

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.23988 OF 2016

% 25th July, 2016

M/s. Progressive Constructions Ltd., Hyderabad

... Petitioner

AND

\$ The Union of India and four others.

... Respondents

! Counsel for the Petitioner

**: Learned Senior Counsel Sri E.
Madan Mohan Rao**

^ Counsel for the respondent No.1

**: Sri B. Narayana Reddy,
Learned Asst.Solicitor General**

^ Counsel for the respondent No.2 to 4: Smt. T. Vidya Rani,

**Learned Government Pleader
for Irrigation (A.P.)**

< Gist:

> Head Note:

? Cases referred:

(1981) 3 SCR 300

AIR 1982Delhi 357

AIR 1994 SC 2778

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.23988 of 2016

ORDER:

The writ petition is filed seeking a direction to the 5th respondent to further renew the original Bank Guarantee B.G No.5625IFIBG130070

dated 16.01.2006 for an amount of Rs.1,00,00,000/- at the instance of the 4th respondent's letter dated 20.06.2016 till 31.07.2017 by collecting the necessary commission from the petitioner.

The petitioner is a limited company incorporated under the Company Act, 1956 with an object to establish infrastructure and construction activities along with other objects. It is stated that the petitioner's company in its normal course of business, awarded prestigious Polavaram contract by the State of Andhra Pradesh to execute the work of 'Earth Work Excavation, Forming Embankment and Construction of CM & CD works including Investigation, Designing and Estimation of Polavaram Project Right main Canal from KM 133.800 to KM 156.00 (RMC-6) and other works also carrying in this connection the petitioner took Performance Bank Guarantee from the 5th respondent to an extension of Rs.1,00,00,000/- vide B.G.No.8609IFIBG130070 dated 16.01.2006 and originally Bank Guarantee valid up to 17.11.2008 and the same renewed from time to time and valid till 31.07.2016 in favour of the 3rd respondent. The 5th respondent also issued various Bank Guarantees to the various works carrying by the petitioner with the State Government and some of those BGs are valid up to 5.6.2016 when the Department requested for extension of Bank Guarantees as those BGs are performance guarantees, the petitioner requested to extend the validity of the said BGs further as the contract is in force. The petitioner approached the 5th respondent for further renewal of those B.Gs., from 5.6.2016, but the 5th respondent-bank without considering the request of the petitioner for renewal of the B.Gs, was trying to invoke the said Bank Guarantees on the ground that the competent authority has instructed the Bank to initiate recovery action against the petitioner company as other facilities were classified as NPA and further extension of B.Gs., is not possible. Hence, the present writ petition.

Heard Sri E. Madan Mohan Rao, learned counsel for the petitioner, Sri B. Narayana Reddy, learned Assistant Solicitor General for 1st respondent and Smt. Vidya Rani, learned Government Pleader for

Irrigation.

The facts not being in dispute, the only question that is required to be decided is whether the writ petition of this nature is maintainable and whether a direction as sought for could and should be issued to 5th respondent-Bank of India.

Though in the context of considering whether injunction could be granted in relation to invocation of bank guarantee, the law laid down by the Supreme Court in a catena of judgments that a contract between the bank and its customer *vis-a-vis* the beneficiary in whose favour bank guarantee is issued is essentially governed by the contract would apply to the case on hand. On this point, a reference may be made to the following judgments:

- 1) United Commercial Bank of India Vs. Bank of India and Ors., [\[1\]](#)
- 2) Banwari Lal Radhe Mohan Vs. Punjab State Cooperative Supply & Marketing Federation Ltd., Chandigarh and Another [\[2\]](#)
- 3) The State Trading Corporation of India Ltd., V. Jainsons Clothing Corporation and Another [\[3\]](#)

It is well settled that relationship between the petitioner and the 5th respondent is contractual in nature and is governed by the terms and conditions of agreement entered between the petitioner and the 5th respondent. Petitioner being the customer of the 5th respondent and in the course of banking business, 5th respondent had extended the credit facilities both fund based and non-fund based. Providing of bank guarantees for and on behalf of petitioner in favour of the 2nd respondent is also one such non fund facility extended. The 3rd respondent sought revalidation of bank guarantee through letter dated 20.06.2016 from the petitioner. When the petitioner approached 5th respondent bank, 5th respondent bank through email dated 12.07.2016 sought compliance with certain formalities. It is for the petitioner to satisfy the banker i.e., 5th

respondent for revalidating the bank guarantees issued by the 5th respondent in favour of the petitioner. To extend the validity or otherwise is in the exclusive discretion and of the commercial wisdom of the 5th respondent bank, as the 5th respondent is engaged in the banking business subject to granting of loans governing the banking. In providing bank guarantee and in extending the validity or otherwise, there is no discharge of service of the nature which the 5th respondent is required to undertake in terms of any mandatory provisions of statute and on the other hand the provision of banking services, particularly to a commercial organisation like the petitioner, is purely within the contractual relationship between the petitioner and the 5th respondent. In the absence of any statute making it mandatory for the 5th respondent to either extend the facility or continue to extend the credit facilities and there being no public duty involved, this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India cannot and should not issue a Writ of Mandamus directing the 5th respondent to do so. Therefore, the Writ Petition of this nature is not maintainable and accordingly the Writ Petition deserves no consideration and the same is dismissed.

As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J.

Date:25.07.2016

Ssv/Gk

Note: L.R. Copy to be marked.

B/o
Ssv

[\[1\]](#) (1981) 3 SCR 300

[\[2\]](#) AIR 1982Delhi 357

[\[3\]](#) AIR 1994 SC 2778