money deposit of 5,00,000/- was paid on 08.11.1994.

3. On 23.02.1995, Asiatic Steel and other allottees approached the Board citing difficulties in commencing commercial operations, on E account of the connectivity to the plots and the existence of rocks inhibiting beaching of ships on the plot for the purpose of ship-breaking. Through a letter dated 19.05.1998, Asiatic steel intimated the Board that it wished to abandon the contract and demanded that the payment be refunded (an amount of $1,153,000), with interest at 10% per annum from the date of remittance. The Board, through a notice dated 19.05.1998, stated F that an amount of 3, 61, 20,000/- would be refunded, but without interest. The Board also clarified that the refund would be directed to the original allottee of the plot (i.e. the second respondent, i.e. M/s Ganpatrai Jaigopal- hereafter referred to as "Ganpatrai"). Asiatic Steel then filed a writ petition before the High Court, seeking (i) refund of USD $ 1,153,000 G with interest of 12% per annum compounded quarterly, to the third respondent, M/s Industeel Investment Holdings (hereafter "Industeel", which had made the payment originally on behalf of Asiatic Steel); and (ii) refund of earnest money of 5,00,000/- with interest of 12% per annum, compounded quarterly to Asiatic Steel.

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4. Through an interim order dated 26.02.2002, the High Court held that *prima facie*, Asiatic Steel was entitled to a refund with interest at 10% per annum. Accordingly, the Board was directed to deposit the admitted amount, i.e., the Principal, with interest at 10% p.a. with the court's Registry on or before 15.04.2002. The interest was to be calculated from 19.05.1998 up to 15.04.2002. The amount was permitted to be withdrawn by Respondent No. 3, with the consent of the other respondents. The Board made this deposit, as directed by the court.

5. On 17.09.2014, the High Court determined that the following issues survived to be determined:

(a) Whether interest on payment should be calculated from 24.03.1995 to 15.04.2002, or from 19.05.1998;

(b) Whether the earnest money of 5,00,000 should be refunded;

(c) Whether interest should be calculated at 10% p.a. or 12% p.a.

6. The Board resolved, through a resolution dated 17.12.2014, to refund the earnest money deposit with interest of 10% calculated from 19.05.1998. On account of this development, the High Court examined the issue of quantification of interest, and held that so far as the amount that had already been refunded with interest at 10% was concerned, no grievance could be raised by Asiatic Steel, as it had initially claimed an interest of 10%, in the letter to the Board dated 19.05.1998. In the case of the refund already made of the Principal and the earnest money deposit, it was held that Asiatic Steel was not justified in claiming more than 10% interest. Neither party raised any grievance against the High Court's interim order dated 26.02.2002 fixing the interest at 10%. The only question then left to be decided was with respect to the date from which interest on the Principal was to be calculated, and what the rate of interest was to be.

7. The High Court held that the Board never claimed that it suffered any damage or loss due to Asiatic Steel's termination of the contract. The reasoning of the impugned judgment was that hence, the Board was under a liability to compensate or pay reasonable interest for the period during which the money was retained by it. The High Court took into consideration that Indusind was a Singaporean company, and that the rate of interest was lower in developed countries. Accordingly,

A the rate of interest was altered to 6% p.a., for the period during which the money was enjoyed by the Board. The Board was directed to (i) refund the earnest money of 5,00,000/- with interest at 10% p.a., in accordance with the resolution of 17.12.2014; and (ii) pay interest of 6% on the Principal from 08.11.1994 to 19.05.1998. This interest amount works out to 76,47,544/-. The Board is, hence, aggrieved by the impugned judgment.

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Arguments Advanced

8. It was contended on behalf of the Board that the subject matter of the present dispute was a contract. To determine whether the Board had to pay compensation for any benefit received under the contract, it was imperative that breach of such contract should have been proved. Sections 64 and 65 of the Indian Contract Act, 1872 (hereinafter the 'Contract Act'), contemplate return of benefit for a void/voidable contract. It was submitted that these provisions do not apply when there is no allegation as to the contract being void. In any case, the Board had already refunded the entire amount to Asiatic Steel. The learned counsel for the Board went on to submit that Section 73 and 75 of the Contract Act were inapplicable, as breach was not proven or found, and neither did the high court make a finding of rightful rescission of contract by Asiatic Steel.

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9. The sole basis of the High Court's direction to pay interest for the period from 08.11.1994 to 19.05.1998 was the Court's view that the Board had an obligation to compensate Asiatic Steel for its enjoyment of the principal during this period, and because the Board had not shown that it suffered any loss on account of termination of the contract. Counsel urged that Asiatic Steel accepted and provided an undertaking of their satisfaction of the site, in the contract entered into between the parties. They then went on to abandon the contract on grounds of the site being rocky/ unsuitable for their commercial activities.

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10. Counsel for Asiatic Steel, on the other hand, submitted that the Board took about 4 years to take action on its promise to create surrounding infrastructure and clear the rocks as well as the rocky island near plot V-10, which made it unviable for Asiatic Steel to commence business. The Board had agreed, through its board meeting on 23.03.1995, to develop infrastructure and remove the rocks; Asiatic Steel once again appraised the Board of the importance of removing the rocks, through a letter dated 26.04.1996. Asiatic Steel even stated that it could take up

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the task of removing the rocks, if the Board so desired. The request for removal of the rocks and the rocky formation near plot V-10 was repeated through another letter dated 22.05.1996. The other successful bidders for plots V-6 to V-9 also raised similar issues, and approached the courts for relief. Asiatic Steel did not join those bidders, and sought to deal with the matter amicably. Counsel submitted that since the Board did not actually carry out the promised work, Asiatic Steel could not commence commercial production; they were left with no option but to abandon the project and seek a refund. It was submitted that Asiatic Steel incurred heavy losses on account of interest costs from the date of remittance, as well as losses on account of depreciation of the rupee over a period of three years.

11. When the Board failed to make the refund or discharge its duties, Asiatic Steel filed a petition before the High Court. A civil suit claiming damages was also preferred at the City Civil Court, Ahmedabad, which was unconditionally withdrawn, after seeking permission from the High Court, which was granted through the order dated 26.02.2002.

12. The learned counsel submitted that on account of the Board's failure to remove the rocks, Asiatic Steel could not take possession of the plot, and therefore, that interest is due from the date of deposit till the date of payment. It was argued that the very fact that the Board agreed to refund the premium and the earnest money shows their acceptance that they have been unable to provide the promised plots. It was further submitted that all the other allottees had been paid interest on the amounts deposited by them. It was urged that the Board enjoyed the Principal amount from 08.11.1994 to 19.05.1998, and it was not a case where the possession of the plot was handed over and the contract was concluded. Asiatic Steel was deprived of a substantial amount that could not be utilized elsewhere during that period. It was submitted that interest was essentially compensation for denial of the right to utilize the money due.

13. Reliance was placed on *Union of India, Tr. Dir. of IT v. M/s Tata Chemicals Ltd.*[1], where this court held that interest *'...is a kind of compensation of use and retention of money collected unauthorizedly by the Department. When the collection is illegal, there is corresponding obligation on the revenue to refund such*

[1] (2014) 6 SCC 335.

amount with interest in as much as they have retained and enjoyed the money deposited.'

14. With regard to the question of whether Asiatic Steel raised objections regarding the unsuitability of the land for the purpose for which it had been tendered, it was contended on its behalf that objections were raised, prior to remitting a major part of the upset premium. The first objection on record was immediately after payment of the earnest money deposit after the allotment of the plot on 08.11.1994, through letter dated 23.02.1995. The payment of the premium was made on 22.03.1995. It was argued that no time period under the lease, was consumed for any activity whatsoever on the plot, and Asiatic Steel did not derive any benefit at all. It was categorically acknowledged and admitted in board meetings and letters that the plot was unusable and the contract was to be mutually abandoned. Considering that the Board agreed to refund the amount with interest, it was argued, that the consequence was that the money should be returned with interest from the date when it was enjoyed by the Board.

15. Asiatic Steel urged that the limited issue to be determined by this court is that of interest payment from when the remittance was made, i.e., 22.03.1995 to 19.05.1998, when the contract was abandoned. Finally, they submitted that this amount works out to 1,32,44,729/- (at 10% interest p.a.), 1,06,95,783/- (at 8% interest p.a.), and 81,46,837 (at 6% interest p.a.).

16. It was further submitted that the successful bidders of plots V-8 (Svaminarayan Ship Breaking Pvt. Ltd.) and V-9 (M/s Mazz Marine Pvt. Ltd.) who were similarly situated to Asiatic Steel, had approached courts for a decree, and been refunded their deposits with interest, pursuant to orders dated 14.08.1996 and 08.07.2002 respectively.

17. With this court's permission, Asiatic Steel filed copies of RTI queries which had sought specific information with regard to (i) amount paid to similarly placed bidders/plot holders during settlement with the Board; (ii) whether interest was paid to the bidders/plot holders along with the principal, and from what date this was paid; and (iii) the percentage of interest paid along with principal.

18. A response to the RTI query was received on 20.02.2020, in respect of the bidders for plots V-7, V-8 and V-9. The bidder for V-7 was paid an interest at 12%, amounting to 22,80,743/-, for the period

from 23.03.1995 – 30.11.1995. The bidder for V-8 was paid interest at 12%, amounting to 3,55,068/-, for the period from 27.03.1995 – 30.11.1995. The bidder for V-9 was paid interest at 9% amounting to 2,12,500/-, for the period from 23.03.1995 – 30.11.1995.

19. It was urged that in accordance with tender conditions, the primary obligation to provide a suitable plot for ship breaking was that of the Board. Counsel for Asiatic Steel submitted that the 'as is where is' clause cannot be interpreted to mean that the Board can allot any piece of land that is of no utility to the bidder, and be absolved of liability.

20. In response to Asiatic Steel's contentions that identically situated bidders were paid interest at 10-12% were unsustainable, it was contended on behalf of the Board, in a response, that interest was not payable under the terms of the contract with the present respondents. Further, Asiatic Steel had allowed the plot to remain unused for almost half of the license/concession period before rescinding the contract. It had verified the site before casting a bid; it took a conscious decision to make the bid and pay the upset premium.

21. It was further submitted that the Board had written to Asiatic Steel on 28.11.1995, informing them that the plot was ready in all respects and possession was required to be taken before 30.11.1995. The bidders for V-7 and V-8 were given interest only up till the date the plot holders were to take possession – 30.11.1995. Asiatic Steel did not take possession.

22. It was urged that the present case is a contractual dispute where, without breach being proved against the Board, interest was ordered as a 'compensatory measure', that too under writ jurisdiction.

Analysis

23. The Guidelines for Permission to Utilize Ship breaking Plots at Sosiya provided that permission shall be granted for a period of ten years from the date of issue of the permission letter, after which, the permission shall cease. The conditions applicable for grant of permission are provided under Clause 13; Clause 13(d) mandates that plot charges be paid in advance, before issuance of the permission letter, and plot charges for the next year are to be paid before the commencement of the relevant year.

24. Asiatic Steel was the highest bidder in an auction for five shipbreaking plots, held on 08.11.1994. The Board received payment of

A the earnest money deposit of 5,00,000/- on this day. Plot V-10 was allotted to Respondent No. 1 (Asiatic Steel Industries Ltd.). M/s Ganpatrai were the Indian shareholders of Asiatic Steel, while M/s Industeel was a foreign shareholder based in Singapore. The upset premium was remitted by Industeel in US currency (dollars $), on 22.03.1995.

B 25. The minutes of the meeting dated 23.02.1995 record that the shipbreakers (including Asiatic Steel herein), informed the Board that certain rocks were required to be removed along plots V-6 to V-10, which hinder the beaching of ships. The Board agreed to prepare an estimate and invite tenders for the removal of these rocks.

C 26. The record shows that the notice inviting tenders issued by the Board expressly stated in para 14 that:

> *"14. The tenderer may inspect the site at his own cost and shall be deemed to have acquainted himself, fully with all the site conditions.*
>
> D *15. Tenderer shall be deemed to have read and understood the guidelines at Annexure one and the terms and conditions at annexure to."*

27. Such being the position, it was nobody's case that Asiatic Steel was unaware about the site conditions. This is particularly important E because it was willing to commit a substantial amount in foreign exchange for the plot which it bid for and was eventually granted. Likewise, the requisite undertaking too was furnished on its behalf. It is in this background of circumstances, that the claim for interest for the period in question requires examination.

F 28. The record relied upon by Asiatic Steel is in the form of three office orders issued by the Board. The first office order is dated 06.05.1996. This order relates to Nyankaran Investment and Leasing Pvt. Ltd. This company had successfully bid for Plot Number V-7 and paid 2.74 crores. This company had deposited the entire amount on 23.03.1995. Upon being dissatisfied with the plot, the company filed CA G 8287/1995, in proceedings under Article 226 of the Constitution of India, before the Gujarat High Court. Having regard to the observations made by the High Court, the board sanctioned refund of the entire amount along with 12% interest, by its order dated 06.05.1996. The amount paid by the Board as interest was 22.80 lakhs. The second instance relates

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to Svaminarayan Shipbreaking (P) Ltd, Surat, which had bid for a plot (V-8) and paid 50 lakhs in two equal instalments. This company filed proceedings before the Gujarat High Court, (i.e. CA 3122/1995). The Board, therefore decided to refund the principal along with interest at 12% per annum for two different periods, based on the deposit of the two payments of 25 lakhs. The total interest sanctioned on 08.08.1996 (and later paid) was 3.55 lakhs. The last instance is of Maaz Marine (P) Ltd, Surat, which had bid for a plot (V-9) and paid the instalments. This company filed proceedings before the Gujarat High Court, (i.e. CA 3211/1995). The Board, therefore decided to refund the principal along with interest @ 9% per annum for the period, based on the deposit of the payment of 25 lakhs. The total interest sanctioned on 08.08.1996 (and later paid) was 2.12 lakhs. This amount was sanctioned by office order dated 27.03.2000, even though the Board had decided to refund earlier (on 21.03.1996, due to the court proceedings and orders); however, the amount was sanctioned later, awaiting the decision of the civil court, in an *inter se* dispute between the directors of Mazz Marine, (i.e. in Suit No. 1200/1997). Upon the decision in that case, the amount was released, including the interest at 9% p.a. for one year.

29. The correspondence on the record reveals that the last payment towards the plot was tendered by Asiatic Steel under cover of a letter dated 22.03.1995 for an amount of US$ 1,153,000/-. The other letters placed on record are the one dated 23.04.1995, to the Board indicating that the full payment for the consideration of 3,61,20,000/- had been made towards a plot. Other than this, in the writ petition, Asiatic Steel argued that it made efforts several times to ask the board to clear the beachfront rocks to make the plot functional. It was also argued that three other entities which had bid for and secured different plots were dissatisfied by the Board's inaction and had approached the High Court. As a result, the High Court passed orders which led to refund of the amounts deposited by those concerns, with some interest. On the record, the minutes of a discussion presided over by the Chief Minister of the state regarding outstanding amounts of premium payable by plot holders in the shipbreaking yard, dated 29.04.1998, would show that the state authorities were pressing for payment of overdue premium instalments. It is after these events, that Asiatic Steel claimed refund of the amount through a letter dated 19.05.1998. In that letter, Asiatic Steel stated as follows:

A *"..there were 4 other successful bidders for plots V- 6 to V-9. These 4 bidders similarly complained of non-availability of basic infrastructure. They subsequently approached the High Court of Gujarat for interim relief and for directions to GMB to develop basic infrastructure and to remove rocks in front of lots V-6 to V-9. They approach the High Court to direct*
B *GMB to fulfil all these obligations before asking for payment of upset premium. We understand that the Hon'ble High Court granted them some relief. We may point out that we did not join the actions of these 4 bidders in the High Court. Instead prefer to deal with the matter amicably via discussions directly*
C *with GMB."*

30. Asiatic Steel's letter dated 26.04.1996, a copy of which has been placed on the record, shows that it expressed willingness to remove the beachfront rocks, provided the Board bore the expenses. The Board, however, was silent.

D 31. The contemporaneous situation, and the correspondence between Asiatic Steel and the Board after the entire amount was deposited, reveals that other concerns approached the court seeking refund of their principal amounts, with interest, which forced the Board to take a decision and comply. The final decision by Asiatic Steel
E demanding refund was later, in May, 1998. In the meanwhile, the other concerns, which had bid successfully for three plots had approached the court (in 1995) and the Board had decided to refund the amounts with one years' interest. Asiatic Steel, therefore, for reasons best known to it, approached the court for refund (which it was undoubtedly entitled) to and interest, first by filing a suit in 2001.

F 32. In this court's opinion, the claim for interest by Asiatic Steel – and the response of the Board, on that issue, is to be judged in the light of both parties' conduct and what was expected of the Board as a state instrumentality. The claim in this case is essentially a monetary one, and would ordinarily be premised upon breach of contract. Asiatic Steel,
G therefore, correctly approached the civil court by filing a suit[2]. Later, apparently it was advised to resort to proceedings under Article 226 of the Constitution of India. When its writ petition was considered, the suit was permitted to be withdrawn; the High Court directed the Board to

[2] Suit No. 2961/2001

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deposit the entire principal amount, with interest at 10% per annum.[3] By the final impugned judgment, that order was confirmed. In an earlier order, the court had in fact crystallized the precise issue, to be whether interest was payable from 24.03.1995 or from 19.05.1998, or whether it was payable from the latter date, till the date of deposit in court, i.e., 15.04.2002.

33. Two important aspects need to be noticed at this stage: first, on the one hand, that Asiatic Steel was aware of the condition of the plot, at an early stage, when it bid for it. In this regard, its conduct is to be judged in the light of the Board's inaction in regard to the unfitness of the allotted site, as in the case of the other concerns. Two, Asiatic Steel was no better and no worse than the other plot lessees, who demanded refund of their amounts. The difference between them, and Asiatic Steel was that the latter chose to demand refund on 19.05.1998. Asiatic Steel's final letter discloses its awareness that the other concerns approached the court earlier, but that it waited as it wished to have the issue resolved amicably, rather than moving the court for relief.

34. In the opinion of this court, that fact that Asiatic Steel and other concerns bid for the plots knowing the state they were in, cannot be disputed. However, the conduct of all the successful bidders consistently suggests that they expected that the plots would be given in usable condition, within reasonable time. Clearly, the Board could not and most certainly did not rectify the conditions by removing the beachfront rocks. The Board is not forthcoming about the reasons for its inaction. It urged two defences in its reply to the writ petition: one, that the dispute was in the realm of contract and two, that even though like in other cases, the Board was prepared to consider a refund, Asiatic Steel was a joint venture company. These, in the opinion of this court are wholly insubstantial reasons.

35. It is clear from the Board's conduct that it never responded to the letters written by Asiatic Steel; at least, no reply has been placed on record. Even Asiatic Steel's request for permission to carry-out the necessary clearance work at the cost of the board, was not responded to - either positively or negatively. Further, whenever any bidder approached the court complaining that the plot allotted was unusable, the Board decided, mostly contemporaneously, to refund the amount, even with interest. In the case of Asiatic Steel, however, when the demand

[3] By its order dated 26.02.2002

A was made for refund on 19.05.1998, the Board did not act, forcing the company to approach the court, firstly through a civil suit which was later withdrawn, and then in a writ petition.

36. In the opinion of this court, the Board's complete silence in responding to Asiatic Steel's demand for refund, coupled with the absence B of any material placed on record by it suggesting that the complaints had no substance leaves it vulnerable to the charge of complete arbitrariness. The Board's conduct or indifference in regard to the refund sought (in respect of which there was no meaningful argument on its part before the High Court) can be only on the premise that it wished the parties to approach the court, till a decision could be taken to refund the amounts C received by it.

37. In this court's considered view, the Board's action is entirely unacceptable. As a public body charged to uphold the rule of law, its conduct had to be fair and not arbitrary. If it had any meaningful justification for withholding the amount received from Asiatic Steel, such D justification has not been highlighted ever. On the other hand, its conduct reveals that it wished that the parties should approach the court, before it took a decision. This behavior of deliberate inaction to force a citizen or a commercial concern to approach the court, rather than take a decision, justified on the anvil of reason (in the present case, a decision to refund) E means that the Board acted in a discriminatory manner.

38. Long ago, in *Dilbagh Rai Jarry* v. *Union of India*[4] this court had quoted from a decision of the Kerala High Court, approvingly[5]:

> *"25. ... But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by* F *hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous* G *litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to*

[4] (1974) 3 SCC 554

H [5] *P.P. Abubacker* v. *Union of India*, AIR 1972 Ker 103

fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf."

Again, in *Gurgaon Gramin Bank* v. *Khazani*[6] this court stated that:

"2. The number of litigations in our country is on the rise, for small and trivial matters, people and sometimes the Central and the State Governments and their instrumentalities like banks, nationalised or private, come to courts may be due to ego clash or to save the officers' skin. The judicial system is overburdened which naturally causes delay in adjudication of disputes. Mediation Centres opened in various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion, this Court has reminded the Central Government, the State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give-and-take attitude should be adopted or both will sink. Unless serious questions of law of general importance arise for consideration or a question which affects a large number of persons or the stakes are very high, the courts' jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed by the manner in which those types of matters are being brought to courts even at the level of the Supreme Court of India and this case falls in that category."

39. In *State of A.P. v. Pioneer Builders*[7] this Court referred to the 27th Report of the Law Commission on the Code of Civil Procedure, and held as follows:

[6] 2012 (8) SCC 781
[7] (2006) 12 SCC 119

A *"14. From a bare reading of sub-section (1) of Section 80, it is plain that subject to what is provided in sub-section (2) thereof, no suit can be filed against the Government or a public officer unless requisite notice under the said provision has been served on such Government or public officer, as the case may be. It is well settled that before the amendment of Section 80 the provisions of unamended Section 80 admitted of no implications and exceptions whatsoever and are express, explicit and mandatory. The section imposes a statutory and unqualified obligation upon the court and in the absence of compliance with Section 80, the suit is not maintainable. (See Bhagchand Dagadusa v. Secy. of State for India in Council [Bhagchand Dagadusa v. Secy. of State for India in Council, 1927 SCC OnLine PC 48 : (1926-27) 54 IA 338 : AIR 1927 PC 176] ; Sawai Singhai Nirmal Chand v. Union of India [Sawai Singhai Nirmal Chand v. Union of India, (1966) 1 SCR 986 : AIR 1966 SC 1068] and Bihari Chowdhary v. State of Bihar [Bihari Chowdhary v. State of Bihar, (1984) 2 SCC 627] .) The service of notice under Section 80 is, thus, a condition precedent for the institution of a suit against the Government or a public officer. The legislative intent of the Section is to give the Government sufficient notice of the suit, which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. As observed in Bihari Chowdhary [Bihari Chowdhary v. State of Bihar, (1984) 2 SCC 627], the object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.*

15. It seems that the provision did not achieve the desired results inasmuch as it is a matter of common experience that hardly any matter is settled by the Government or the public officer concerned by making use of the opportunity afforded by the said provisions. In most of the cases, notice given under Section 80 remains unanswered. In its 14th Report (reiterated in the 27th and 54th Reports), the Law Commission, while noting that the provisions of this section had worked a great hardship in a large number of cases where immediate relief by way of injunction against the Government or a public

officer was necessary in the interests of justice, had recommended omission of the Section. However, the Joint Committee of Parliament, to which the Amendment Bill, 1974 was referred, did not agree with the Law Commission and recommended retention of Section 80 with necessary modifications/relaxations.

16. Thus, in conformity therewith, by the Code of Civil Procedure (Amendment) Act, 1976 the existing Section 80 was renumbered as Section 80(1) and sub-sections (2) and (3) were inserted with effect from 1-2-1977. Sub-section (2) carved out an exception to the mandatory rule that no suit can be filed against the Government or a public officer unless two months' notice has been served on such Government or public officer. The provision mitigates the rigours of sub-section (1) and empowers the court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the court cannot grant relief under the sub-section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. The proviso to the said sub-section enjoins that in case the court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1). Sub-section (3), though not relevant for the present case, seeks to bring in the rule of substantial compliance and tends to relax the rigour of sub-section (1)."

40. In this case, conduct of the Board betrays a callous and indifferent attitude, which in effect is that if Asiatic Steel wished for its money to be returned, it had to approach the court. This was despite its knowledge that at least three other identically placed entities had asked for return of money and, upon approaching the court, were refunded the amounts given by them promptly. In view of these facts, nothing prevented the Board from deciding to refund the amount, without forcing Asiatic Steel to approach the court.

41. This court notes that the High Court directed payment of interest for the entire period (i.e. starting from 08.11.1994 and ending on

A 19.05.1998). However, it is evident that Asiatic Steel had not paid the entire amount on 08.11.1994; in fact the sum of $1,153,000 /- i.e. the principal consideration, excluding the earnest money deposit, was deposited on 24.03.1995. Therefore, the impugned judgment erred in directing payment of interest on the entire amount from 08.11.1994; instead, the direction to pay interest on 3,61,20,000/- shall operate with effect from 22.03.1995 to 19.05.1998.

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42. The appeal is dismissed, subject to the modification indicated above, to the impugned judgment of the High Court.

Kalpana K. Tripathy Appeal dismissed.