
(2018) 02 UK CK 0004
In the Uttarakhand High Court
Case No : 54 of 2018

Bhaiji & Company

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 21-02-2018

Acts Referred:

Citation : (2018) 02 UK CK 0004

Hon'ble Judges : K.M. Joseph, Sharad Kumar Sharma

Bench : Division Bench

Advocate : Arvind Vashisth, Shivam Vashisth, Prabha Naithani, Rakesh Thapliyal, V.K. Kaparwan,, D.S. Patni, Piyush Garg

Judgement

1. We heard Mr. Arvind Vashisth, learned Senior Counsel appearing on behalf of the appellant. We also heard Mrs. Prabha Naithani, learned

Brief Holder on behalf of the first respondent, Mr. Rakesh Thapliyal with Mr. V.K. Kaparwan, learned counsel for respondent nos. 2 & 3 and

Mr. D.S. Patni along with Mr. Piyush Garg, learned counsel on behalf of respondent no. 4. Though there is no appearance on behalf of respondent

nos. 5 to 7, having regard to the fact that in fact the work has already been allotted to respondent no. 4 in December, 2017 and having regard to

the nature of order we propose to pass on merits in the Appeal, we dispense with the notice to respondent nos. 5 to 7. We also take note of the

fact that respondent nos. 5 to 7 have not challenged the allotment of work to respondent no. 4 and in fact, respondent no. 4 is carrying out the

work. In the circumstances, the Application (CLMA No. 841 of 2018) for condonation of delay will stand allowed and the delay of 17 days will

stand condoned.

2. Appellant is the writ petitioner. A tender advertisement was issued by respondent no. 3 for management of Electronic Weighing Bridges

(Dharamkanta) at various gates of River Gaula in District Nainital. Petitioner also applied. As per Condition No. 16, a candidate should have at

least three years experience in management, upkeep, and maintenance of a weighing bridge (Dharamkanta).

3. The appellant in this regard sought to rely on Annexure -2 Experience Certificate issued by one Vindhwashni Stone Crushers Pvt. Ltd. In the

Certificate, it is stated that the appellant had successfully managed and operated the weighing bridge of the said stone crusher from the year 2013

till 2016. The technical bid of the appellant, however, came to be rejected on the ground that the appellant had not enclosed along with the

technical bid, copy of the Registration Certificate for last three years from Legal Metrology Department in view of Clause 11 Part 4 of the tender

document.

4. Appellant sought to quash Annexure-6 order dismissing the representation of the petitioner, which was, in fact, given as Annexure 5 by him.

Appellant also sought a mandamus to allow him to participate in the financial bid for electronic weighing bridges (Dharamkanta) and some other

reliefs were also sought.

5. Learned Single Judge dismissed the writ petition. Hence, the Appeal.

6. We heard Mr. Arvind Vashisth, learned Senior Counsel for the appellant, Mr. Rakesh Thapliyal along with Mr. Virendra Kaparwan, learned

counsel for respondent nos. 2 & 3, as also, Mr. D.S. Patni along with Mr. Piyush Garg, learned counsel for respondent no.4.

7. The learned Single Judge in its judgment has found, inter alia, that the appellant has nowhere disclosed in the writ petition that the experience, if

any, acquired by him, is in what capacity. He has not disclosed in the writ petition, his status in M/s Vindhvashini Stone Crusher Private Limited,

which is a company having a legal personality distinct from its shareholders, therefore, the experience earned by the said company cannot be

treated as experience of a Director or a shareholder. The learned Single Judge further noticed that the appellant is neither a Director, nor a

Shareholder of the Company. This created a doubt regarding the bona fides of the appellant as to whether he actually earned three years

experience or simply obtained a certificate for participating in the tender process. Thereafter, the learned Single Judge has proceeded to rely on the

judgment of the Hon'ble Supreme Court in the case of AFCONS Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited reported in

(2016) 16 SCC 818, and dismissed the writ petition.

8. Mr. Arvind Vashisht, learned Senior Counsel would point out that actually the appellant is a proprietor of a proprietorship concern. He did have

three years" experience as required in Clause 11, and the experience is vouchsafed for by the Company, which we have referred and which has

given the Certificate for the same. Therefore, the condition stood fulfilled by the appellant and there was no reason to reject the technical bid.

9. Per contra, it is the case of the appearing respondents that the appellant does not have the registration, as was required, from the Legal

Metrology Department as is insisted upon under Clause 11. A translation of Clause 11 about which there is no dispute reads as follows:

Experience of three years for running / maintaining Electronic Weigh Machines in the name of Contractor for which a certified copy of Registration

under the Department of Weights and Measures.

10. Mr. Arvind Vashisth, learned Senior Counsel for the appellant would also submit that the respondents do not have such a case that the

appellant did not have the registration. In this regard, we may straightway notice the following contentions in Paragraph 9 of the counter affidavit

filed by respondent no. 3:

9. That the contents of para no. 16 of the writ petition are matter of record. However, it is submitted here that the Legal Metrology department

has issued the registration certificate with the name of M/s Vindvasini Stone Crusher Pvt. Ltd. whereas, the specific condition of the tender is that

the bidder should have the registration certificate from the Metrological Department with his name. The said condition is specifically mentioned in

the point no. 11 of the part 4 of the tender notice, whereas, the registration certificate issued by the metrological department can be verified from

the annexure no. 3 of the writ petition which is at page no. 51 of the writ petition.

11. In the light of this, we do not think that it may be open to the appellant to contend that there is no such case. Therefore, the next question is

whether the appellant is justified in contending that the appellant having

requisite three years experience, nothing more is required in Clause 11. In other words, the experience, which the appellant had in the private limited company, which was certified by the Company and since the company, in turn, was admittedly having the registration, it was not further necessary that the appellant should also possess the registration. For this, appellant sought to construe the said clause and points out that the registration under the Department of Weights and Measures having been taken by the Company, it was not necessary for the appellant also to have taken the registration. On the other hand, it is here that the respondents join issue and point out that the requirement under Clause 11 is that not only a contractor must have three years' experience in maintaining the Electronic Weighing Bridge (Dharamkanta), but he should have been registered with the Department of Weights and Measures.

12. We would think that having regard to the tenor of the clause, the appellant may not be justified in placing interpretation, which he is pressing

before us. Quite clearly, a contractor must possess three years' experience for running and maintaining the Electronic Weighing Bridge

(Dharamkanta). It is thereafter that the Clause provides that "for which a certified copy of the Registration Certificate with Weights and Measures

Department is necessary". In fact, Mr. Arvind Vashisth, learned counsel for the appellant himself does not dispute that, there can be a case of a

self-employed person, who could be running the weighing bridge after obtaining registration. There could also be a case of a person, who is

running it for another person, who is having the registration, but in this case, it is for the employer to decide the matter. The State as an employer

can insist on terms and conditions, particularly in transactions in the commercial field and it is settled law that the State is ordinarily as free as a

private individual in the matter of running its business. In fact, there is no challenge also to the Clause. We are not called upon to decide the validity

of Clause 11. Therefore, if the State has insisted that the person having three years' experience must not only have three years experience, but he

should have been registered under the Department of Weights and Measures, we cannot make this premise for interference. We do not think that

on a reasonable interpretation of Clause 11, it could be said that the registration with the Department of Weights and Measures, even in respect of

experience must not be of the contractor, but it could also be of the employer under whom the contractor in a case of contract gained experience.

Furthermore, we may also not be oblivious to the law laid down by the Hon''ble Apex Court in the case of AFCONS Infrastructure Limited vs.

Nagpur Metro Rail Corporation Limited reported in (2016) 16 SCC 818 at Paragraph 16, which reads as follows:

16. In the present Appeal, although there does not appear to be any ambiguity or doubt about the interpretation given by NMRCL to the tender

conditions, we are of the view that even if there was such ambiguity or doubt, the High Court ought to have refrained from giving its own

interpretation unless it had come to a clear conclusion that the interpretation given by NMRCL was perverse or mala fide or intended to favour one

of the bidders. This was certainly not the case either before the High Court or before this Court.

13. Therefore, even proceeding on the basis that there is an ambiguity at best, we could not possibly interfere and grant relief to the appellant.

14. We may not be inclined to agree with finding of the learned Single Judge that M/s Vindvashini Stone Crusher Private Limited is a Company

having a legal personality distinct from its shareholder and therefore, belittle the experience earned by the appellant, which is vouchsafed by the

certificate issued by the Company and we would, therefore, proceed on the basis that he did have three years experience. We also notice that the

contract was awarded in December 2017 as is pointed out by Mr. Rakesh Thapliyal, learned counsel, to respondent no. 4.

15. We find no merit in the case of the appellant. The Appeal is dismissed. No order as to costs.