

**(2010) 12 KL CK 0162**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 1489 of 2009**

Aksh Optifibre Limited

APPELLANT

Vs

Bharat Sanchar Nigam Ltd., Chief General Manager, Telecom  
and Chief Manager

RESPONDENT

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**Date of Decision :** 03-12-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2010) 12 KL CK 0162

**Hon'ble Judges :** Jasti Chelameswar, C.J;P.N.Ravindran, J

**Bench :** Division Bench

**Advocate :** Mullasseril P. Udayabanu, for the Appellant; Mathews K. Philip, SC  
for BSNL, for the Respondent

**Final Decision :** Dismissed

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## Judgement

J. Chelameswar, C.J.—Aggrieved by a judgment dated 4th June, 2009 in W.P. (C) No. 32919 of 2003, the unsuccessful Petitioner therein preferred the instant writ appeal.

2. The Appellant is a manufacturer of optic fibre cables and accessories. The first Respondent issued a tender notification dated 1.8.2002 inviting tenders for supply of certain material. The Appellant responded to the tender notification and in compliance with the condition of the tender notification the Appellant furnished a bank guarantee for an amount of Rs. 316026/- secured from the third Respondent Bank. The Appellant became the successful bidder with reference to some of the items quoted by him. The first Respondent issued a communication dated 15.11.2002 informing that the Appellant is the successful bidder and calling upon him to supply the various items specified in the said communication and comply with the various conditions specified therein. At that stage the Appellant informed the first Respondent that he is not willing to supply the material as demanded by the Respondent in the above mentioned communication. It is not very relevant at this stage for us to go into the reasons

which prompted the Appellant to decline supply of the material. We are only concerned with the factum of the Appellant's declination. As a consequence the Respondents invoked the bank guarantee mentioned above. Therefore, the Appellant approached this Court by way of the above mentioned writ petition with the prayers as follows:

(a) Call for the records pertaining to the Petitioner's bid and purported acceptance thereof in respect of the Tender Enquiry No. NWP/6-15/12F/2002 dated 03.07.2002 of the Respondent.

(b) Issue a writ in the nature of certiorari or any other appropriate writ or direction, quashing Ext.P12 letter/order issued by the Respondents 1 & 2 debarring the Petitioner from participating in tenders for a period of three years and encashing the Petitioner's Bank Guarantee dated 01.08.2002 given by way of bid security;

(c) Issue a writ in the nature of mandamus or any other appropriate writ or direction, commanding the Respondents 1 & 2 not to encash the Petitioner's Bank Guarantee dated August 1, 2002 given by way of its bid security and receive any payment thereunder;

(d) In the alternative, issue a writ in the nature of mandamus or any other appropriate writ or direction, commanding the Respondent to restore the bank guarantee amount of Rs. 3,16,026/- given by way of bid security to the Petitioner;

(e) to declare that Respondents 1 & 2 are not entitled to encash bank guarantee executed by the Petitioner as evidenced by the Ext.P3;

(f) To stay the operation of Exhibits P-12 & P-13 pending disposal of the Writ Petition;

(g) Award costs in favour of the Petitioner; and h) Any other writ direction or order in the facts and circumstances of the case.

3. By the judgment under appeal the said writ petition was dismissed. Hence this appeal.

4. The facts mentioned above are not in dispute. The rights and obligations of the Appellant to seek the various reliefs sought in the writ petition arise out of a contract. Whether the reasons sought to be given by the Appellant for resiling from the offer made by him are legally justified or not is a matter which depends on the examination of the various attendant circumstances which requires the evidence to be considered. It is also required after the establishment of the facts as to what are the exact legal rights and obligations of the Appellant and the Respondents in the context of the contract and the various other factual assertions made by the Appellant. Such an exercise is not normally undertaken by this Court in its jurisdiction under Article 226 of the Constitution. In our opinion, the conclusion reached by the learned Judge by the judgment under

appeal does not call for any interference.

The writ appeal is therefore dismissed at the admission stage. However, it is open to the Appellant to pursue such legal remedies as are available to him under law.