

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

WRIT APPEAL No.57 of 2015

JUDGMENT: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This Appeal, under Clause 15 of Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.No.25766 of 2014 dated 10.12.2014.

The respondent herein filed the aforesaid writ petition seeking a mandamus to declare the action of State in coercing them to furnish a 'no claim' undertaking for closing the contract, besides not returning the performance bank guarantee, as illegal and arbitrary; and to, consequently, direct them not to coerce the respondent-writ petitioner to furnish a 'no claim' undertaking, and to release bank guarantee No.04821GPER004309 dated 17.11.2009 issued by the Bank of Baroda.

In the order under appeal, the learned Single Judge observed that the State was not justified in insisting on the respondent-writ petitioner executing a 'no claim' undertaking, and in withholding the performance bank guarantee, furnished by the respondent-writ petitioner, on the ground of non-execution of the said undertaking; whether the respondent's proposed claim against the State is sustainable or not, needs to be adjudicated in appropriate proceedings in the event such a dispute is raised by the respondent-writ petitioner; and the respondent-writ petitioner was not liable

to furnish a 'no claim' undertaking to the State. The State Government was directed to forthwith release the bank guarantee.

Before us, learned Government Pleader for Irrigation would submit that, since the disputes between the appellant-State and respondent-writ petitioner, fall in contractual domain, the writ petition as filed is not maintainable; subsequent to the order under appeal, the respondent-writ petitioner had filed COS.No.114 of 2017; consequently, there was no justification in the writ petition being entertained; and the relief, as sought for by the respondent-writ petitioner, ought not to have been granted.

Facts, to the extent relevant, are that the Standing Committee of the Government resolved to close the subject work in view of a change in design, and other issues relating to land acquisition. Closure of the work was not attributed to any fault on the part of the respondent-writ petitioner in performing their contractual obligations. The State Government had, on its own accord, closed the contract for their convenience. In the order under appeal, the Learned Single Judge observed that the appellant-State was not justified in retaining the bank guarantee; and in insisting, as a pre-condition for its release, that the respondent-writ petitioner should furnish a 'no claim' certificate; the bank guarantee was furnished, by the respondent-writ petitioner, for performance of their contractual obligations; as the

contract was determined by the government, for reasons other than the failure of the respondent-writ petitioner to perform their obligations under the contract, the performance bank guarantee could not be retained or encashed; and requiring a 'no claim' certificate from the respondent-writ petitioner, as a pre-condition for return of the bank guarantee, would disable the respondent-writ petitioner from putting forth any claim for foreclosure of the contract.

The fact that the respondent-writ petitioner filed a civil suit, in COS.No.114 of 2017 before the Principal District Judge, Kurnool, after the disposal of the Writ Petition, only shows that the respondent has sought to put forth certain claims on account of the contract being terminated midway. Whether or not the respondent-writ petitioner is justified in making such claims are all matters for the Civil Court to decide. The respondent-writ petitioner cannot, however, be held to be disentitled to the return of the performance bank guarantee, when the contract was terminated by the State for reasons other than the respondent-writ petitioner's failure to perform the contract, much less on the ground that the respondent-writ petitioner had not furnished a 'no claim' certificate. Furnishing such a certificate would disable the respondent-writ petitioner from making any claim against the appellant-State, even if such claims were justified.

The contention, of the learned Government Pleader for Irrigation, that all these issues can be examined in the Suit

filed in COS.No.114 of 2017 on the file of the Principal District Judge, Kurnool, does not also merit acceptance. Issues which would arise for consideration in COS.No.114 of 2017 is whether or not the claims put forth by the respondent-writ petitioner are justified. The question whether or not the State was justified in refusing to return the performance bank guarantee, without a 'no claim' certificate being submitted by the respondent-writ petitioner, is not put in issue in the Civil Suit.

With regards the contention, urged on behalf of the appellant-State, that the writ petition is not maintainable since disputes between the parties are in the contractual domain, a Writ Petition, in the contractual domain can be entertained if the Court is satisfied that the action of the State in such matters, violate part – III of the Constitution.

It must be borne in mind that, while there is no prohibition for a Writ Petition, against the Government in the contractual realm being entertained, it is in the discretion of the Learned Single Judge, before whom the Writ Petition was filed, either to entertain the Writ Petition or to relegate the respondent-writ petitioner to the remedy of filing a Civil Suit and seek adjudication of non-statutory contractual disputes.

It must also be borne in mind that the learned Single Judge has exercised his discretion to entertain the present Writ Petition involving contractual disputes. While we may not have entertained the Writ Petition, and may have

relegated the petitioner to avail their common law remedy of filing a Civil Suit seeking adjudication of such contractual disputes, interference in an intra-court appeal, under Clause 15 of the Letter Patent, would be justified only if the order under appeal suffers from a patent illegality, or if the view taken by the learned Single Judge is not even a possible view. As it is in the discretion of the learned Single Judge whether or not to entertain a Writ Petition in the contractual domain, and as the Learned Single Judge has exercised his discretion to entertain the Writ Petition, we may not be justified in taking an opposite view and in relegating the petitioner to avail the remedy of filing a Civil Suit, in the exercise of our jurisdiction under Clause 15 of the Letter Patent, as exercise of discretion by the learned Single Judge, to entertain the Writ Petition, cannot be said to suffer from a patent illegality.

The Writ Appeal fails and is, accordingly, dismissed. We, however, make it clear that we have not expressed any opinion on the respondent-writ petitioner's claim for damages, consequent upon the termination of the subject non-statutory contract. In view of the order under appeal, the State shall not encash the bank guarantee, and shall return the said bank guarantee to the respondent-writ petitioner. The Learned Principal District Judge, Kurnool shall adjudicate the respondent-writ petitioner's claim, in COS.No.114 of 2017, on its own merits uninfluenced by any

observations made either in the order under appeal or in the order now passed by us.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI,J

Date:18.06.2018
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