

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 15819 of 2010 (O&M)
Date of decision: 7.1.2016

M/s Vang Infrastructure Pvt. Ltd.

.. Petitioner

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

**Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arjun Shukla, Advocate for the petitioner.**

**Mr. Naveen Kaushik, Additional Advocate General,
Haryana.**

Mr. Ashwinie Kumar Bansal, Advocate for respondent No. 3.

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Rajesh Bindal J.

The petitioner in the present case has filed the present petition impugning the communication dated 1.9.2010 (Annexure P-6) received by it from the bank informing the petitioner that the bank guarantees furnished by it to the State had been invoked vide communication dated 27.8.2010.

Learned counsel for the petitioner submitted that the petitioner had submitted a tender, which was accepted by the respondent-State vide memo No. 17071 dated 27.11.2007 and the petitioner was directed to furnish performance security to the tune of ₹ 28,91,260/-. With reference to the same contract, the petitioner furnished bank guarantee bearing No. 143/07 dated 11.12.2007 to the Superintending Engineer, Chandigarh Circle, Haryana PWD (B&R), Chandigarh for a sum of ₹ 28,91,260/-. The aforesaid contract was duly completed on 20.7.2009. Even completion certificate was also issued to the petitioner. In the same contract, the

petitioner had deposited ₹ 32,36,086/- as security, out of which 50% was refunded on completion of the contract and a sum of ₹ 16,18,043/- was retained by the department. The submission is that once the contract for which the petitioner had submitted the bank guarantee was satisfactorily completed, the same deserved to be released. It could not be invoked to recover any alleged dues pertaining to other contract entered into between the parties. The petitioner had been carrying on many projects with the State, for which independent securities/guarantees had been furnished. Each transaction had to be dealt with independently. He further submitted that the bank guarantee was furnished to the Superintending Engineer, however, the same has been invoked by the Executive Engineer, which was totally without jurisdiction, as he had no authority to invoke the same. He further submitted that the affidavit was taken by the respondents from the petitioner under duress for linking the bank guarantee with other tenders, hence, the same cannot be made the basis to permit the respondents to invoke the bank guarantee furnished in different contracts.

On the other hand, learned counsel for the respondents submitted that no doubt the contract in question was completed by the petitioner on 20.7.2009, however, the road was to be maintained thereafter by the petitioner for a period of five years, which expired on 19.7.2014. The petitioner having not carried out the work of maintenance of road, the department had to get the same executed from other contractors. On that account, a sum of ₹ 38,95,000/- has to be recovered from the petitioner. He further submitted that the security deposited by the petitioner in other contracts, where also certain amounts were found to be due, were released after the petitioner furnished the affidavit stating that the bank guarantee already furnished be treated as good for other contracts as well. At this stage, the petitioner cannot be permitted to blow hot and cold and claim that the affidavit was taken under duress, once it had taken the benefit thereof. The bank guarantee was unconditional. The bank was required to remit the amount to the State immediately after receipt of letter, which was not done. The interference in the case of invocation of bank guarantee by the authority, to whom it is furnished, can only be on the ground of fraud and

not otherwise.

Heard learned counsel for the parties and perused the paper book.

As far as the facts of the case are concerned, the same are not in dispute to the extent that the petitioner had furnished the bank guarantee pertaining to a particular contract, which was invoked by the State, referring to certain amount due from the petitioner. The petitioner claimed that the amount was due with reference to some other contract, where on completion even the security was released. However, the facts remain that the petitioner had furnished an affidavit giving liberty to the department to invoke the bank guarantee for other contracts and in fact, as submitted by learned counsel for the State, the payments in all other contracts were released and even the securities. It was further submitted by counsel for the State that on account of non-fulfilment of the clause pertaining to maintenance of the road laid by the petitioner for a period of five years, the department had to spend ₹ 38,95,000/-, which are recoverable from the petitioner.

The important aspect, which cannot be lost sight of is that the bank guarantee furnished by the petitioner was unconditional. A perusal of the communication dated 1.9.2010 from the banker of the petitioner to the petitioner intimating that the bank guarantees furnished by it have been invoked by the Executive Engineer, Provincial Division, PWD, B&R Branch, vide his memo dated 27.8.2010 and the petitioner was advised to deposit the amount in cash credit account immediately. It establishes the fact that the bank had failed to act upon the communication from the State invoking the bank guarantee, which was unconditional. The fact that the petitioner was directed to deposit the amount of bank guarantee in its cash credit account shows that the bank did not have the requisite money or security, for which the bank guarantees had been issued. That is why, the petitioner was required to deposit the amount. Such are not the conditions in the bank guarantees. The bank guarantee is an instrument, which entitles a person in whose favour it is issued to receive the amount immediately the same is invoked. It is not that it is conditional on deposit of the amount by the person who furnishes the bank guarantee.

In view of my aforesaid discussion, I do not find any merit in the present petition. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

7.1.2016
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