
(2020) 09 UK CK 0030

In the Uttarakhand High Court

Case No : Appeal from Order No. 196 Of 2020

PRL Projects & Infrastructure Ltd

APPELLANT

Vs

Public Works Department & Another

RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 37

Citation : (2020) 09 UK CK 0030

Hon'ble Judges : Lok Pal Singh, J;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Hari Mohan Bhatia, Anil K. Bisht, Suyash Pant, Monika Pant

Final Decision : Disposed Of

Judgement

Lok Pal Singh, J

Mr. Hari Mohan Bhatia, learned counsel for the appellant.

Mr. Anil K. Bisht, learned Addl. Chief Standing Counsel and Mr. Suyash Pant, learned Brief Holder for the State / respondent no. 1.

Ms. Monika Pant, learned counsel for respondent no. 2.

1) This appeal, preferred under Section 37 of Arbitration and Conciliation Act 1996, is directed against the order dated 07.09.2020, passed by Addl. District Judge, Commercial Court, Dehradun, in Arbitration Case no. 41 of 2020, PRL Projects & Infrastructure Ltd. Vs Public Works Department.

2) Facts leading to filing of present appeal are that there was a dispute going on between the appellant and respondent no. 1 in regard to some construction work. Respondent no. 1 intends to encash the bank guarantees furnished by the appellant. Feeling aggrieved, appellant instituted the aforesaid case before the Commercial Court, Dehradun, being Misc. Case no. 41 of 2020.

3) The Misc. case was registered on 19.08.2020. Learned Commercial Court,

Dehradun passed an order issuing notice to the respondent no. 1 inviting objection against the interim relief application (Paper no. 6C/2). On the same day, counsel for respondent no. 1 puts in appearance and 07.09.2020 was fixed for hearing on the interim relief application. The matter was taken up on 07.09.2020. It depicts from the order dated 07.09.2020 that learned counsel for respondent no. 1 withdrew his Vakalatnama. However, ADGC (Civil) appeared on behalf of the State, who made a statement that the copy of the petition and application has not been received by him, therefore, he could not file the objection to the interim relief application. It was contended on behalf of the appellant that in case the bank guarantees are encashed by the respondent no. 1, the purpose of instituting the suit would frustrate, as such, the respondent no. 1 be restrained from encashing the bank guarantees till the next date of listing. A statement came forward from the respondent side that the period for which the bank guarantees were furnished by the appellant has elapsed and time has not been extended, therefore, it is not possible to encash the bank guarantees. A statement was made by respondent no. 1 that on the next date of listing, the bank guarantees would not be encashed on factual grounds. Having considered the statement of respondent no. 1, the Commercial Court fixed the matter for hearing on the interim relief application (paper no. 6C/2) and objection thereon on 18.09.2020.

4) On the one hand, respondent no. 1 has made statement that he will not encash the bank guarantees in view of the fact that the bank guarantees are with the appellant, on the other hand, the Executing Engineer, Construction Division, Public Works Department, Khatima wrote a letter dated 09.09.2020 to respondent no. 2 stating therein that more than 150 days' time has elapsed since the receiving of original bank guarantee by your bank on 17.07.2020 regarding the revocation and encashment of the above mentioned bank guarantee. In spite of reminding time and again through above cited letters you never responded. It was further mentioned that you are again requested to revoke and encash the above mentioned bank guarantees and send the total amount of bank guarantees to the undersigned in the form of Demand Draft payable at Khatima, Udham Singh Nagar in favour of Executive Engineer, Construction Division P.W.D. Khatima within three days of receipt of this letter via email otherwise FIR will be lodged against you in local police station.

5) Learned counsel for the appellant submits that as the statement was made on behalf of respondent no. 1 that till the next date of listing the bank guarantees would not be encashed, respondent no. 1 should have honoured the statement made before the Commercial Court.

6) Per contra, Mr. Anil K. Bisht, learned Addl. Chief Standing Counsel appearing for respondent no. 1 submits that such a statement has not been made before the Commercial Court. However, later on he realized his mistake and submits that the original bank guarantees are with the appellant, therefore, the same cannot be encashed by the bank in favour of respondent no. 1. The statement of

learned Addl. Chief Standing Counsel is misconceived.

7) A perusal of the order dated 07.09.2020 would reveal that learned ADGC (Civil) appeared on behalf of respondent no. 1 and has made a statement before the Commercial Court that the original bank guarantees are with the appellant and the time to encash the bank guarantees has not been extended, therefore, it is not possible to encash the bank guarantees. However, a statement was made that till the next date of listing the bank guarantees would not be encashed on factual grounds. Having considered the statement of learned counsel for respondent no. 1, learned Commercial Court fixed 18.09.2020 for hearing on the interim relief application and objection thereon.

8) Perusal of the letter dated 09.09.2020 written on behalf of respondent no. 1 would reveal that after the order dated 07.09.2020, respondent no. 1 has threatened respondent no. 2 to encash the bank guarantees, otherwise FIR will be lodged against the bank officials.

9) Learned counsel for the parties made a statement at Bar that the appeal be disposed of at the admission stage itself. In view of the statement made by learned counsel for the parties, present appeal stands disposed of with the direction to the Commercial Court, Dehradun to decide the interim relief application (paper no. 6C/2) and objections thereon, in accordance with law, after affording ample opportunity of hearing to both the parties. However, it is directed that till decision is taken on the interim relief application, respondent no. 1 shall restrain itself from encashing the bank guarantees from the appellant.

10) With the aforesaid direction, the appeal stands disposed of, finally. (Exemption application no. 7188 of 2020 as well as Stay Application no. 7189 of 2020 both stand disposed of).

11) No order as to costs.

12) Let a copy of this order be supplied to learned counsel for the parties today itself on payment of usual charges.