
(2019) 09 UK CK 0086
In the Uttarakhand High Court
Case No : Special Appeal No. 850 Of 2019

M/s Century Traders

APPELLANT

Vs

Bharat Heavy Electricals Limited And Another

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Citation : (2019) 09 UK CK 0086

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Jitendra Chaudhary, V.K. Kohli, Rajni Supyal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No. 2606 of 2019 dated 02.09.2019.
2. The appellant-writ petitioner invoked the writ jurisdiction of this Court seeking a writ of certiorari to quash the order dated 16.08.2016 issued by the Bharat Heavy Electricals Limited (for short the 'BHEL'), Rudrapur, District Udham Singh Nagar; a writ of mandamus directing the respondents to permit the appellant-writ petitioner to make payment of 90% of the auction amount in three interest-free installments within forty-five days as per Condition No. 11 Note (ii) under the Special Terms and Conditions of the Auction; and, thereafter, be pleased to permit the appellant-writ petitioner to lift the material in part from the site in proportion to the amount paid by him.
3. Facts, to the limited extent necessary, are that the appellant-writ petitioner, a scrap-dealer, participated in an auction conducted by the respondents for lifting aluminum scrap lying in their factory. The total contract amount, as determined pursuant to the auction, was Rs. 84,03,620/-. In terms of the e-tender, the appellant-writ petitioner was required to deposit a sum of Rs. 7,05,120/- within

seven days in favour of the BHEL, which they complied with. The appellant-writ petitioner, thereafter, sought permission to make payment in three equal installments, and to lift material proportionate to such payment. On the appellant-writ petitioner's request being rejected by the respondents, by the order impugned in the writ petition, they invoked the jurisdiction of this Court.

4. In the order under appeal, the learned Single Judge extracted Condition No. 11 of the Conditions of Contract, which reads as under:-

"11.0 PAYMENT PERIOD: The cost of each lot of materials along with all taxes and duties must be paid by the buyer within 15 days from the date of issue of Sale Order / Acceptance letter (including the date of issue).

Note:

(i) Above payment schedule shall supersede the payment schedule as stated in Clause 4 of General Terms and Conditions.

(ii) Payment dates for installments (if any) shall be strictly adhered to irrespective of whether lifting of earlier installments are completed or not."

4. The learned Single Judge, thereafter, observed that reliance was placed by the appellant-writ petitioner on the words "installments" in Note (ii) of Condition No. 11; this Condition did not confer any right on the appellant-writ petitioner to claim payment by installments; it merely conferred a discretion on the employer to receive the amount by way of installments; and such was not the case in the writ petition. While dismissing the writ petition as without merit, the learned Single Judge granted the appellant-writ petitioner 15 days' more time to lift the entire material and make payment. Aggrieved thereby, the present appeal.

5. Sri Jitendra Chaudhary, learned counsel for the appellant-writ petitioner, would submit that even earlier in the year 2014, when the appellant-writ petitioner had submitted their bid, they were permitted to lift the material on payment of 90% of the amount in two equal monthly installments; Note (ii) to Condition No. 11 should be examined in the light of the past practice; even if the said Clause is required to be understood as conferring a discretion on the respondent-Corporation, such discretion must be exercised only for just and valid reasons; and in the absence of any reason being furnished by the respondent-authorities, the impugned order, refusing to extend time, is arbitrary and illegal.

6. Clause 11.0 of the Conditions of Contract relates to the payment period and, in terms thereof, the cost of each lot of material, along with taxes and duties, must be paid by the buyer within 15 days from the date of issue of the Sale Order / Acceptance Letter. While the condition stipulated in the contract is for payment of the cost of the lot of material, including duties and taxes, within 15 days, Note (ii) stipulates that the payment dates for installments, if any, shall be strictly adhered to. On a conjoint reading of Condition No. 11 and Note (ii), it is clear that, while it is the obligation of the auction purchaser to make payment within 15 days, a discretion is conferred, in terms of Note (ii), on the

respondents to permit payment of the amounts in installments. It is evident from the use of the words "if any" in Note (ii) that, in the absence of any relaxation being granted by the respondents and permission being accorded for payment in installments, it is the obligation of the auction-purchaser to make payment, in terms of Clause 11.0 of the Conditions of Contract, within 15 days from the date of issue of the Sale Order / Acceptance Letter.

7. The mere fact that the said condition confers a discretion on the respondents to permit payment in installments, does not confer any right on the auction-purchaser to claim that installments should be granted for the mere asking, though they had participated in the auction knowing fully well that, in terms of Clause 11.0, they were obligated to make payment within 15 days. Permission having been granted in favour of the appellant-writ petitioner in the year 2014, to make payment in two installments, would not constitute a practice which can be said to have crystallized into a right in the appellant-writ petitioner's favour, that they should be granted the benefit of payment of the amount, in installments, in every subsequent auction. The appellant-writ petitioner's unilateral decision to make payment within three months is neither supported by the Conditions of the Agreement, nor is it accepted by past practice.

8. Accepting the appellant-writ petitioner's plea would mean that, even if the appellant-writ petitioner had asked for payment of the balance amount, in say 20 or 30 installments, the respondents were obligated to grant them such a benefit. The learned Single Judge has, in our opinion, rightly refused to interfere. He has, in fact, been indulgent in granting them 15 days' more time to make payment, which they have failed to comply with.

9. Sri Jitendra Chaudhary, learned counsel for the appellant-writ petitioner, seeks 15 more days time to make payment. While Sri V.K. Kohli, learned Senior Counsel appearing for BHEL, would submit that such a request is wholly unjustified, it is unnecessary for us to dwell on this issue. Suffice it to make it clear that the order now passed by us shall not disable the appellant-writ petitioner from requesting the respondent-BHEL for grant of some more time to make payment, and for the respondent-BHEL to consider the same, if they so choose to.

10. We may not be understood to have expressed any opinion on the appellant-writ petitioner's entitlement for grant of further time, in as much as the conditions of the contract specify 15 days as the period within which the payment should be made, and this period of 15 days expired on 22.08.2019 (15 days after the Acceptance Letter dated 07.08.2019) more than three weeks ago.

11. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.