
(2013) 12 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20476 of 2013 (O/M)

M/s. Mahavir Transmission Udyog Pvt. Ltd.	APPELLANT
Vs	
Punjab State Transmission Corporation Ltd. and Others	RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : AIR 2014 P&H 21 : (2014) 3 BC 309

Hon'ble Judges : Sanjay Kishan Kaul, C.J; Augustine George Masih, J

Bench : Division Bench

Advocate : Shailendra Jain, for the Appellant; Roshan Lal Sharma, for the Respondent

Final Decision : Allowed

Judgement

1. Leave is granted to place on record replication to the written statement of all the respondents (wrongly categorized as of respondent No. 3) and the application is allowed.

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The petitioner seeks to assail before us the speaking order dated 2.8.2013 (Annex-ure-P-13) to the limited extent that it seeks to debar the petitioner upto 24.9.2017 from future participation in the tenders.

2. The petitioner, a private limited company, entered into an agreement with respondent No. 1 on 27.4.2010 for manufacture, testing, supply and delivery of 490 Km ACSR Panther 200 mm² against Tender Specification No. DTQ-3155. Supplies were made against various invoices, but issue arose on account of quality of supply. The respondents thus, are stated to have refused to pay the balance consideration while asking the petitioner to lift the alleged defective supply. In view of this dispute, the petitioner approached Uttrakhand Small Enterprises Facilitation Council (USEFC) u/s 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the said Act"). Initially as envisaged under the said provision, conciliation proceedings were

endeavoured which did not proved to be fruitful and in terms of sub-section (3) of Section 18 of the said Act, the USEFC took upon itself to arbitrate in terms of the dispute under the Arbitration and Conciliation Act, 1996. In order to appreciate the procedure of what was done, we reproduce Section 18 of the said Act as under:--

18. Reference to Micro and Small Enterprises Facilitation Council.--(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due u/s 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under subsection (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

3. The stand of the respondent No. 2 was sought for, vide communication dated 10.10.2012, emanating from the USEFC and the petitioner is also stated to have filed revised claim petition thereafter.

4. A parallel proceeding arose out of action proposed by respondent No. 2, vide letter dated 25.9.2012, in the form of a debarment order against the petitioner for a period of five years for future participation and seeking to forfeit the bank guarantee amongst others. This letter claims that an earlier communication dated 29.7.2011 had been addressed in this behalf which remained unanswered. The petitioner aggrieved by these actions filed Civil Writ Petition No. 341 of 2013 before this Court, inter alia, raising the absence of show-cause notice prior to initiation of debarment proceedings, apart from pointing out that the arbitration

process was on. The writ petition was allowed quashing the debarment order of 25.9.2012 on 20.3.2013 and calling upon the petitioner to submit reply to the show-cause notice dated 29.7.2011 within three weeks whereupon respondent No. 2 was to pass a speaking order after giving personal hearing to the petitioner.

5. The petitioner submitted reply to the show-cause notice on 1.4.2013 and after giving personal hearing on 10.6.2013 passed a speaking order on 2.8.2013 once again debarring the petitioner for five years upto 24.9.2017 which is now sought to be assailed in the present petition filed under Article 226 of the Constitution of India.

6. The petitioner has brought our attention to the reply dated 1.4.2013 (Annexure-P-8) where a specific plea had been raised that prior to the blacklisting order dated 25.9.2012, the petitioner had already initiated arbitration proceedings, vide an application dated 28.8.2012 to USEFC which had resulted in the said Council seeking a reply. Thus, arbitration process was stated to be under way on the same issue and a request was made to the respondents that it would be disrespectful to the high office of the learned Arbitrator for the parties to engage on the same issue. In this behalf, reliance was placed in the said letter on certain judicial pronouncements.

7. Learned counsel for the petitioner has also pointed out that in terms of letter dated 15.5.2013 issued by the USEFC at Annexure-P-10, the factum of initiation of conciliation proceedings u/s 18(2) of the said Act was informed to both the parties as also their failure and the consequent decision taken on 24.8.2013 u/s 18(3) of the said Act to initiate arbitration proceedings. Both the parties were called upon to depute their representatives at a date and time to be intimated. It has thus, been emphasized that there can be no doubt of the initiation of the proceeding for arbitration much prior to the issuance of the impugned order on 2.8.2013.

8. Learned counsel for the petitioner relied upon the judgment of the Delhi High Court in National Building Construction Corporation Limited Vs. New Delhi Municipal Council and Another, to advance the proposition that where arbitration disputes were pending between the parties, action of blacklisting during pending proceedings would be illegal and the impugned order in this behalf had been set aside. Reliance in this behalf was placed by the learned single Judge on the view of learned Division Bench in Indian Oil Corporation Ltd. Vs. SPS Engineering Ltd., . Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains and thus it was held that the proposed administrative action even after recession of contract which had become subject-matter of arbitration seems to have lost sight of this cardinal principle. In Prakash Atlanta JV and others v. National Highways Authority of India and others, 2010 (169) DLT 664, another learned single Judge held that where a matter was subject-matter of arbitration proceedings, the decision of the Arbitrator should have been awaited before taking a decision as to the blacklisting in a hurry.

9. On the other hand, learned counsel for respondents submits that in the earlier writ petition filed by the petitioner, no such issue was raised and the only issue raised was of absence of show-cause notice and opportunity of hearing prior to the blacklisting order being passed. Learned counsel has also drawn our attention to a copy of agenda enclosed with memo dated 15.10.2013 being Annexure-R/A where representatives of both parties were present and issues had been raised by the respondent qua the arbitration including as to who would be Arbitrator, what would be terms and conditions, whether the arbitration was to start from initial stage and arbitration would take place on what points/issues to contend that really speaking there was no arbitration pending even as late on October, 2013.

10. We have given our thought to the matter and on hearing learned counsel for the parties are of the opinion that there can be little doubt of the arbitration mechanism having been invoked in accordance with Section 18 of the said Act much prior to the impugned speaking order dated 2.8.2013. In fact, this process began in the year 2012 by initiation of process of conciliation under sub-section (1) of Section 18 of the said Act and it is on the failure of the same and under the same mechanism providing for compulsory arbitration that sub-section (3) of Section 18 of the said Act was invoked. This is apparent from the communication dated 15.5.2013 (Annexure-P-10) which refers to the decision taken by USEFC on 23.4.2013 "to initiate the arbitration proceedings" and calling both the parties to remain present before it. Not only that, in reply to the show-cause notice for which leave was granted in the earlier proceedings, the petitioner, vide communication dated 10.6.2013, had clearly raised the issue of the pendency of arbitration proceedings and the desirability of the respondents holding their hands pending conclusion of arbitration proceedings. Thus, the respondents proceeded to pass the impugned debarment order despite arbitration proceedings pending.

11. As to what should be the approach in this behalf is clearly enunciated in two judicial pronouncements referred to aforesaid with which we are in agreement. It was thus, desirable for the respondents to stay their hands qua the issue of blacklisting pending arbitration proceedings. Thus, one course of action for us is to keep impugned order in abeyance qua the issue of debarment but then we do not know the fate of the arbitration proceedings which may go completely in favour of one or the other party or may go partially in favour of either of the parties. This may necessitate passing of a fresh/supplementary order qua the issue of debarment. The impugned order, of course, deals with issue beyond debarment but we have confined ourselves to the issue of debarment.

12. We are thus, of the view that the present writ petition is liable to be allowed in the following terms:--

(i) The impugned order dated 2.8.2013 should be kept in abeyance during the pendency of the arbitration proceedings;

(ii) Dependent on the fate of the arbitration proceedings, either the impugned order can be revived or a fresh/supplementary order passed qua the aspect dealing with the debarment dependent on the award to be rendered in the arbitration proceedings;

(iii) In either eventuality in case of an adverse action of the respondents post conclusion of arbitration proceedings, the petitioner would be entitled to challenge the same in accordance with law.

13. The petition is accordingly allowed, leaving the parties to bear their own costs. The operative portion of this order be conveyed to all the parties by the respondents to whom the debarment order was circulated/sent, so that the petitioner does not face any inconvenience.