Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 14/09/2026

(2015) 09 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9975 of 2015

SVR Electricals (P) Ltd. APPELLANT

Vs

Jaipur Vidyut Vitran Nigam Ltd. and Others RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Citation : (2015) 09 RAJ CK 0061

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Manish Kumar Sharma, for the Appellant; Bipin Gupta, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Alok Sharma, J—This petition has been filed praying that the respondent Jaipur Vidyut Vitran Nigam Limited (hereinafter ''the Nigam'') be directed to refer the disputes between the petitioner firm and the Nigam to the Settlement Committee as per clause 26 of the purchase order dated 27-7-2009 and in the process of the letter dated 22-6-2015 issued by the Superintending Engineer, JVVNL rejecting petitioner firm''s (hereinafter ''the firm'') request for referring the matter to the settlement committee till the deposit of alleged penalty amount Rs. 23,44,182/- on account of recoveries under TN-2051, TN-2053, TN-2062 and TN-2068 be set aside. It has also been prayed that till the adjudication of disputes by the Settlement Committee, the Bank guarantees furnished by the firm to the Nigam not be encashed.

2. The facts of the case are that the petitioner firm having been registered as a vendor with the respondent Nigam for supply of transformers participated in various tender processes initiated by the Nigam for supply of transformers. The petitioner firm was successful in several of its bids such as one pursuant to Tender notice No. 2053 in respect whereof purchase order dated 27-7-2009 was issued. Clause 26 of the said purchase order provided for reference of dispute to a Settlement Committee. Similarly the petitioner firm was also favoured with

three other purchase orders with condition similar to clause 26 of the purchase order dated 27-7-2009 following tender processes pursuant to TN-2051, TN-2062 and TN-2068. It has been submitted that disputes with regard to supplies pursuance to several of the purchase orders ensued as the petitioner firm could not fully supply transformers as contracted for owing to the Nigam having committed breach of conditions of the terms and conditions of the contracts largely relating to non-payments and processes for acceptance of goods supplied. It has been submitted that vide letter dated 1-6-2015 the petitioner firm invoked clause 26 of the purchase order dated 27-7-2009 and similar conditions in other purchase orders seeking reference of the disputes relating to purchase orders under TN-2051, TN-2053, TN-2062 and TN-2068 to the Settlement Committee. Yet immediate reference to the Settlement Committee was denied by the respondent Nigam on the absolutely arbitrary and unreasonable ground that the petitioner firm first deposit the alleged penalty amount Rs. 23,44,182/- on account of its alleged breach of terms and conditions of the purchase order dated 27-7-2009 and other orders for supply of transformers to the Nigam. It has been submitted that while on the one hand the respondent Nigam itself refuses to comply with the agreed conditions of the purchase orders and refer the dispute to the Settlement Committee, yet, on the other hand, the bank guarantees submitted by the petitioner firm in the course of the transactions for the supply of transformers to respondent Nigam are sought to be arbitrarily invoked. It has been prayed that in the circumstances this court direct the respondent Nigam to refer the disputes between it and the petitioner firm to the Settlement Committee in terms and condition 26 of the purchase order dated 27-7-2009 and similar conditions the purchase orders issued to the firm in relation to TN-2051, TN-2062 and TN-2068 and further direct the respondent Nigam that during pendency of the dispute before the Settlement Committee, the bank guarantees submitted by the petitioner firm in favour of the respondent Nigam not be encashed.

3. Reply to petition has been filed. It has been submitted that the petition is deserving of dismissal on account of the petitioner firm not approaching the court with clean hands. It has been submitted that the petitioner firm was issued various purchase orders pursuant to tender processes initiated by the Nigam. Yet at times, it failed to supply the requisite number of transformers, and sometime it did not supply any transformer at all vis-a-vis certain purchase orders or made defective supplies. It has been submitted that in terms of purchase order following TN-2051/112 dated 22-10-2009, the petitioner firm failed to supply a single transformer and in terms of the contract was visited with a penalty of Rs. 7,27,159/-, which remained unpaid. Similarly with regard to the purchase order following TN-2053/35 dated 27-7-2009 the petitioner firm was again required to supply transformers, of which only part supply was made of which 20 transformers failed in Central Testing Laboratory of the Nigam as would be evident from letter No. 4285 dated 30-11-2010. Pursuant to TN-2053 and purchase orders placed, with regard thereto, only 77 transformers were found

satisfactory of which payment has been made to the petitioner firm. Referring to TN 2062/189 dated 3-2-2010 it has been submitted that the petitioner firm was required to supply 675 transformers in respect of which not even a single transformer was supplied by the petitioner firm. Similarly pursuant to TN-2068/178 dated 27-1-2010 the petitioner firm was required to supply 5 transformers but did not supply the same. Various other breaches by the firm with regard to supply of transformers under the purchase orders following different NITs aforesaid were committed by the firm. In the circumstances the petitioner firm has been visited with penalty and in the aggregate amounting to Rs. 23,44,182/- under the terms and conditions of various purchase orders placed on it. Recovery notice was sent to the petitioner firm on 19-9-2013. On failure of the petitioner firm to make payment of penalty amount due on account of breach of various contracts, the firm''s bank guarantees were invoked. It then approached the Nigam and requested that the bank guarantee be not encashed on undertaking that the entire penalty amount as claimed would be paid on or before 31-7-2015. A copy of the petitioner''s writing dated 23-5-2015 in this regard has been annexed with the reply to the writ petition. It has been submitted that on the assurance of the petitioner firm with regard to payment of penalty amount of Rs. 23,44,182/- the respondent Nigam kept in abeyance the encashment of the bank guarantee. None of the aforesaid facts have been brought to the notice of the court by the petitioner firm which is therefore guilty of suppression of material facts. Therefore the writ petition deserves dismissal at the threshold on the said ground. It has been submitted that in the facts obtaining there is no dispute to be referred to the Settlement Committee as the petitioner has agreed to deposit the outstanding penalty amount of Rs. 23,44,182/- as per writing dated 23-5-2015. Hence reference to the settlement committee as sought in the writ petition is misplaced. It has however been further submitted in the alternative that, in any event the petitioner firm having admitted to the penalty amount levied against it and expected to pay, it should be first require to deposit the same, and thereupon the matter can be considered and decided by the settlement committee, if so directed by the court.

4. Mr. Manish Kumar Sharma, counsel for the petitioner firm has submitted that the letter dated 23-5-2015 Annexure-R/12 was submitted by the petitioner firm seeking reference of the disputes between the petitioner firm and the Nigam qua the various purchase orders to the Settlement Committee. However on the Managing Director of the petitioner firm approaching the Nigam carrying the said letter he was coerced into admitting the liability of the penalty amount of Rs. 23,44,182/- arrived at without due process under threat of imminent invocation of bank guarantees issued by the firm in favour of the respondent Nigam. Such admission is not binding on the petitioner firm, submitted counsel. He submitted that in the circumstances, disputes obtaining between the petitioner firm and the respondent Nigam, in the terms of the condition No. 26 of the purchase order dated 27-7-2009, and similar clauses in other purchase orders relating to supply of transformers, they be directed to be referred to the Settlement Committee.

And pending settlement the bank guarantees directed not to be encashed by the Nigam.

5. Mr. Bipin Gupta, appearing on behalf of the respondent Nigam reiterating the contents of the reply to writ petition prayed for dismissal of the writ petition.

6. Heard. Considered.

7. It has not been disputed by the counsel for the respondent Nigam that the purchase orders, under which supply of transformers were made by the petitioner firm, contained a clause for referring all disputes between the parties relating to the matters under contract to the settlement committee. One such purchase order dated 27-7-2009 has been filed with the writ petition, wherein it has been stated that "in case of any question/dispute, differences whatsoever arise between the purchaser and supplier upon or in relation to the contract the matter may be referred to the settlement committee so constituted by the Nigam". Similar conditions in the other purchase orders for referring the dispute to the settlement committee obtained in all purchase orders. This fact has not been denied by the respondent Nigam either in reply to writ petition or in the course of arguments.

8. The question that remains is as to whether the deposit of penalty amount can be made a pre condition for the reference of disputes between the petitioner firm and the Nigam to the settlement committee in terms of the contract between the parties. A perusal of clause 26 of the purchase order dated 27-7-2009 does not support the case of the respondent Nigam that a reference cannot be made until payment of the penalty amount allegedly outstanding against the firm. I am also not impressed with the contention of counsel for the respondent Nigam that the hand written part in the petitioner firm''s typed letter dated 23-5-2015 can be construed as un-adulterated and unequivocal admission of the petitioner firm to pay the penalty amount of Rs. 23,44,182/- levied for breaches in respect of various purchase orders following TN-2051, TN-2053, TN-2062 and TN-2068. A perusal of the letter dated 23-5-2015 indicates that the commitment to deposit the penalty amount on or before 31-7-2015 is in hand-writing, while the remainder letter is typed. In the circumstances, it is not difficult to visualise the plausibility of the defence of the petitioner firm that the said writing was a consequence of economic coercion with the imminent threat of bank guarantees issued by the petitioner firm in favour of the respondent Nigam otherwise being encashed. Whether the hand-writing in an otherwise typed letter dated 23-5-2015 would be binding on the petitioner firm would be a matter of consideration by the settlement commitment and subsequently if warranted by the courts. Further there is nothing on record with regard to the manner in which the penalty amount Rs. 23,44,182/- as claimed by the Nigam allegedly in the terms and conditions of the contract/purchase orders was arrived at. The obligation to pay the amount of penalty as claimed by the respondent Nigam is thus by itself can be a dispute amenable to the jurisdiction of the Settlement Committee of the Nigam.

9. I am, however, disinclined to accept the prayer of the petitioner firm that this court restrain the encashment of its bank guarantees by the respondent Nigam. Bank Guarantees are a separate contract between the bank issuing them and the beneficiary. It is well settled that unless there is underlying fraud, encashment of bank guarantee would not be injuncted by courts. This is not so nor argued in the case at hand. Mere dispute between the parties to a contract cannot entail restrain on the encashment of bank guarantees which are ordinarily to be encashed without any demur in the event of the beneficiary invoking the same. The amount, so encashed will be adjustable in the amounts payable one way or the other as determined by the Settlement Committee.

10. Consequently, the writ petition is partly allowed with a direction to the respondent Nigam to refer all disputes between the petitioner firm and the Nigam under purchase orders relating to TN-2051, TN-2053, TN-2062 and TN-2068 to the Settlement Committee within a period of three weeks from today. Thereupon the Settlement Committee would be obliged to decide the disputes referred to it within a period of six months thereafter.