

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-46-2016

Date of decision:- 06.01.2016

PCI Ltd.

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Birender Singh Rana, Senior Advocate,
with Mr. Arun Khatri, Advocate,
for the petitioner.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner has challenged the termination of the contract under which the petitioner was to supply, erect, test and commission six new 33 KV sub-stations.

2. Considering the facts and circumstances of this case, we are not inclined to entertain this writ petition. There are, to say the least, several seriously disputed questions of fact which cannot possibly be gone into in this writ petition.

3. Reliance is placed upon clauses 45.1 and 45.2 of the agreement which read as under:-

“45. Contractor’s Default

45.1 Notice of Default

If the contractor is not executing the works in accordance with the contract or is neglecting to perform his obligations, there under, as seriously, to affect the programme for carrying out of the works, the employer may give notice to the contractor requiring him to make good such failure or neglect.

45.2 Nature of Contractor’s default

If the contractor:-

a) Has failed to comply within a reasonable time with a notice under sub clause 45.1 or

b) Assigns the contract or sub-contracts the whole of the works without the employer's written consent, or

c) Becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation.

The employer may, after giving 15 days notice to the contractor, terminate the contract and expel the contractor from the site.

Any such expulsion and termination shall be without prejudice to any other rights or powers of the employer, or the contractor under the contract. The employer may upon such termination complete the works himself or by any other contractor. The employer or such other contractor may use for such completion, contractor's equipment which is on the site and as he or they may think proper, and the employer shall allow the contractor a fair price for such use."

4. The respondents had by a notice dated 13.11.2014 terminated the contract. The notice refers to several defaults on the part of the petitioner. For instance, it is stated that the petitioner was required to complete the work within 12 months, but it miserably failed to do so. It also refers to the review of the progress of the work from time to time at various meetings held between the parties and the assurances given by the petitioner's representatives that the work would be executed and completed within the scheduled time. The notice also refers to the voluminous correspondences between the parties in the course of which the respondents referred to the poor performance on the part of the petitioner. The notice also refers to a prior notice under clause 45.1. It is stated before us that that notice was not received. It is difficult to accept this denial without anything more especially as there was no letter addressed by the petitioner at the relevant time stating that it had not received the notice under clause 45.1. The respondents, therefore, terminated the contract and invoked the bank guarantee.

5. We do not suggest that what the respondents say is correct. Suffice it to note that allegations have been made by the respondents regarding the poor performance of work by the petitioner which constitute disputed questions of fact.

6. Faced with this, it is contended that the petitioner had submitted an action plan by a communication dated 09.02.2015. The petitioner assured the respondents that it would comply with the action plan.

7. It is important to note that this, however, was subject to immediate release of the petitioner's payments and also payment of future bills when submitted. It was, therefore, not an unconditional offer. In view of the allegations of breach of contract by the respondents, presumably, the respondents did not accept the same.

8. We will assume that even thereafter the petitioner was allowed to carry out certain works. It would make no difference. By a further letter dated 10.11.2015, the respondents once again issued a notice under clause 45.2. It is important to note that the respondents in this notice referred to several letters addressed even after the action plan furnished by the letter dated 09.02.2015. The respondents' grievances continued even after 09.02.2015. The final notice of termination is dated 18.12.2015.

9. In these circumstances, there is no warrant for our interfering in a purely contractual dispute by invoking our extra-ordinary jurisdiction under Article 226 of the Constitution of India. The petitioner has the remedy of filing a suit or invoking the arbitration agreement. In any event, we are not inclined to stay the invocation of the bank guarantee. In view of the well established law relating to injunctions regarding unconditional bank guarantees, the injunction cannot be issued. The bank is not concerned with the disputes relating to the underlying contract between the parties.

10. The writ petition is, therefore, dismissed. Needless to clarify that the contentions on merits are kept open.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.01.2016

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