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**(2015) 09 SHI CK 0090**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 8055 of 2014**

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|-----------------------------------------------------|----|------------|
| Mittal Iron Store                                   | Vs | APPELLANT  |
| Himachal Pradesh State Electricity Board and Others |    | RESPONDENT |

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**Date of Decision :** 23-09-2015

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation :** (2015) 09 SHI CK 0090

**Hon'ble Judges :** Tarlok Singh Chauhan, J

**Bench :** Single Bench

**Advocate :** Rohit Chauhan, for the Appellant; Satyen Vaidya, Senior Advocate and Vivek Sharma, Advocates for the Respondent

**Final Decision :** Disposed off

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## Judgement

Tarlok Singh Chauhan, J—The petitioner was offered the work of disposal of old/obsolete electromechanical/electronics Meters (scrap) vide letter dated 13.8.2014 as per the rates specified in the sale order dated 9.12.2013 and was called upon to deposit a sum of Rs. 1,16,53,592/-(One Crore, Sixteen Lacs, Fifty Three Thousand, Five Hundred Ninety Two only) as the cost of meter scrap. The petitioner admittedly deposited this amount vide receipt dated 20.8.2014 and thereafter vide letter dated 20.8.2014 was allowed/authorized to lift the condemned material. The petitioner immediately started lifting the material from the stores of the respondent. However, on 25.8.2014, respondent No. 3 did not allow the loading of material in the vehicles hired by the petitioner on the ground that this was as per the directions of the higher authorities. The petitioner vide letter dated 28.8.2014 was informed that on account of complaint of some scrap dealer, the competent authority had stayed the order. The petitioner represented, but to no avail.

2. Before this petition could be taken up for hearing, the respondents during the pendency of the petition issued letter dated 22.10.2014, whereby the petitioner was communicated that the office offer (sale) letter dated 13.8.2014 had been

partially modified, resulting in reduction of scope of his work to about 40% and the Senior Executive M&T Division HPSEBL, Sundernagar was directed to refund to the petitioner the balance amount of Rs. 68,68,300/-.

3. Being aggrieved by the action of the respondents, the petitioner has approached this Court for grant of following substantive reliefs:

"b. Impugned action on the part of the respondents in stopping the work, which had been awarded to the petitioner vide letter dated 13.9.2014 (Annexure P-4), may kindly be quashed and set aside;

c. Respondents may kindly be directed to permit the petitioner to lift the condemned material, i.e., Electromechanical & Electronics Meters as per list attached with the authorization letter dated 20.8.2014 (Annexure P-6) from their stores at Solan, Una, Kangra, Banikhet, Hamirpur, Bilaspur and Sundernagar;

e. The impugned action on the part of respondents in unilaterally, illegally and arbitrarily reducing the quantities of the Electromechanical/Electronics Meters (Scrap) and reducing the scope of work to about 40% which has already been completed by the petitioner and further directing Senior, Executive, M&T, Division HPSEBL, Sundernagar to immediately refund balance amount in the sum of Rs. 68,68,300/- to the petitioner vide letter dated 22.10.2014 (Annexure P-13) may kindly be quashed and set aside."

4. The respondents in their reply have sought to justify their action by stating that it had received complaint from another scrap dealer alleging therein that the order in favour of the petitioner was illegal since the prevailing rates of scrap in the market were much higher. Therefore, it was after taking into consideration the public interest that the lifting/issuing of meter scrap was stopped vide communication dated 28.8.2014 and 26.9.2014.

I have heard the learned counsel for the parties and have gone through the records of the case.

5. At the outset, it may be observed that it is not in dispute that a fair and transparent procedure of inviting tenders had been adopted by the respondents, pursuant to which the petitioner was allotted the work of scrap, which fact is acknowledged even by the respondents themselves. Could this concluded contract be unilaterally recalled, altered, varied, modified etc., that too on the basis of complaint made at the behest of a competitor scrap dealer?

6. The answer to this is definitely in the negative for the simple reason that it was solely on the basis of complaint received from one Sanjeev Kumar, S/o Sh. Rajinder Kumar, R/o House No. 60A, Main Bazar, Bilaspur, that the impugned orders came to be passed. The said Sanjeev Kumar is none other than the scrap dealer, who too had unsuccessfully participated in the tender process by submitting a bid of Rs. 1,14,13,113/-. Therefore, the action drawn by the respondents, that too on the basis of a complaint by an unsuccessful and disgruntled bidder is not at all sustainable.

7. That apart, once the contract between the parties had been concluded, then it was impermissible for the respondents to have unilaterally altered, modified or varied the terms thereof. To say the least, respondents have failed to ensure even minimum fairness and processual justice and have acted with complete callousness and irresponsibility, giving go by even to the principles of natural justice and fair play.

8. Admittedly, respondent No. 2 is a State within the meaning of Article 12 of the Constitution of India and cannot, therefore, act like a private individual, who can act in a manner whatsoever he likes, unless it is interdicted or prohibited by law. The exercise of power is subject to constitutional limitations and cannot be exercised arbitrarily. It is a trite that the State and its instrumentalities have to act strictly within the four corners of law and all its activities are governed by rules, regulations and instructions.

9. At this stage, it shall be apt to note the contents of order handed over to the petitioner on 25.8.2014, when he was not permitted to load the material and the same reads thus:--

"Lorry No. H.P.-64 1922 has been returned empty, which was taken by M/s. Mittal Iron Store Chd. For loading Meters (names Khushi Ram as per the higher authority directions.

To be returned empty. Loading has been closed."

10. It is evident from the aforesaid that the action of the respondents is influenced by the directions of the higher authority, but what are those directions and at whose instance and at what level the decision pursuant to which these directions have been issued, is not forthcoming. Therefore, in this factual background, the defence of the respondents is not tenable and cannot be countenanced.

11. Moreover, the respondents under the guise of public interest cannot be permitted to defeat the legitimate claim of the petitioner, more particularly, when it is established on record that the entire action of the respondents was motivated and guided in order to confer undue benefit in favour of Sanjeev Kumar. Lastly the respondents have failed to place on record any document to establish and prove their stand that the value of scrap was far more than the rate as quoted by the petitioner.

12. In view of the aforesaid discussion, the present petition is allowed and the impugned orders dated 13.8.2014, 20.8.2014 and 22.10.2014 are quashed and set aside. The petitioner is held entitled to lift the entire scrap for which his bid of Rs. 1,16,53,592/- was unconditionally accepted by the respondents.

The petition is disposed of in the aforesaid terms, so also the pending application(s), if any.