

GAHC010256132023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/421/2023

THE ASSAM POWER DISTRIBUTION COMPANY LTD.
REPRESENTED BY ITS CHAIRMAN, 1ST FLOOR, BIJULEE BHAWAN,
PALTANBAZAR, GUWAHATI-781001

2: THE MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN
PALTANBAZAR
GUWAHATI-781001

3: THE CHIEF GENERAL MANAGER (PP AND D)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN
GUWAHATI-1

4: THE CHIEF GENERAL MANAGER (NRE)
ASSAM POWER DISTRIBUTION COMPANY LIMITED
BIJULEE BHAWAN
GUWAHATI-

VERSUS

JAYANTA KHAUND AND ANR
CLASS 1 (A) CONTRACTOR, GUWAHATI DIAGNOSTIC CENTRE BUILDING,
2ND FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI-781008

2:THE SENIOR MANAGER
FEDERAL BANK LTD.
PALTAN BAZAR BRANCH
RAMANAND TOWER
G.S. ROAD
GUWAHATI-0

Advocate for the Petitioner : MR. P N GOSWAMI
Advocate for the Respondent : MR. K N CHOUDHURY (R1)

BEFORE
HON'BLE THE CHIEF JUSTICE (ACTING) MR. LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

:: O R D E R ::

16-11-2023

(N. U.K. Nair, J)

Heard Mr. I. Chowdhury, learned senior counsel, assisted by Mr. K.P. Pathak, learned counsel representing the appellants, Assam Power Distribution Company Limited. Also heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. J. Patowary, learned counsel for the respondents.

2. This intra-Court appeal has been instituted by the Assam Power Distribution Company Limited (APDCL) challenging the interim order dated 08-11-2023, passed by the learned Single Judge, in WP(C) No. 6446 of 2023, by which a conditional restraint was imposed upon the APDCL from invoking the Bank Guarantees involved.

3. The writ petition was instituted by the respondent No. 1 herein raising a grievance with regard to the steps taken by the APDCL for invoking the Bank Guarantees. During the course of hearing the writ petition, a legal issue came up as to whether a bank guarantee, which stood expired, can still be en-cashed without extending the validity period of the same, basing on a clause incorporated to the effect that the Bank is bound to pay the guaranteed amount within the extended period of one year from the expiry date. The learned Single Judge in the order dated 08-11-2023, held as follows:

“Law is firmly settled that invocation of irrevocable Bank Guarantees cannot be enjoined by the Court save and except upon fulfillment of atleast one of the two grounds, viz. 1. Practicing fraud and 2. Irretrievable damage to the parties. After going through the materials on record this Court is of the prima facie opinion that none of the above conditions are

fulfilled in this case. However, the larger question that confronts the Court in this case is as to whether, the Bank Guarantees, which have already expired, can still be en-cashed at this point of time without extending the validity period of the same, merely on the basis of an agreement entered into by and between the bank and the employer wherein the writ petitioner is not even a party. This is more so, since the particular clause in the Bank Guarantee Agreement relied upon by APDCL apparently runs counter to the terms and conditions reflected in the communication dated 04-01-2021, which makes the Bank Guarantees valid only for a period of 22 months from the date of signing of the PPA. This Court is, therefore, of the prima facie opinion that there is a genuine controversy involved in this case, which would require further consideration by the Court.

As such, issue notice of motion returnable in 04 weeks.

Since Mr. Pathak has accepted notice on behalf of all the respondents, service of notice is deemed to be complete in this case.

Extra copies of the writ petition, requisite in numbers, be furnished to the learned standing counsel within 03 days from today so as to enable him to file counter affidavit.

Heard on the prayer of interim relief.

The said prayer will be considered on the returnable date.

However, having regard to the peculiar facts and circumstances of the case, as an ad-interim measure, it is hereby provided that if the Bank Guarantees furnished by the petitioner have already expired on the dates indicated in the letter dated 29-01-2021 and the validity of the same have not been extended, then in that event, the same shall not be en-cashed without the leave of the Court."

4. Mr. I. Chowdhury, learned senior counsel appearing on behalf of the APDCL has contested the conclusion arrived at by the learned single Judge and by relying on the finding recorded in the order dated 08-11-2023 that there was no fraud or irretrievable damage to the parties involved in the invocation of the Bank Guarantee, had contended that the legal point recorded in the order for consideration is clearly not sustainable.

5. Per contra, Mr. K.N. Choudhury, learned senior counsel has contended that the views, as recorded in the order dated 08-11-2023 by the learned single Judge, is only tentative in nature and the same is not a final order and accordingly submits that the present appeal be not proceeded with and the issue be left open for a decision by the learned single Judge.

6. We have considered the submissions advanced by the parties to the proceeding and also perused the materials on record and we are of the view that in the fact situation involved the legal issue which has been formulated by the learned single Judge has not been considered finally. The issue so formulated is to be first adjudicated in the writ proceeding and not in the present proceeding.

7. We have also noticed that there arose no occasion for the parties to address the learned single Judge on the issue raised. Further, the learned single Judge had also granted liberty to APDCL to seek leave of the Court before encashing the Bank Guarantees. As such, in the event of filing such application, an opportunity would be available for the parties to address the issue formulated by the learned single Judge in the order dated 08-11-2023.

8. Accordingly, we are of the view that this writ appeal is to be closed and the APDCL be required to approach the learned single Judge by way of an appropriate application in terms of the order dated 08-11-2023. In the event of such application being filed, we request the writ Court to expeditiously consider the same and arrive at a conclusion on the legal issue raised in view of the fact that the outside date for encashment of the Bank Guarantees involved are 24-01-2024 and 26-01-2024.

9. Any view expressed by this Court will not be binding during consideration of the writ petition as well as the leave application as may be filed in the matter by the APDCL.

10. In terms of above, the writ appeal stands disposed of.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant