IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 594 of 2024

Intech Safety Private Limited & Anr.
Vs.
Union of India & Ors.

For the writ petitioners	:-	Mr. Sakya Sen, Sr. Adv. Mr. Amritam Mandal, Adv. Ms. Swati Agarwal, Adv. Mr. Nayam Chowni, Adv.
For the respondent nos. 2-5	:-	Mr. Ayan Poddar, Adv. Mr. Soham Dutta, Adv.
For the respondent no. 7	:-	Mr. Avishek Guha, Adv. Ms. Shilpa Das, Adv.
Heard on	:-	11.08.2025
Judgment on	:-	11.08.2025

Amrita Sinha, J.:-

1. Affidavit-in-reply filed in Court today is taken on record.

2. The petitioner has prayed for a declaration that the notice dated 15th June, 2024 issued by the respondent South Eastern Coal Fields Limited (SECL) by which the bank guarantee was sought to be invoked was not binding upon the parties in any manner whatsoever.

3. The parties have exchanged their affidavits and have made submissions.

4. It appears that a tender was floated by SECL on 9th October, 2023. The petitioner participated in the tender process and submitted its bid on 9th November, 2023. The bid of the petitioner was not accepted and contract was executed by SECL with a third party being the successful bidder on 23rd February, 2024.

5. For participating in the tender, the applicant was required to submit earnest money deposit by way of bank guarantee for a sum of rupees fifty lakh. The petitioner, being unsuccessful in the bidding process, seeks refund of the bank guarantee. SECL has refused to return the bank guarantee which has, in the meantime, expired on the ground that the petitioner furnished false, misleading and forged documents at the time of submission of bid. SECL got the information about submission of false documents by the petitioner in June, 2024.

6. As per the bid document, the bid offer validity period from the end date was 120 days. The bid end date and the bid opening date was 30th October, 2023. The first invocation of bank guarantee was made by SECL on 26th March, 2024. The bank guarantee had expired by then. The petitioner had to renew the same, allegedly, on the pressure created by SECL.

7. The bank guarantee was a conditional one. As per general terms and conditions of GeM, the bid security submitted by the bidder shall be forfeited if the bidder withdraws or modifies or impairs or derogates from the bid in any respect within the validity period of the bid or if it

comes to the notice that the information/document furnished in its bid is false, misleading or forged.

8. According to SECL, information regarding submission of false, misleading and forged documents by the petitioner was received only in the month of June, 2024, accordingly, the bank guarantee has been directed to be renewed as the SECL intended to forfeit the same.

9. Specific submission of SECL is that the clause permitting forfeiture mentions that when there is a modification or derogation from the bid, the bank guarantee is to be forfeited within the validity period of the bid; but no time limit has been mentioned within which the bank guarantee can be invoked on the ground of submission of false, misleading and forged documents. SECL interprets the clause in such a manner, as if, whenever it comes to the knowledge of the authority that the bid document is false, misleading or forged, the authority can proceed to forfeit the bank guarantee.

10. The aforesaid interpretation of SECL cannot be accepted for the simple reason that the authority cannot claim infinite time to hold on to the bank guarantee. General terms and conditions on GeM portal mandates that earnest money of unsuccessful bidders shall be returned within fifteen days after the award of contract or expiry of bid validity, whichever is earlier.

11. In the instant case, the bid was valid till February, 2024 and contract was awarded on 23rd February, 2024. The first invocation was sought

to be made in March, 2024 that is long after the time period as mentioned in the GeM portal. To forfeit the earnest money the tender issuing authority ought to have taken steps within the period stipulated in the Government e-Marketplace platform.

12. The tender issuing authority cannot compel the applicant to keep on extending the bank guarantee with the sole intention to forfeit the same. Had SECL got the information regarding submission of false documents within the bid validity period or prior to execution of the contract, whichever is earlier, forfeiture could have been made. After getting information in June, 2024 about submission of false documents, the authority cannot seek to forfeit the earnest money deposit.

13. The bank has filed an affidavit disclosing that the request for invocation of bank guarantee made by SECL could not be honoured as the invocation claim was not as per the terms of the bank guarantee.

14. An objection has been raised by SECL regarding maintainability of the writ petition before this Court.

15. Government e-Marketplace is an electronic platform which operates across the country. The bank guarantee which has been sought to be invoked was drawn on the ICICI Bank Limited having office within the territorial jurisdiction of this Court. As the invocation will take effect within the jurisdiction of this Court, accordingly, the objection by SECL that this Court does not have the jurisdiction to adjudicate the

issue cannot be accepted. Invocation of bank guarantee has to be taken as an integral part of the cause of action for filing the writ petition. As such, the Court concludes that the Calcutta High Court has the jurisdiction to decide the issue.

16. In the facts and circumstances of the instant case, the Court is of the considered opinion that the bank guarantee of the petitioner, the unsuccessful bidder, is liable to be returned.

17. SECL is, accordingly, directed to return the bank guarantee to the petitioner positively within a fortnight from the date of communication of this judgment.

18. The writ petition stands disposed of.

19. All parties to act on the basis of the server copy of this judgment duly downloaded from the official website of this Court.

20. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)