

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.38154 OF 2017

ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the State in arbitrarily seeking to encash the Bank Guarantees bearing No.0008BG00037209, dated 22.05.2009 (amended on 22.05.2017) valid till 24.05.2018 for Rs.5,36,40,000/- , Bank Guarantee No.0008BG 00084907, dated 14.11.2007 (amended on 08.11.2016) valid till 13.11.2017 for Rs.1,34,10,000/- drawn on ICICI Bank Limited, Commercial Banking, Begumpet, Hyderabad in its favour pursuant to Letter No.SE/NTR.TGP/KDP/DB/ATO/GNSS/635M, dated 16.10.2017 in view of faults and delays attributable to it as action not satisfying the *wednesbury* principle, as illegal, arbitrary and thus contrary to Articles 14, 19 and 300 A of the Constitution of India and direct the State not to invoke the Bank Guarantee quo the mobilization advance and interest thereof and for a consequential direction to take a decision of extension of contract vide Agreement No.15SE/2007-08, dated 11.10.2007 or pre-closure of contract in accordance with the terms of contract.

Heard Sri L.Ravi Chander, learned Senior Counsel appearing for the petitioner who submits that because of delay on the part of respondents, petitioner could not complete the work, as such, invocation of Bank Guarantee by the respondents is illegal and arbitrary and against the Principle of *Wednesbury*.

On the other hand learned Assistant Government Pleader for Irrigation submits that the writ petition is not maintainable against the invocation of Bank Guarantee. He relied on the Judgment of this Court in ***Lanco Infratech Limited, Hyderabad and another v. Power Finance Corporation, New Delhi and another***¹ and also order of this Court in WP.No.28092 of 2017 dated 10.10.2017, wherein no plea of fraud or irretrievable harm or injustice is raised.

In the instance case also the petitioner has not raised plea of fraud and irretrievable injury. Though learned Senior Counsel tried to argue on merits, this Court cannot go into the merits of the contractual claim between petitioner and respondents in the writ petition. In ***Lanco Infratech Limited, Hyderabad and another v. Power Finance Corporation, New Delhi and another (supra)***, wherein it is held that in respect of Bank guarantees, the satisfaction of the beneficiary is final with regard to breach of the covenants between the beneficiary and the person on whose behalf the Bank guarantee was issued and the Bank has no other alternative except to honour the payment under the guarantee.

Accordingly, the writ petition is dismissed. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

14.11.2017
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¹ 2017 (5) ALD 556