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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 15403 of 2023

Dilip Kumar Chatterjee
Vs.
State of West Bengal & Ors.

Mr. Sakya Sen,
Mr. Priyankar Saha,
Mr. Hemant Tiwari
...for the petitioner

Mr. Debjit Mukherjee
...for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner contends that the respondents are illegally withholding a bank guarantee, which was submitted by the petitioner for the limited purpose of getting back the security deposit in terms of a Government Notification dated October 27, 2014.
3. It is argued that after issuance of a completion certificate on the petitioner having completed the work allotted to it by the respondents, the petitioner deposited a bank guarantee, in terms of the said Notification, only for the purpose of getting a refund of the security deposit. At that juncture, the respondents had only indicated

that the same was subject to being adjusted with unpaid royalty (if any).

4. However, subsequent to furnishing the bank guarantee, the respondents quantified a purported due in lieu of royalty, which, according to the petitioner, the petitioner has already paid to the respondent-authorities.
5. It is argued that even without going into the dispute as to such dues, the petitioner now seeks discharge of its bank guarantee and does not press its claim for refund of security deposit.
6. Learned counsel appearing for the respondent-authorities submits that the petitioner has not, within the four corners of the writ petition, challenged the quantum of royalty claimed by the respondents from the petitioner. That apart, the bank guarantee was accepted only on the specific assertion of the petitioner that the petitioner wants a refund of security deposit. Moreover, it was intimated to the petitioner that the bank guarantee would be subject to any claim of the respondents for non-deducted royalty amount (if any). As such, at this juncture, the respondents are entitled to claim the royalty amount dues from the petitioner, to

be adjusted from the security deposit against the bank guarantee.

7. A perusal of the Notification of the Government of West Bengal, Public Works Department dated October 27, 2014 indicates that the purpose of furnishing a bank guarantee under the said Notification is exclusively limited to any claim of the contractor for refund of the security deposit lying with the employer.
8. It is specifically mentioned in the third paragraph thereof that in cases of refunding and releasing of 100 per cent security deposit held with the Government arising from the works contract, the security deposit will be released after issuance of completion certificate on submission of unconditional bank guarantee.
9. The documents annexed to the writ petition indicate that the petitioner specifically sought for a disclosure from the respondents as to the exact amount of bank guarantee which was to be furnished for the sole purpose of refund of security deposit.
10. Upon correspondence between the parties, vide communication dated May 23, 2023, the respondent-authorities intimated that the petitioner was to furnish a bank guarantee of

Rs.3,10,59,655/- only. Although it was indicated in the same communication that it was against the security deposit subject to recovery of the non-deducted royalty amount, the same was circumscribed by a rider “if any”, as an adjunct to such non-deducted royalty amount.

11. Hence, as on the date when the bank guarantee was furnished by the petitioner, the respondents had not raised any specific claim of non-deducted royalty payable by the petitioner, let alone quantifying such claim. Such claim was raised only post facto, when the petitioner had already furnished the bank guarantee for the sole purpose of getting a refund of its security deposit within the contemplation of the Government Notification dated October 27, 2014.

12. Since the petitioner now seeks to be released from the bank guarantee, the respondents cannot assert a subsequently quantified claim to hold back such bank guarantee, particularly as there is nothing within the four corners of the Government Notification dated October 27, 2014 establishing any lien on such bank guarantee in favour of the respondents and/or

giving any right to the respondents to make any further claim against such bank guarantee.

13. In any event, the inchoate claim of non-deducted royalty amount, if any, was to be adjusted with the security deposit which was to be refunded by the respondents to the petitioner. Such security deposit, if refunded, could at best be the reservoir from which the claimed amount might have been the deducted. The bank guarantee was furnished for the sole purpose of getting back the security deposit and was never intended to cover any non-deducted royalty amount or other claim.
14. The respondents cannot claim a right beyond the Notification dated October 27, 2014, which was the sole genesis of the bank guarantee being furnished by the petitioner.
15. In such view of the matter, W.P.A. No. 15403 of 2023 is allowed, thereby directing the respondent-authorities to return the bank guarantee to the petitioner without any deduction. The petitioner shall, immediately from this date, stand released from any liability under such bank guarantee.
16. It is however, made clear that nothing in this order shall prejudice the rights of either party

regarding any claim which they may have in law against each other.

17. In the event any of the parties have any claim against each other, it will be open to the parties to claim the same before a proper forum/court.

18. Needless to say, since the bank guarantee is being returned and the petitioner discharged from any liability thereunder, the respondents need not refund the security deposit of the petitioner at this juncture.

19. Since no affidavits have been called for, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

20. There will be no order as to costs.

21. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

Sabyasachi Bhattacharyya, J.