
(2019) 02 UK CK 0021
In the Uttarakhand High Court
Case No : Special Appeal No. 115 Of 2019

M/s A.P. Securitas Private Limited	Vs	APPELLANT
Government Of India & Others		RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Constitution Of India, 1950 — Section 226

Citation : (2019) 02 UK CK 0021

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Sachin Dhamija, Bhaskar Chandra Joshi, Maneesh Bisht, Vipul Sharma

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Sachin Dhamija and Mr. Bhaskar Chandra Joshi, learned counsel for the appellant and Mr. Maneesh Bisht, learned counsel holding brief of Mr. Vipul Sharma, learned counsel for respondent nos. 2 to 4.

2. This appeal is preferred against the order passed by the learned Single Judge in WPMS No. 298 of 2019 dated 05.02.2019. The appellant herein filed WPMS No.298 of 2019 seeking a writ of certiorari to quash the cancellation of contract letter dated 25.01.2019 passed by the respondent institution; to issue an order or direction in the nature of certiorari for quashing the e-Tender notice published in the e-Procurement System of the Government of India website on 01.02.2019; to issue a mandamus commanding the respondent to permit the petitioner to take over the duties, and to deploy security guards and other manpower, as soon as possible at Roorkee, Saharanpur & GNEC campuses of the Indian Institute of Technology, Roorkee; and to make payment as per the contract.

3. By the letter dated 25.01.2019, the appellant-writ petitioner was informed

that, pursuant to the tender notice dated 16.08.2018 for outsourcing of security services, the contract was awarded to the appellant-writ petitioner; thereafter, an agreement was signed on 28.12.2018; on receipt of some objections, the respondent-institute had decided to review the tendering process; a communication of postponement was sent to the appellant-writ petitioner on 29.12.2019; as a result, the agreement was not activated, and the appellant-writ petitioner did not take charge with effect from 01.01.2019; on further examination, and subsequently on receipt of legal opinion, it was decided to cancel the agreement and to invite fresh tender; hence, the letter dated 26.12.2018 for award of the contract, and the agreement dated 28.12.2018, were cancelled before it came into force; fresh tender were invited; and the appellant- writ petitioner was invited to participate in the fresh tender process. Contending that termination of the agreement, entered into on 28.12.2018, vide proceedings dated 25.01.2019 is illegal, the appellant- writ petitioner invoked the jurisdiction of this Court.

4. It is not in dispute that the said agreement dated 28.12.2018 is not referable to any statute, and is a non-statutory contract. The said agreement, in clause 50 thereof, provides that all matters and disputes, arising out of the agreement, will be subject to the jurisdiction of Courts located in Uttarakhand. Clause 56 thereof, provides that, in the event of any dispute or difference at any time arising between the parties relating to this tender, it shall be resolved mutually; and, in case of any legal implication, the District Court, Haridwar will have jurisdiction to hear the matter. The said agreement also provides for arbitration. Clause 54 thereof stipulates that, in case of any dispute arising out of this agreement or any claim or dispute pertaining to interpretation of this agreement, the same should be referred to the sole arbitration by the Director, Indian Institute of Technology, Roorkee who shall decide the disputes etc in accordance with the Indian Arbitration Act; and whose decision shall be final and binding upon both the parties.

5. The learned Single Judge has, in the order under appeal, taken note of the fact that the agreement contained an arbitration clause. He held that rescindment of the contract by the impugned order would entail interpretation of the terms of the contract; it would not fall within the scope of interference under Article 226 of the Constitution of India; and the appellant-writ petitioner had the remedy of approaching the arbitrator under the terms of the contract. The Writ Petition was dismissed without prejudice to the right of the appellant to approach the arbitrator by invoking clause 5 of the Contract Act.

6. Shri Sachin Dhamija and Mr. Bhaskar Chandra Joshi, learned counsel appearing on behalf of the appellant-writ petitioner, would submit that the contract is ambiguous in as much as, while clause 50 read with clause 54 requires the parties to approach the District Judge at Haridwar, clause 54 requires the parties to approach the arbitrator; and the petitioner can always invoke the jurisdiction of the High Court, under Article 226 of the Constitution of

India, questioning the arbitrary action of instrumentalities of the State, such as the respondent -IIT, Roorkee.

7. Exercise of jurisdiction under Article 226 is discretionary. One of the grounds on which this Court would refrain from exercising its jurisdiction, to entertain the writ petition, is if the petitioner has an effective alternate remedy. In the present case the contract, entered into between the parties, provides for arbitration, and in some matters to invoke the jurisdiction of the District Court at Haridwar. If, as is now contended before us by the learned counsel for the appellant, the remedy of arbitration is not feasible, it is always open to the appellant-writ petitioner, in terms of the agreement, to approach the competent civil court which in the present case, as is stipulated in the agreement, is the District Court at Haridwar.

8. While we may not be understood to have held that, in all cases involving non-statutory contracts to which the State or its instrumentalities are parties, a writ petition would not lie, we must bear in mind that the scope of interference in an intra-court appeal, is extremely limited. It is only if the order under appeal suffers from a patent illegality would interference be justified. Exercise of discretion by the learned Single Judge, to refrain from interference and relegate the appellant-writ petitioner to arbitration, does not suffer from any such infirmity. We see no reason, therefore, to exercise jurisdiction to interfere with the order under appeal. Suffice it to make it clear that neither the order passed by the learned Single Judge, nor the order now passed by us, shall disable the appellant-writ-petitioner from either availing the remedy of arbitration, or from approaching the District Court, Haridwar, in accordance with law. The appeal however fails and is, accordingly, dismissed. No costs.