

POOJA CERATECH PRIVATE LIMITED

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v.

OIL AND NATURAL GAS CORPORATION LTD. & ANR.

(Special Leave Petition (C) No. 19006 Of 2021)

DECEMBER 03, 2021

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[M. R. SHAH AND B. V. NAGARATHNA, JJ]

Tender: Tender process – Security interest deposit – Forfeiture of – Bidder participated in the tender process – Bidder sought permission to modify his price bid on the ground of mistake committed in offering the price – However, the bidder disqualified – Corporation then decided to invoke the bank guarantees furnished by the bidder towards the security interest deposit invoking clause 14.5(b) of the tender document – Writ petition by the bidder challenging the decision of the Corporation to forfeit the security interest deposit by invoking the bank guarantees – Writ petition dismissed by the High Court holding that in a contractual matter, the writ petition u/Art. 226 not maintainable – Correctness of – Held: High Court justified in dismissing the writ petition – As per Clause 14.5 of the tender document, the security deposit submitted by the bidders would be forfeited by the Corporation in the event bidder varies or modifies the bid in a manner not acceptable to ONGC during the validity period or any extension thereof duly agreed by the bidder – Action of the Corporation in consonance with the terms and conditions of the tender document – It cannot be said that it was not a case of modification of the bid but an arithmetical error in calculation which was sought to be corrected – Furthermore, the request for modification/variation of the bid offer was made during the validity period, thus, clause 14.5(b) of the tender document applicable – In view thereof, order passed by the High Court upheld.

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Kailash Nath Associates Vs. Delhi Development Authority and Anr. (2015) 4 SCC 136 – referred to.

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Case Law Reference

(2015) 4 SCC 136

referred to

Para 5

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A CIVIL APPELLATE JURISDICTION : Special Leave Petition
(C) No.19006 of 2021.

From the Judgment and Order dated 27.07.2021 of the High Court of Gujarat at Ahmedabad in Special Civil Application No.3569 of 2020.

B Malak Manish Bhatt, Ms. Neeha Nagpal, Vijay Patel, Anubhav Taneja, Advs. for the Appellant.

Ajay Jain, Jinendra Jain, Ms. Tannu, Ms. Mitika Choudhary, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

C 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 27.07.2021 passed by the High Court of Gujarat in Special Civil Application No.3569 of 2020 by which the High Court has dismissed the said writ application preferred by the petitioner, the original writ petitioner has preferred the present special leave petition.

D 2. The respondent – Oil and Natural Gas Corporation Limited issued a tender notice for sale of gas. That the writ applicant participated in the tender process by offering its bid. The petitioner received an e-mail on 29.11.2019 from one of the officers of the Corporation informing that upon evaluation of the technical bids on 17.09.2019, the price bids were to be opened on 03.12.2019 at 03.00 PM. That the petitioner requested the Corporation to permit him to modify his price bid on the ground that he has committed a mistake in offering the price. Initially, it was decided to postpone the opening of the price bids, however, the Corporation thereafter decided to open the price bids in absence of the writ petitioner. That thereafter the Corporation disqualifying the writ applicant, decided to invoke the bank guarantees furnished by the writ applicant towards the security interest deposit invoking clause 14.5(b) of the tender document. The writ applicant challenged the decision of the Corporation to forfeit the security interest deposit by invoking the bank guarantees. The writ petitioner preferred writ petition before the High Court under Article 226 of the Constitution of India. By the impugned judgment and order, the High Court keeping the question “whether in a contractual matter, the writ petition under Article 226 of the Constitution will be maintainable or not?” considered the matter on merits and has dismissed the writ petition, which has given rise to the present special leave petition.

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3. We have heard Shri Malak Manish Bhat, learned Advocate appearing on behalf of the petitioner. A

4. Shri Bhat, learned Advocate appearing on behalf of the petitioner has heavily relied upon the decision of this Court in the case of **Kailash Nath Associates vs. Delhi Development Authority and Anr., (2015) 4 SCC 136** and has submitted that as held by this Court and considering Section 74 of the Indian Contract Act unless there is a loss caused and/or established and proved, there is no question of forfeiting the security deposit. It is submitted that the purpose of security deposit is to secure the payment after entering into the contract and during the contract there is any failure on the part of the contractor to fulfill his part of the contract. B C

5. Having gone through the decision of this Court in the case of **Kailash Nath Associates (supra)** and considering the relevant clause of the tender document, more particularly, Clause 14.5, we are of the opinion that the action of the Corporation is absolutely in consonance with the terms and conditions of the tender document. As per Clause 14.5, the security deposit submitted by the bidders shall be forfeited by the Corporation in the event..... “bidder varies or modifies the bid in a manner not acceptable to ONGC during the validity period or any extension thereof duly agreed by the bidder”. D

6. Then it is submitted that it was not a case of modification of the bid but it was only an arithmetical error in calculation which was sought to be corrected. The aforesaid is factually not correct. In the communication dated 03.12.2019, it is submitted that there was a misunderstanding in the price calculations of the bidding price. E

7. Then it is next submitted that even the offer was not varied during the validity period. However, it is required to be noted that the last date of submitting the tender was 17.09.2019 and the opening date was 17.09.2019. The request for modification/variation of the bid offer was made on 03.12.2019. Therefore clause 14.5(b) of the tender document shall be applicable. F G

8. No error has been committed by the High Court in dismissing the writ petition, hence this special leave petition is dismissed.