

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 6554/2024

Vishnu Prakash R Pungalia Limited, a Company registered under Companies Act, 1956, having principal place of business situated at B-31-32, Second Floor, Industrial Estate, New Power House Road, Jodhpur, Rajasthan through its Authorized Signatory Dipanshu Punglia S/o Manohar Lal Punglia, aged about 28 years Resident of 22-A, Subhash Colony, New Pali Road, Bhagat Ki Kothi, Jodhpur 342001.

----Petitioner

Versus

1. State of Rajasthan through Deputy Secretary, Public Health Engineering Department, Jaipur
2. Chief Engineer (Special Projects), Public Health Engineering Department, Jaipur
3. Additional Chief Engineer, Public Health Engineering Department, Project Region, Udaipur, RMW Road - Udaipur (313001)

----Respondents

For Petitioner(s)	:	Mr. M.S. Singhvi, Sr. Advocate assisted by Mr. Sharad Kothari. Mr. Pranjul Mehta. Mr. Abhishek Mehta. Mr. Mayank Taparia.
For Respondent(s)	:	Mr. B.L. Bhati, AAG. Mr. R.K. Soni Mr. Tapendra Sankhla

HON'BLE DR. JUSTICE NUPUR BHATI

Order

Reserved on: 02/05/2024

Pronounced on: 03/05/2024

1. The matter has been listed in 'Fresh' category, and the arguments have been heard and concluded on the stay petition.
2. The petitioner is a Company duly registered under the Companies Act, 1956 engaged in the business of construction

work, engineering contracts and designs and has specialization in Water and Sewage Treatment Plants. The petitioner participated in the tender process pursuant to NIT No.03/2023-24 issued by the Additional Chief Engineer, Public Health & Engineering Department, Project Region Udaipur for procurement of works related to 'Drinking Water Supply for 212 villages (77 villages of Sabla Block and 135 villages of Sagwara Block). For such participation qua the NIT in question, the petitioner furnished Bank Guarantee to the respondents of Rs.1,85,64,000/. The Bank Guarantee submitted by the petitioner was extended from time to time at the request of the respondents. However, the NIT No.03/2023-24 was cancelled by the respondents and the entire NIT was annulled.

3. The controversy today before this Court is while the respondents are attributing irregularity/illegality in submitting the affidavit by the petitioner and warned the petitioner to continue the Bank Guarantee up to 31.07.2024, failing which the respondents shall encash the Bank Guarantee to ensure control of such funds. On the other hand, the petitioner seeks revocation of Bank Guarantee to secure liquidity of its funds.

4. Learned counsel for the petitioner has submitted that the funds in the shape of Bank Guarantee are blocked even when the NIT is annulled. He submitted that such act is detrimental to the business activity of the petitioner and withholding of such fund in the shape of Bank Guarantee will prejudice the liquidity of the assets of the petitioner. The reasons of violating the NIT conditions by giving wrongful affidavit is contestable but does not give right to the respondents to withhold the Bank Guarantee when the NIT

itself has been annulled vide summary record of decisions of Finance Committee in its Meeting No.880/04.03.2024 (Annex.9).

5. Learned counsel for the respondents submitted that at the interim stage if the Bank Guarantee is allowed to expire, then it will amount to final relief being granted to the petitioner and will result into petitioner being achieving the relief of final prayer of return of Bank Guarantee. Learned counsel for the respondents further submitted that unless the Bank Guarantee is extended, the writ petition will stand decided in favour of petitioner at this stage itself.

6. In support of his contentions, learned counsel for the petitioner relied upon judgment in the case of *Krishna C. Mathur v. The University of Jodhpur & Ors.* : 1980 WLN 22, *The Madras Aluminium Co. Ltd. v. The Tamil Nadu Electricity Board & Ors.* : (2023) 8 SCC 240, *Laxman Purshottam Pimputkar v. State of Bombay & Ors.* : AIR 1964 SC 436, *Ram and Shyam Company v. State of Haryana & Ors.* : (1985) 3 SCC 267, *Prakash Narain Sharma Vs. Burmah Shell Cooperative Housing Society Ltd.* : (2002) 7 SCC 46, *Unitech Limited and Ors. Vs. Telangana State Industrial Infrastructure Corporation (TSIIC) & Ors.* : (2021) 16 SCC 35 and *Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Ors.* : : AIR 1987 SC 2186.

7. I have considered the submissions made by counsel for the parties and have perused the material available on record.

8. Having regard to the submissions made by counsel for the parties and having perused the material placed on record, this Court is of the opinion that final relief prayed is for returning/non-extension of the Bank Guarantee and the petitioner in the stay

petition has prayed that the respondents be restrained from taking any coercive action against the petitioner seeking revival of the expired bank guarantee. The relief claimed can be argued finally by the parties, but in case the Bank Guarantee is not extended and interim relief protecting the petitioner against the extension of Bank Guarantee is granted, it would amount to final relief as control of funds shall lie completely in the hands of the petitioner without determining the fate of the rights involved of both the parties claiming the security amount in the shape of Bank Guarantee as an outcome of the annulment of the NIT or on account of furnishing the wrong information in the affidavit by the petitioner. The dispute of the security amount in the given contest has to be finally made and cannot be tentatively decided at this stage. The judgments sought to be relied upon by the counsel for the petitioner do not apply to the case at hand.

9. In view of above discussion, the Stay Petition No.6700/2024 is rejected.

(DR. NUPUR BHATI),J