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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(s). 4716 OF 2004

JINDAL PIPES LTD.

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

O R D E R

This appeal has been preferred against the impugned judgment and order dated 14.8.2003 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No.5420/2003 by way of which the High Court has dismissed the writ petition filed by the appellant against the order of forfeiture of earnest money to the tune of Rupees Two Crores.

Facts and circumstances giving rise to this appeal are that the respondent, State of Punjab issued a Notice inviting tender in January, 2003 comprising of technical and financial bids containing various clauses, including that a person intended to be a bidder must deposit a sum of Rupees Two Crores as the earnest money. The same was a condition precedent to consider the eligibility and suitability of the tenderer-bidder. The appellant deposited the said amount of Rupees Two Crores alongwith a sum of Rupees Five Lakhs as process fee, alongwith all other required papers on 6/7th February, 2003. The same were found in order.

On 17.2.2003, the State of Punjab accepted the appellant's bid and issued the Letter of Intent (LOI) but offered terms were not in accordance with the technical bid of the appellant alongwith LOI, the respondents forwarded a draft Agency Agreement. The appellant found it difficult to execute the Agency Agreement, accepting the terms and conditions incorporated in the draft Agency Agreement for the reason that, something new had been introduced which was not there earlier in the Notice inviting tender. The appellant made a representation and also sought extension of time to execute the same. The matter was considered by the respondent-State but, in vain. Ultimately, the respondent authorities forfeited the said amount of earnest money.

Aggrieved, the appellant challenged the said forfeiture order, by filing the writ petition before the High Court which has been dismissed on the ground that, once the bank guarantee to the tune of Rupees Two Crores in the form of earnest money has been deposited alongwith tender papers, the appellant was bound by the terms and conditions incorporated in the said bank guarantee itself as Bank Guarantee in itself is a separate contract. The beneficiary of the

bank guarantee is entitled to get the benefit of it, irrespective of the dispute between the appellant and State of Punjab, vide judgment and order dated 14.8.2003.

Hence this appeal,

Mr. P.S. Patwalia, learned senior counsel appearing for the appellant, submits that the earnest money was deposited in the form of a bank guarantee in terms of the tender conditions and that there was no such stipulation in the Notice inviting Tenders by the respondent-State that the earnest amount would stand forfeited, in case the agreement is not executed and therefore, the appeal deserves to be allowed.

Per contra, Mr. Jagjit Singh Chhabra, learned counsel appearing for the State, submits that undoubtedly, there was no document prior to the issuance of the Letter of Intent which had made it clear to the appellant that his earnest money to the tune of Rupees Two Crores would stand forfeited, in case it failed to execute the agreement. However, Mr. Chhabra claims that the state was entitled to claim damages from the appellant in case it failed to execute agreement in pursuance of the draft Agency Agreement. Therefore, the High Court was justified in dismissing the writ petition, though Mr. Chhabra in all fairness has conceded to the extent that the High Court has not considered this vital issue which is being raised before this Court by Mr. Patwalia.

We have considered all the documents on record and we are of the view that in case the State was aggrieved by the non-execution of the draft Agency Agreement, it could have claimed damages, but in absence of any statutory provision in the Act or Rules framed by the State, or any clause contained in the Notice inviting Tender giving a clear understanding to all the eligible tenderers that their earnest money would stand forfeited in case their bid is accepted and the agreement for agency is not executed.

In our humble opinion, it was not permissible for the State to change the rule after accepting the bid, and it is contrary to the principles of public policy contained in the Contract Act.

Thus, in view of the above, the appeal is allowed. The impugned judgment and order of the High Court is set aside. The respondents are directed to refund the amount of earnest money with interest at the rate of 6 per cent per annum within a period of three months.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(V. GOPALA GOWDA)

New Delhi,
February 11, 2013
ITEM NO.108

COURT NO.7

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 4716 OF 2004

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(With office report)

Date: 11/02/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. P.S. Patwalia, Sr. Adv.

Mr. Vipin Gogia, Adv.
Mr. Ashok Nijhawan, Adv.
Mr. Arun Batta, Adv.
Mr. Brijendra Singh, Adv.
Ms. Jaspreet Gogia, Adv.

For Respondent(s) Mr. Jagjit Singh Chhabra, Adv.

UPON hearing counsel the Court made the following

O R D E R

In terms of the signed order, the appeal is allowed. The impugned judgment and order of the High Court is set aside. The respondents are directed to refund the amount of earnest money with interest at the rate of 6 per cent per annum within a period of three months.

(O.P. Sharma)

Court Master

(Signed order is placed on the file)

(M.S. Negi)

Court Master