

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.6070 OF 2009

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ORDER:

This writ petition is filed challenging the proceedings in Rc.No.112/C/2008/S6(ii), dated 14.03.2009, issued by the 2nd respondent.

Heard Sri S. Surender Reddy, learned counsel for the petitioner and the learned Government Pleader for Forest (T.G).

It is the case of the petitioner that she is the Beedi Leaf contractor and for the season 2008-09, the petitioner became the successful bidder for collection of abnus (Beedi) leaves. Alleging the petitioner had not collected the beedi leaves during the season 2008-09, and caused loss to the Government, the 2nd respondent-Divisional Forest Officer issued a show cause notice dated 14.03.2009 in Rc.No.112/C/2008/S6(i) to the petitioner. Para No.5 of the order reads as under:

“5. Finally you have stated that, the Department should purchase leaves and give to you which is again in violation of agreement condition. No.2 where in you as the purchaser are responsible to purchase abnus leaves collected from Government lands.

Therefore for these irresponsible acts and demands which are in violation of agreement condition as above the Government has been caused a minimum loss of Rs.4,05,090/- besides a huge wages loss to B.L. Collectors and loss of credibility by the Government in the public at your responsibility. Therefore you are issued this final notice to show cause within one week as to why suitable action should not be taken as per agreement condition to recover the Government loss besides penal action for violation of other agreement conditions and also to initiate action to black list you.

You should acknowledge the receipt of this final notice upon the duplicate copy enclosed and submit it to this office immediately.”

Thereafter, immediately on receipt of the said show cause notice, the petitioner submitted a detailed explanation on 18.03.2009 to the 2nd respondent-Divisional Forest Officer, denying that the Government sustained loss of Rs.4,05,090/- due to non collection of beedi leaves for the season 2008-09. Further, the petitioner claimed a sum of Rs.5,80,000/- payable to her on account of the 2nd respondent's non fulfilling of the terms of the agreement. Except issuing the impugned proceedings, no orders as such were passed by the 2nd respondent-Divisional Forest Officer either accepting or denying the explanation submitted by the petitioner. However, the impugned proceedings came to be issued for encashing the bank guarantee furnished by the petitioner as a precondition for entering into the agreement.

It is the contention of the learned counsel for the petitioner that without determining the loss as alleged in the show cause notice and without considering the explanation submitted by the petitioner, the invocation of bank guarantee is unwarranted and is *malafide* on the part of the 2nd respondent-Divisional Forest Officer.

On the other hand, the learned Government Pleader for Forest (T.G) submits that inasmuch as the bank guarantee which was furnished by the petitioner is an unconditional bank guarantee and there being no breach in fulfilling the conditions of the terms of the agreement, the bank guarantee was rightly invoked by the 2nd respondent-Divisional Forest Officer.

This Court while admitting the writ petition granted interim stay of the invocation of bank guarantee and the same was being extended from time to time and ultimately on 22.01.2014 the interim order dated 23.03.2009 was made absolute.

This is a case where, the respondents-authorities had issued show cause notice alleging that they have suffered a loss of certain amount on account of non fulfilling the terms of the agreement by the petitioner. A show cause notice to that effect was issued by giving seven days time to the petitioner to submit her explanation. Even before submitting her explanation, the impugned invocation of bank guarantee had been done. In other words as on the date of passing of the impugned order, there is no determination as to the amount of loss which they had incurred. Though the bank guarantee furnished by the petitioner is an unconditional bank guarantee and is liable to be paid on demand and without demur, the fact remains as on the date of the invocation of bank guarantee, the respondents authorities themselves have not come to a conclusion that there is any loss caused to them. The same is evident from the fact of issuance of the show cause notice calling for explanation to be submitted by the petitioner. Viewed from that angle, invocation of bank guarantee was not in order and the impugned proceedings issued by the 2nd respondent are liable to be set aside.

Though the learned Government Pleader submitted that the writ petition is not maintainable inasmuch as the same arises on account of the violation of contractual obligation by the petitioner, considering the fact that the writ petition came to be admitted in the year 2009 and after passing of six long years and especially in view of the judgment of the Supreme Court reported in **A.B.L. International Limited vs. Export Credit Guarantee of India Limited**, I am not inclined to take into consideration of the said arguments.

Having regard to the facts and circumstances of the case and especially in view of the respondents authorities did not consider the explanation submitted by the petitioner and have not come to a conclusion that there is any loss caused to them, the impugned proceedings are liable to be set aside.

Accordingly, the writ petition is allowed setting aside the proceedings in Rc.No.112/C/2008/S6(ii), dated 14.03.2009, issued by the 2nd respondent-Divisional

Forest Officer. However, the 2nd respondent-Divisional Forest Officer, is given liberty to consider the explanation submitted by the petitioner and pass appropriate orders, in accordance with law, after giving the opportunity of hearing to the petitioner to substantiate her claim within a period of four weeks from the date of receipt of copy of this order. Further, the bank guarantee which has been furnished by the petitioner shall be kept alive till the disposal of the explanation submitted by the petitioner. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed.

No order as to costs.

CHALLA KODANDA RAM,J

Date:04.11.2015.

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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