

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

Letters Patent Appeal No.53 of 2007 (O&M)  
Date of Decision: March 20, 2015

Infotech 2000 India Limited and others  
.....Appellants  
versus  
State of Punjab and others  
.....Respondents

**CORAM:** HON'BLE MR.JUSTICE SURYA KANT.  
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present:Mr.Rohit Suri, Advocate, for the appellants.  
Mr.Gurinder Pal Singh, Addl. AG, Punjab.

-. -

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

---

Surya Kant, J. (Oral)

This letters patent appeal impugns the order dated 24.01.2007 whereby the learned Single Judge has dismissed the appellants' writ petition in which it challenged the order re: forfeiture of its earnest money on refusal to accept the offer given to it for on-line lottery system being the second highest bidder.

[2] Briefly stated, the facts are that the State of Punjab invited bids from prospective bidders for on-line lottery system, in January, 2003. Every bidder was required to furnish a bank guarantee of Rs.2.0 crores towards earnest money.

[3] M/s Jindal Pipes Limited came out to be the highest bidder, whereas a consortium led by first appellant was the second highest bidder. A letter of intent was accordingly issued to the highest bidder, namely, M/s Jindal Pipes Limited.

The first highest bidder, however, did not execute the Agency Agreement, hence, the bank guarantee furnished by that bidder was forfeited.

[4] The offer was then made to the first appellant and finally its bid was accepted on 17.02.2003 and a letter of intent was issued. The appellant found it difficult to execute the Agency Agreement and after negotiations and when the authorities failed to persuade the first appellant to execute that agreement, the earnest money deposited by the appellant was decided to be forfeited. The appellants approached this Court apprehending the forfeiture of their earnest money and obtained an interim stay against forfeiture. Their writ petition was finally dismissed by learned Single Judge, giving rise to this letters patent appeal.

[5] The record reveals that on February 22, 2007, a Coordinate Bench stayed the order re: encashment of bank guarantee. The said interim order is still operative.

[6] Meanwhile, the highest bidder (M/s Jindal Pipes Limited) approached this Court against the forfeiture of its earnest money of Rs.2.0 crores. Its writ petition was dismissed on 14.08.2003. The aggrieved bidder went to the Hon'ble Supreme Court in Civil Appeal No.4716 of 2014 which has been allowed by the Hon'ble Apex Court vide judgment dated 11.02.2013 on the ground that in the absence of any statutory provision in the Act or the Rules framed by the State or any clause contained in the notice notifying the tender (NIT) 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, the action of the State authorities in forfeiting the earnest money

was unjustified. The Apex Court, however, has given liberty to the State to claim damages.

[7] In the light of the above-cited decision of the Hon'ble Supreme Court rendered in the case of highest bidder (M/s Jindal Pipes Limited), learned State counsel is left with no other contention for sustenance of their action to forfeit the bank guarantee furnished by the appellants.

[8] Consequently and for the reasons assigned by Supreme Court in the case of M/s Jindal Pipes Limited, decided on 11.02.2013, the instant appeal is allowed; the order passed by the learned Single Judge dated 24.01.2007 is set-aside and the writ petition filed by the appellants is allowed. As the respondents could not encash the bank guarantee, no further direction is required to be issued nor the appellants are entitled to claim any interest. The original bank guarantee shall be returned to the appellants within a period of one month. The State of Punjab and its authorities shall be entitled to seek damages from the appellants in accordance with law.

Ordered accordingly.

Dasti.

[SURYA KANT]  
JUDGE

*March 20, 2015*  
*mohinder*

[P.B.BAJANTHRI]  
JUDGE