the Rules, made on 31st January, 2007, cannot be applied retrospectively to a transaction which was complete on 26th December, 2006 to deprive the petitioners of their legitimate rights which have accrued in their favour by virtue of order dated 22nd Febraury, 2006 (P-6) subject to compliance of certain conditions. Those conditions were complied with by the petitioners on 16th November, 2006 and 26th December, 2006 which is within the period stipulated in the order of the Adviser. Therefore, impugned order dated 25th May, 2007 (P-13) is liable to be quashed.

(11) As a sequal to the above discussion, impugned order dated 25th May, 2007 (P-13) is quashed. A direction is issued to the Estate Officer-respondent No. 3 to re-transfer Booth No. 168, Sector 24, Chandigarh, in the names of the petitioners and complete all other formalities in this regard. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.

(12) The writ petition stands disposed of in the above terms.

R.N.R.

Before Uma Nath Singh & Daya Chaudhary, JJ.

M/S ABB LIMITED,—*Petitioner*

versus

HARYANA URBAN DEVELOPMENT AUTHORITY,—*Respondent*

C.W.P. No. 3219 of 2007

30th September, 2008

Constitution of India, 1950—Art. 226—Permission to change of land use granted-Company depositing development charges with interest three years before formulation of revised policy—HUDA accepting money with interest and raising no demand towards any other charges—HUDA imposing development charges in terms of policy dated 8th July, 2002 fixing revised rates—No reason as to how a such policy would also cover petitioner's case retrospectively—

Petitioners ready to pay interest at revised rate—Petition allowed, demand notices quashed.

Held, that the petitioner-company deposited the charges in question three years before the impugned policy was formulated. We also notice that after the acceptance of money with 7% simple interest, the respondent- authority never raised any deamand towards any other charges. Period of three years between depositing the last instalment and formulation of policy is sufficient enough to think that the disputes in question between the parties had stood settled. That apart, it does not stand to reason as to how a policy which was formulated in the year 2002, would also cover petitioner's case retrospectively. In addition to that, petitioner-company deposited the amount in question with interest and is still ready to pay a simple interest @ 10% per annum in terms of the judgment of Division Bench in **National Air Products Limited** *versus* **Haryana Urban Development Athority and others, 2004(2) PLR 7,** if a similar demand is raised by the respondent-authority. We do not notice anything unreasonable in the stand taken by learned Senior Counsel for the petitioner which is only in line with the ratio of aforesaid judgment.

(Para 7)

M.L. Sarin, Senior Advocate, with P.R. Sikka, Advocate, *for the petitioner.*

Dinesh Nagar, Advocate, *for the respondent.*

UMA NATH SINGH J.

(1) M/s ABB Limited (petitioner herein), has filed this writ petition for issuance of a writ, order or direction in the nature of *certiorari* to quash the demands raised by respondent herein, Haryana Urban Development Authority (for short, 'HUDA'), *vide* notices (Annexure P-18 and Annexure P-19) dated 25th July, 2005 and 14th March, 2006, for Rs. 99.00 lacs, towards development charges, Petitioner-company has also sought a writ to quash the impugned order dated 7th December, 2006 (Annexure P-23), rejecting the representation

of petitioner and thereby reiterating the demand for development charges, as raised *vide* the impugned notices.

(2) This appears from the averments and writ records that petitioner herein, is the successor company to M/s Taylor Instrument Company Limited, which was incorporated on 17th July, 1964. Later, M/s Taylor Instrument Company Limited was changed to M/s Birla Kent Taylor Limited, *vide* certificate dated 26th July, 1993. And it was further changed to M/s ABB Instrumentation Limited (petitioner herein), in the year 1998.

(3) It seems that an area of land measuring 55 kanals and 7½ marlas belonged to erstwhile company M/s Taylor Instrument Company (India) Limited, the predecessor of petitioner herein. That land was acquired in the year 1971-72. However, State Government of Haryana, after considering the objections filed by Company that a factory existed from before on the land under acquisition, released the land in question, subject to conditions that petitioner-company would apply for the change of land use (CLU) and pay the development charges proportionately under Rule 26-D (Clause-II) of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Rules, 1965. Under the said Rule (Rule 26-D), petitioner was also required to enter into an agreement for the change of land use on such terms and conditions as stipulated in that agreement. Thus, in lieu of release of 55 kanals and 7½ marlas land as aforesaid, petitioner-company entered into an agreement dated 26th May, 1972 with Director, Town and Country Planning Department, Haryana, for the change of land use. One of the conditions, as stipulated in that agreement for the grant of permission to change the land use, was that the petitioner company was required to pay the proportionate development charges firstly for land and then for external development works to be carried out by the department of Government in respect of the land under release. Relevant conditions of agreement dated 26th May, 1972, as agreed into between both parties, are reproduced hereunder :

> "1. In consideration of the Director agreeing to grant permission to the promisee to build Factory Buildings, Administrative Block, Warehouse, Godown, Watch and

Ward quarters and such other Buildings as required from time to time, on the land mentioned on Annexure I, hereto on the fulfillment of all the I conditions of rule 26-D by the Promisee, the Promisee hereby covenants as follows :

A) That the promisee shall pay proportionate development charges which shall be a first charge on the said land as and when required and as determined by the Director in respect of external development works which may be carried out in the area for the benefit of the said land.

B) That the promisee shall be responsible for making arrangement for the disposal of affluent to the satisfaction of the Director.

C) That the promisee shall get the plan approved from the Director before commencing any construction on the said land.

XX XX XX XX

2. Provided always and it is hereby agreed that if the promisee shall commit any breach of the terms and conditions of this agreement, then, notwithstanding the waiver of any previous cause or right, the Director may revoke the permission granted to him.

3. Upon revocation of the permission under clause 2 above, the Director may recover the proportionate development charges incurred on the said development works pertaining to the said land, as may be determined by the Director."

Pursuant to the execution of said agreement, petitioner-company was asked to deposit the development charges amounting to Rs. 38,720 on or before 1st December, 1977 and the balance amount in 9 annual equal installments of Rs. 45,315 alongwith 7% interest per month each on or before 1st December of each year, *vide* letter dated 14th January, 1977. This was also clarified that in the case of default of payment,

the permission so granted for change of land use, could be revoked. It appears that after the receipt of notice dated 14th January, 1977, petitioner company had made the full and final payment of Rs. 3,57,838 with simple interest @ 7% per annum as per the statement of account dated 20th December, 1999. However, this fact is disputed by respondent-authority while stating that the petitioner-company failed to deposit the initial amount as also 9 installments within the stipulated period of 9 years i.e. up to the year 1986, as per the agreement, thus, also failed to comply with the terms and conditions of agreement for the change of land use. According to authority, first installment was deposited in the year 1991 after a delay of 14 years. This is also mentioned in reply that the petitioner-company remained silent for more than 14 years and did not discharge its liability to make the payment of development charges which was required to be utilized for providing civic amenities and carry development works in that area. Contrary to assertion of authority, this is submitted on behalf of petitioner-company that the Estate Officer of authority did not raise any objection for about 3 years after the entire dues were cleared in the year 1999 and a dispute started only after coming into force of a new policy notified on 8th July, 2002 (Annexure P-24), fixing the revised rates of development charges at Rs. 200 per square yard. As per the new policy, the land owners who had failed to pay the entire development charges or made the part payments, were also to pay the enhanced rates of charges. Hence, the petitioner-company was served with a demand notice dated 25th July, 2005 for the payment of enhanced development charges calculated at Rs. 200 per square yard i.e. Rs. 97,96,500 (Annexure P-18). A further demand notice dated 14th March, 2006 for Rs. 99,00,000 (Annexure P-19) was also served. Hence, the petitioner-company filed a Civil Writ Petition No. 7594 of 2006 in this Court, which was disposed of *vide* order dated 18th May, 2006 with direction to Estate Officer, HUDA, to consider the representation of petitioner by passing a speaking order within a period of 2 months. Respondent-authority considered the representation of petitioner towards compliance of the said order dated 18th May, 2006 passed by this Court, and finally dismissed it by passing a speaking order dated 7th December, 2006 (Annexure P-23).

(4) We have heard learned counsel for parties and perused the writ records.

(5) Learned Senior Counsel Mr. Sarin submitted that the petitioner-company deposited the external development charges with simple interest @ 7% per annum, way back in year 1999, as detailed in Annexure P-25 of this writ petition, as under :—

Sr. No.	Receipt No.	Date	Amount	Pay slip issued by Central Bank of India, NIT, FBD.
1.		20.11.1991	38,720.00	74142
2.		26.02.1992	50,000.00	74621
3.		21.02.1992	45,315.35	5 No. 1335
4.	40166	04.02.1994	45,313.35	
5.	107243	30.12.1994	45,313.35	
6.	125436	02.01.1996	45,313.35	
7.	142705	27.12.1996	45,313.35	
8.	158334	22.12.1997	45,313.35	
9.	172642	24.12.1998	45,313.35	
10.	185880	20.12.1999	40,630.55	
		Total :	4,46,558.00	

This is also a submission of learned Senior Counsel that since the development charges were deposited with chargeable interest and no any further demand was raised thereafter, there is no ground for the respondent Authority to impose a revised development charges in terms of policy dated 8th July, 2002 (Annexure P-24). This is further submitted by learned Senior Counsel that some similar issues came

up for consideration in the matter of **National Air Products Limited** *versus* **Haryana Urban Development Authority and others (1),** which were dealt with *vide* Para Nos. 11, 12 & 13 of the judgment of that case by a Coordinate Bench of this Court, as under :

> ".....11. In the present case, there is no dispute that respondents are entitled to charge external development charges @ Rs. 10 per square yard nor there is any dispute that the petitioners are liable to pay the same because the permission for change of land use has been granted on that condition. The dispute, however, revolves around the rate of interest and penalty imposed on the petitioner. A perusal of Annexures P-5 and P-6 dated 26th May, 1976 and 25th November, 1976 clearly shows that development charges @ Rs. 10 per sq. yard were demanded and the total sum specified in the impugned order is Rs. 1,79,080. It is further clear that the Department has allowed payment of development charges in easy installments after paying the lump sum to the extent of 25/20 present of the total amount. It is further clear that some negotiations with the association of the Chambers of Commerce and Industry and Industrial Manufactures Association were held. At one stage, it was proposed to charge 50 ps. per square yard as is clear from the communication Annexure P-9. However, formal order of the Government were yet to be passed and the meeting was convened on 26th February, 1977. Eventually, the aforementioned proposal did not mature and the department raised the demand on @ Rs. 10 per square yard as was ordered earlier *vide* Annexure P-5 and P-6. Some payment appears to have been made on 17th November, 1987. The petitioner was intimated that recovery in accordance with the decision of the HUDA is to be made at the first instance and for the remaining amount bank guarantee was required to be furnished. In old

(1) 2004 (2) P.L.R. 7

cases if development charges have not been paid then proceedings under Section 4 of the Land Acquisition Act were to be undertaken. In the wake of the aforesaid decisions, the petitioners were again asked to deposit a sum of Rs. 1,52,219 alongwith 10 percent interest failing which necessary action was to be initiated. However, nothing was paid by the petitioner and as a result, the show cause notice under Section 17(1) of the HUDA Act was issued to the petitioner for showing cause as to why a penalty of Rs. 1,67,445 with ten percent interest be not imposed upon the petitioner as he was required to submit the bank draft of Rs. 1,67,445. On the pretext of loss of documents, the petitioner failed to file the reply which resulted into passing of the order dated 13th December, 2001 directing the petitioner to pay a sum of Rs. 45,72,000 calculating the interest @ 18 percent w.e.f. 15th January, 1987. Again a reminder was sent on 17th January, 2002.

12. Having gone through the documents placed on the record, we are satisfied that the petitioner has been successfully delaying the payment of development charges on one pretext or the other. After the issuance of order Annexure P-5 on 26th May, 1976 and P-6 on 25th November, 1976, there was no legal execute with the petitioner to defer the payment of development charges as demanded therein. In any case, the decision taken to adhere to the previous formula as mentioned in the order dated 26th May, 1976 (Annexure P-5) and 25th November, 1976 (Annexure P-6) should have been complied with by the petitioner and the payment should have been made. We are further of the view that the rate of interest @ 18 percent levied by the respondents is on the higher side as held by the Supreme Court in *Roochira Ceramic's case (supra).* It has been held that in case of default of payment interest @ 10 percent

as against 18 percent has to be charged. The observations of the Supreme Court in this regard reads as under :–

> "Learned counsel appearing for the appellant, urged that the consistent view of the High Court has been that where an allottee has committed default in payment of instalment, the Authority was made to charge interest at the rate of 10 percent and not 18 percent. It is also urged that the judgment of the High Court has been upheld by this Court. Learned counsel appearing for the appellant, referred the judgment of the High Court of Punjab and Haryana, passed in CWP No. 12975/94 decided on 25th August, 1996 wherein the Division Bench of the High Court held that the Authority is entitled to charge interest at the rate of 10% and not 18% when there is default in payment of instalment. The Special Leave Petition No. 23203/96 preferred by the authority against the said judgment was dismissed on 9th December, 1996. The decision of the High Court of Punjab and Haryana in CWP No. 16487/91 Harish Kumar Virja versus State of Haryana and another, which was followed in other cases, laid down that the Authority in cases of default in payment of installments is entitled to charge interest at the rate of 10%. Learned counsel, appearing for the respondents, conceded that no special leave petition was filed against the said judgment and the said judgment has attained finality. In view of the aforesaid decision, we are of the view that the respondents were entitled to charge interest @ 10% only and not 18%. Since the appellant had deposited interest @ 18%, the Authority under law is required to refund the excess of the interest released from the appellant.

For the aforesaid reason, the judgment under appeal is set aside. The respondent-Authority is directed to refund excess interest realised from the appellant within three months from the date of service of certified copy of this order." (emphasis supplied).

13. When the rate of interest as laid down by the Supreme Court is applied to the facts of the instant case, it becomes evident that the orders Annexures P.20 and P.21 are liable to be partially quashed to the extent interest @ 18 percent has been charged. Accordingly, respondent Nos. 1 and 2 are directed to recalculate the amount by charging simple interest @ 10 percent instead of 18 percent. The respondents shall serve the demand notice on the petitioner and thereafter the petitioner shall pay the sum demanded within 15 days of the issuance of the notice....."

(6) On the other hand, learned counsel for respondent-authority submitted that as the petitioner-company had committed defaults by failing to pay the external development charges as raised in the year 1977 and there was delay of almost 14 years, the policy in question would also cover its case and thus, raising a demand @ Rs. 200 per square yards towards the external development charges, is fully justified.

(7) From rival contentions, we notice that the petitioner-company deposited the charges in question three years before the impugned policy was formulated. We also notice that after the acceptance of money with 7% simple interest, the respondent-authority never raised any demand towards any other charges. Period of three years between depositing the last instalment and formulation of policy is sufficient enough to think that the disputes in question between the parties had stood settled. That apart, it does not stand to reason as to how a policy which was formulated in the year 2002, would also cover petitioner's case retrospectively. In addition to that, petitioner-company deposited the amount in question with interest and is still ready to pay a simple

interest @ 10% per annum in terms of the judgment of Division Bench in National Air Products Limited (supra), if a similar demand is raised by the respondent-authority. We do not notice anything unreasonable in the stand taken by learned Senior Counsel for the petitioner which is only in line with the ratio of aforesaid judgment.

(8) Accordingly, demand notices dated 25th July, 2005 (Annexure P-18) and 14th March, 2006 (Annexure P-16), and order dated 7th December, 2006 (Annexure P-23) are hereby quashed and this writ petition is allowed with the liberty to respondent-authority to enhance the rate of simple interest from 7% to 10% per annum, if so advised, and raise a demand accordingly within a period of 2 weeks from the date of receiving a copy of this order.

(9) This writ petition is, thus, disposed of.

R.N.R.

Before Satish Kumar Mittal & Jaswant Singh, JJ.

HARBANS LAL,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 14651 of 2008

26th November, 2008

Constitution of India, 1950—Art. 226—Punjab Municipal Act, 1911-S. 24 (2)—Punjab Municipal (President & Vice President) Election Rules, 1994—Rl. 3-Petitioner declared elected President of M.C.-Government declining to notify in official gazettee—No requirement of quorum for first meeting in which President and Vice President of Municipality are to be elected under provisions of 1911 Act and 1994 Rules-11 out of 22 members present in meeting—Plea that an ex-officio member cannot be taken as member of Municipal Council and cannot be counted for purpose of determining one half quorum cannot be accepted—Section 12 provides that a Municipal Council consists of elected members as