

(2019) 07 UK CK 0256

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2771 Of 2018

M/S Energy Development Company Ltd

APPELLANT

Vs

Uttarakhand Jal Vidhut Nigam Limited & Another

RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 17

Citation : (2019) 07 UK CK 0256

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Vijay Bahadur Singh, A.S. Rawat, Priyanshu Gairola, Vinay Kumar

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J

1. The petitioner was given a contract to establish and run of a run of the river project which is a small hydro project having a capacity of 2 x 1750 KW at Limchagad in Uttarkashi. The petitioner has not been able to commission the project as yet inasmuch as there were various logistics and other problems being faced by the petitioner such as, non-availability of land and clearance from the Ministry of Environment and Forest, Government of India and other clearances.
2. Since there has been a breach of contract on the part of the petitioner, the respondent no.1 vide order dated 29.08.2018 has cancelled the contract of the petitioner, which is at Annexure No.33 of the writ petition.
3. This order was challenged by the petitioner before this Court in the present writ petition where as far as encashment of bank guarantee was concerned, the respondent no.1 was directed to deposit the same in a nationalized bank in the form of fixed deposit so that it may earn interest vide order dated 11.10.2018.
4. Now the matter has come up for hearing before this Court.
5. Learned counsel for the Uttarakhand Power Corporation Mr. Vinay Kumar has

pointed out that the contract executed between the two parties has an arbitration clause at clause 4.18. Clause 4.18 reads as under:-

"Arbitration

a) Rules of procedure for arbitration proceedings:

Any dispute arising in the present contract shall be referred to the Arbitration. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act 1996 (Indian Act no.XXVI of 1996) or any statutory modifications there to. The venue of arbitration shall be at Dehradun (India) and Courts at Dehradun with High Court of Uttarakhand at Nainital shall exclusively have the jurisdiction regarding dispute pertaining to this contract. The jurisdiction of other courts is specifically ousted. The award of the arbitral tribunal shall have the same effect as given in the Arbitration and Conciliation Act 1996.

b) Appointment of Arbitrator and conduct of arbitration:

The arbitration shall be carried out by the Arbitral Tribunal consisting of Sole Arbitrator appointed by the Chairman of UJVNL or any person authorized by him in this behalf in accordance with the Arbitration and Conciliation Act, 1996 (Indian Act No.XXVI of 1996) as amended from time to time."

6. Learned Senior Counsel for the petitioner Mr. Vijay Bahadur Singh fairly admits that since there is an arbitration clause in the contract and further informs this Court that he already has an instruction that they would move an appropriate application for appointment of an arbitrator within a period of two weeks.

7. In view of this position, nothing further needs to be done in this case.

8. Let the petitioner approach the Appointing Authority who shall appoint the Arbitrator in accordance with law.

9. Since by the interim order of this Court dated 11.10.2018 money has already been deposited in a nationalized bank, the same shall continue to be deposited as such for a further period of six months from today in order to enable the petitioner to approach the Arbitrator.

10. It is made clear that the interim order of this Court dated 11.10.2018 shall be subject to modification, vacation and correction etc., of the Arbitrator as the Arbitrator has powers under Section 17 of the Arbitration and Conciliation Act, 1996 to pass an interim order in accordance with law.

11. In view of the above, the writ petition stands disposed.