
(2019) 04 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 569 Of 2017 (M Of S)

M/s Lallo Ji Enterprises

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 01-04-2019

Acts Referred:

Citation : (2019) 04 UK CK 0003

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Pradeep Kumar Chauhan, K.N. Joshi

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. In the Writ Petition, in question, the petitioner has questioned the demand of recovery made on 15th October, 2016 and 13th December, 2016, as issued by respondent No. 2 and the recovery citation as a consequence thereto as issued by respondent No.4, whereby, the petitioner has been directed to appear on 24th March, 2017, to make good the demand as raised by the respondent No. 2.

2. Brief facts of the case as involved in the instant matter is that the petitioner who is engaged in the business of supply of Tent, Tin (GC sheet), furniture and various others articles of establishment and amenities for conducting the Mela, the Government had invited tender for the supply of the aforesaid components to organize the Ardh Kumb Mela of 2016 and the notice in that regard, when it came to the knowledge of the petitioner, he participated in the tendering process and an award / agreement was executed between the petitioner and respondent No. 2 on 28th November, 2015. Consequently, an agreement was executed, wherein, in its Clause 20, it provides an Arbitration Clause, which reads as under :-

" Arbitration

20-इस निविदा के अन्तर्गत ठेकेदार व विभिन्न विभागों के प्रमुखों के बीच भी मतभेद या विवाद, अथवा इस निविदा के अन्तर्गत सभी पक्षों के अधिकारों अथवा उत्तरदायित्व के सम्बन्ध में उत्पन्न हर प्रकार के प्रकरण आवश्यक समाधान हेतु आर्बिटर (ARBITRATOR) को ही संदर्भित किये जा सकेंगे, जो आयुक्त, गढ़वाल मण्डल, उत्तराखण्ड होंगे। आर्बिटर का निर्णय अंतिम होगा जो दानो पक्षों के लिए बाध्यकारी होगा। कोई भी प्रकरण संदर्भित किये जाने पर संदर्भ व आर्बिटेशन का मूल्य आर्बिटर के विवेकाधीन होगा जो इसकी धनराशि का निर्णय करेंगे तथा यह भी निर्देशित करेंगे कि यह धनराशि किसके द्वारा किसको और किस रीति से अदा की जायेगी। यहाँ 'z' उपर उल्लिखित किये गये प्रकरण के सम्बन्ध में कोई भी पक्ष किसी न्यायालय से अनुतोष प्राप्त करने का अधिकारी नहीं होगा।"

3. The petitioner successfully completed the work and it is not in dispute that on completion of the work assigned to the petitioner and that the work which was later on increased and assigned to the petitioner, have been performed by the petitioner satisfactory and respondents by their own wisdom and, according to their own computation of the bills presented by the petitioner in pursuance to the work awarded to him in terms of the contract dated 28th November, 2015, had been made with a full and final payment to the petitioner to the tune of Rs.4,21,84,291.19 on 16th May, 2016.

4. Surprisingly, after the payment of the aforesaid amount, it could be inferred that the terms of the contract and the liabilities accruing from it rather stands settled after the payment of the bill to the petitioner. Later on, the petitioner was surprised to receive a demand notice issued by respondent No. 2 on 15th October, 2016, directing the petitioner to remit back a sum of Rs.32,43,612/-, which, according to the respondents, was sought to be demanded in view of the audit objection Nos. 584, 572 and 624 and the respondents attempted to settle the amount as against the security deposit made by the petitioner at the time of entering into the contraction on 28th November, 2015.

5. Out of the total amount thus demanded, Rs.20 lacs was adjusted from the security deposit and the balance amount of Rs.12,43,612/- which constituted to be part of the audit objection No.585, was demanded from the petitioner by an order dated 13th December, 2016. Failure to do so, has resulted into the issuance of the recovery citation (undated), impugned in the writ petition.

6. The petitioner has questioned the subsequent recovery proceedings resorted to by the respondents after the remittance of the full and final payment to the petitioner based on the audit objection, the process of recovery of the amount as arrears of land revenue by issuing the recovery citation runs contrary of the contract itself, which in its Clause 20 provides that in case if there arises any dispute in pursuance to the contract, in question, either before or after the completion of the work, the same would be subjected to the arbitration proceedings to be conducted by the sole arbitrator, i.e. the Commissioner, Garhwal Mandal. The grievance of the petitioner is that instead of appointing the Arbitrator under Clause 20 of the agreement, straightway, passing the order of demand and then consequential recovery in pursuance to the recovery citation would be bad and illegal as under the terms of the contract, which was inter se settled between the parties and binding on them, the mode of settlement of the

dispute was rather agreed between the petitioner and the respondents to be done through arbitration. They have further contended that the recovery citation is bad from the view point from the reason that none of the provisions and, in particular, the U.P. Public Moneys (Recovery of Dues) Act, 1972, would not apply in terms of an agreed arbitration clause in the contract dated 25th November, 2015, settled between the parties, which equally binds them both.

7. This Court by an interim order dated 23rd March, 2017 had stayed the recovery proceedings subject to the condition imposed by the order dated 20th March, 2015. The interim order, as passed on the said date, reads as under :-

"Considering the fact that regarding the same matter, the petitioner had entered into a contract with the respondent State in which there is an arbitration clause and today the petitioner had also moved an arbitration petition before this Court for the same purpose, as an interim measure, it is provided that the operation and effect of the order dated 24.03.2017 shall remain stayed, provided the petitioner gives a bank guarantee of Rs.39,00,000/- (Rupees Thirty Nine Lakh Only) with the District Magistrate, Haridwar. The bank guarantee shall be of a nationalized bank and should be for atleast a period of two years."

8. After exchange of the pleadings, when the writ petition was being argued at the final stage with the consent of the parties, the learned counsel for the respondents though admits the fact of the conditions imposed by Clause 20 of the agreement had made reference to Clause 28 of the said contract from the view point that under the terms of the contract, the right of the employer was reserved to make the deduction from the amount to be paid to the contractor in excess to the worked performed.

9. Without venturing into the merit of the liabilities and with regard to the quantum of the bill reimbursed to the petitioner and considering the impact of interim order dated 23rd March, 2017, whereby, the Court itself has left open for the petitioner to invoke arbitration clause, this Court is of the view that the recovery proceedings resorted by the impugned order without there being recourse or decision by the Arbitrator would not be tenable, as the same was resorted to after making of full and final payment under the decision making process held ex parte by respondent No. 1 itself.

10. Thus the recovery in pursuance to the impugned recovery citation is quashed, subject to the condition that its adjudication if at all required is to be made by the Arbitrator, which the petitioner has sought to be appointed by invoking Clause 20 by filing the ARBAP No. 8 of 2017 for appointment of an Arbitrator.

11. Subject to above observations, the Writ Petition is allowed.