

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3053 OF 2015  
(Arising out of S.L.P.(Civil) No.15689/2011)

National Highways Authority of India .. Appellant(s)

Versus

MEIL-EDB LLC (JV) .. Respondent(s)

WITH  
CIVIL APPEAL NO.3054/2015 @ SLP(C)NO.15787/2011  
CIVIL APPEAL NO.3068/2015 @ SLP(C)NO.15875/2011

O R D E R

CIVIL APPEAL NO.3053/2015 @ SLP(C)NO.15689/2011

Leave granted.

Heard learned Counsel for the parties.

The question whether the National Highway Authority of India was contractually competent to forfeit the Bid Security from parties who had purchased the Tender Documents came up for consideration before us in Civil Appeals @ SLP(C) No.28475-28476/2010. In

Impugned Order the Division Bench had relied upon the decision of the Constitution Bench of this Court

Fateh Chand vs. Balkishan Dass AIR 1963 SC 1405, to hold

Signature Not Verified

Digitally signed by  
Usha Rani Bhardwaj  
Date: 2015.03.23  
15:41:06 IST

Reason: that it is not open to any party to deduct from the security the damages for alleged non-performance of a contract if damages were punitive in character. In t

hat

the Appellant National Highways Authority of India, who is also the Appellant before us, had forfeited the entire Bid Security of Rs.13.42 crores and submitted their bids/offers which were stated by the Appellants to be non-responsive. In the course of hearing, however, on the submissions made by the learned Additional Solicitor General who appeared for the Appellant in those cases, the Division Bench had restricted the deduction to 5% of the Bid Security since that was the default deduction envisaged by the Appellant itself in subsequent transactions. Notably, the Division Bench in that case left the party free to initiate civil proceedings to prove or disprove damages, as the case may be. We had dismissed the Appeal of the National Highways Authority of India. In these Appeals, the Division Bench has considered it appropriate to follow the reasoning in Madhucon Projects Pvt. Ltd. vs. NHAI, which Appeal we have also dismissed by separate orders. However, in Madhucon Projects Pvt. Ltd. the writ petitioner had duly completed/performed the contract. It was in those circumstances that the Division Bench of the High Court had concluded that there was no justification whatsoever to carry out any deduction from the Bid Security. It is true that a reference has also

3

been made to another decision of the Division Bench, namely Gayatri DLF Consortium & Ors. vs. National Highways Authority of India. However, the reasoning is predicated on Madhucon Projects Pvt. Ltd.

The say of the Appellant is that the Respondent's bid was non-responsive thereby entitling the Appellant, National Highways Authority of India, to forfeit the 5% of the Bid Security by way of "mutually agreed genuine pre-estimated compensation and damages payable to the Authority." The tender documents are

avowedly in the nature of Standard Form document prepared by NHAI and, therefore, it is entirely incorrect to posit that there was mutual agreement on the terms contained therein. The actual situation is that a person who wishes to participate in the tender process of the NHAI has no option but to take these documents as they speak and in their totality; they cannot even suggest any changes. The law applicable on the ambit of interference by the Court when confronted by a Standard Form document need not be gone into by us at this stage.

We are confronted with a situation when there is a contract between the parties, duly signed by the Respondent which restricts forfeiture of 5% of the value  
4  
of the Bid Security ostensibly not by way of a penalty. Of course, as is to be expected, the Respondent disagrees and on the contrary submits that the deduction/forfeiture is in terrorem and is punitive in nature. A Writ Court may at least as a temporary or preliminary view decide whether the damages imposed by an Authority amenable to writ jurisdiction such as NHAI indubitably are punitive or not, but it should abjure from going into the minute calculation. That controversy should be left to the Civil Court to decide, i.e. whether the deduction/forfeiture, in the present instance of 5% of the value of the Bid Security is punitive or otherwise. We think that the course that commends itself to us is to relegate the parties to the Civil Courts to determine whether any damages had been suffered by the National Highways Authority of India and if so whether the deduction of 5% was a fair pre-estimate or was punitive in nature. Since the parties have been bona fide prosecuting writ proceedings

in the event of the plaintiff seeks enlargement/extension of time for filing of a Suit, the Courts in seisin will keep all the circumstances in view before passing an order.

If the Suit is brought by the Respondent as  
5

plaintiff within one month from today, the Trial Court shall decide within six months whether or not to release the Bank Guarantee which has been furnished by the Respondent before this Court. Thereafter, the Appellant shall be free to encash the Bank Guarantee.

The Appeal stands disposed of in the above terms. No order as to costs.

CIVIL APPEAL NO.3054/2015 @ SLP(C)NO.15787/2011

Leave granted.

The matter has been heard at length.

We find no merit in this Appeal. The Appeal is dismissed. However, the imposition of costs of Rs.50,000/- is recalled.

CIVIL APPEAL NO.3068/2015 @ SLP(C)NO.15875/2011

Leave granted.

We find no merit in this Appeal.

However, a perusal of the Impugned Judgment discloses that Costs of Rs.6 Lakhs has been imposed on the Appellant. The Respondents have till date incurred a liability of Rs.3,45,485/- as a consequence of keeping the subject Bank Guarantee alive. This amount, we think, should be reimbursable to the Respondents. In these circumstances, we direct the appellant to remit the sum of Rs.3,45,485/- to the Respondents within two weeks from  
6

today. If this amount is so remitted, the order burdening the Appellant with costs of Rs. 6 Lakhs shall stand set aside.



The Appeal @ SLP(C)No.15689/2011 is disposed of with no order as to costs.

The other appeals are dismissed.

(USHA BHARDWAJ)  
AR-CUM-PS

(SAROJ SAINI)  
COURT MASTER

Signed order is placed on the file.