In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 508 of 2019

Nand Lal Shaw
Vs.
Union of India and others

For the petitioner	:	Mr. R. K. Chowdhury, Mr. T.K. Mitra
For the Union of India	:	Ms. Aparna Banerjee
Hearing concluded on	:	02.03.2021
Judgment on	:	09.03.2021

The Court:

1. The petitioner emerged as a successful bidder in an e-auction held on November 30, 2018 by respondent no.2 for sale of 489.659 metric tons (MT) of scrap materials. Accordingly, a Delivery/Sale Release Order was issued in favour of the petitioner (Annexure P-2 at page 22 of the writ petition) which indicates that the total amount paid by the petitioner to the Railways was Rs.1,27,15,886/- (without GST). The petitioner was permitted, in terms of the tender as well as the Sale Release Order, to cut the scrap material in pieces to facilitate loading. Relying on several e-Way Bills and receipts of payments made to weighbridges, the petitioner claims that altogether 434.659 MT of such scrap materials, out of the total of 489.659 MT, was delivered to the petitioner by February 9, 2019. The petitioner places reliance on several Requisition and Issue Notes issued by the concerned officials of the Railways, all of which indicate that the scarp material was delivered in part. The last such Note was issued on January 15, 2019, which also indicates that the delivery was made in part.

2. Relying on a Joint Note issued by the Railways and signed by the representative of the petitioner, learned counsel for the petitioner argues that, admittedly, due to earth cutting and dumping of muddy soil of the construction work which was going on, bed plate, bearing plate, bottom flange plate, etc., lying on the river bed and muddy soil could not be recovered. It was also mentioned in the said Joint Note dated February 9, 2019 that after clearing the earth covered materials if found, fresh programme for witnessing the balance quantity after obtaining necessary approval of the competent authority may be done. The note ended with the sentence: "Undersigned are undisputedly agreed to the above fact."

3. Subsequently, the petitioner communicated to the respondent no.2 on March 19, 2019 therein for refund of the materials which could not be recovered from the site. It was indicated in the said communication that the materials which could not be recovered was approximately of 55 MT. There are subsequent communications by the petitioner to respondent no.2, reiterating such claim for delivery of due quantity, in the alternative for refund for such undelivered amount, at the earliest. The petitioner has been consistently claiming in several letters that the due materials amounted to 55 MT, which claim has been reiterated in the pleadings of the writ petition itself. The petitioner, thus, prays for a direction upon the respondents to deliver the balance

55MT of scrap materials, in the alternative to refund the sale value together with GST, TCS and interest.

4. However, in a chart filed by learned counsel for the petitioner in court, a copy of which was handed over to learned counsel for the respondents, it was indicated that, as per the receipts issued by the weighbridges, the amount of goods delivered (without tax) was worth Rs.1,10,86,725/-. Deducting such amount from the total amount paid, that is, Rs.1,25,15,886/-, the amount due comes to Rs.16,29,161/-. By dividing the said due amount by the sale price as mentioned in the notice inviting tender (Rs.25,666/- per MT), the petitioner claims that the due quantity of scrap was 63.475 MT.

5. The respondents, by both an affidavit-in-opposition and a supplementary affidavit, controverted the allegations of the writ petitioner. By placing reliance on certain internal communications between the respondents, as annexed to the supplementary affidavit, it is contended by learned counsel for the respondents that no short delivery was given but the full quantity had been handed over to the purchaser, that is, the petitioner.

6. In the letter dated December 31, 2020 issued by respondent no.3 to respondent no.2, annexed at page 11 of the supplementary affidavit, the authorities relied on the Joint Note dated February 9, 2019, referred to by the petitioner as well.

7. As such, learned counsel for the respondents contends that no delivery of scrap material was due to the petitioner at all.

8. Considering the submission of both sides, it transpires that the admitted position, as per the Joint Note dated February 9, 2019 (annexed at page 111 of the writ petition), is that some parts of the scrap lying on the river bed and muddy soil could not be recovered. It further mentioned that, after clearing the earth, if covered materials were found, a fresh programme for witnessing the balance quantity might be done with approval of the competent authority. Such Joint Note, being an admitted document, clearly indicates that the entire materials were not supplied to the petitioner. In the absence of any document being produced by the Railway authorities to controvert the Requisition and Issue Notes produced by the petitioner, there is no option but to accept the petitioner's contention that 55 metric tons were still due from the respondents.

9. The documents annexed to the supplementary affidavit of the respondents, although relying on the Joint Note dated February 9, 2019, which itself indicates that the entire delivery was never made but some of the scrap materials were still lying on the river bed and under muddy soil, respondent no.3 stated that delivery of full quantity had been completed on February 9, 2019. Such letter is patently contradictory to the Joint Note, which is an admitted document on which both sides rely. Hence, no reliance can be placed on the internal communications annexed to the supplementary affidavit to the affidavit-in-opposition.

10. The next question which arises is, what was the quantum of undelivered material to the petition. Only the chart filed by the petitioner indicated that the short quantity was 63.475 MT. Such a stand is contrary to the specific and consistent contention of the petitioner, both in the pleadings of the writ petition and the communications made by the petitioner to the respondents, that the undelivered material amounted to 55 MT.

11. Since the chart produced in court is contrary to the pleadings in the writ petition, the same cannot be taken as proof, even *prima facie*, with regard to the quantity of undelivered material. However, since the pleadings of the writ petitioner that 55 MT was the quantum of undelivered material could not be controverted by the respondents, it has to be taken that the quantum of short delivery was 55 MT and not 63.457 MT. That apart, the calculation of 63.457 MT was based on receipts issued by private weighbridges, which cannot be lent much evidentiary weight insofar as the quantum of payment is concerned, in the absence of further corroborative evidence.

12. As such, I find from the materials and pleadings on record that the respondents were liable to deliver 55 MT of scrap material to the petitioner as per the notice inviting tender as well as the Sale Release Order.

13. Multiplying the said quantity of scrap with the sale price per metric ton, as mentioned in the notice inviting tender, that is Rs.25,666/-, the figure of Rs.14,11,630/- is arrived at.

14. Since the Joint Note dated February 9, 2019 was the last document indicating that there was a joint effort by the parties to recover the balance scrap, which failed, the respondents are liable to pay interest at the rate of 6 per cent per annum from that date on the said principal dues to the petitioner. As far as the claim of GST is concerned, since the total amount paid by the petitioner, being Rs.12,56,759/-, was without GST, as indicated in the Sale Release Order annexed at page 22 of the writ petition, there is no question of awarding any amount in lieu of GST and/or TCS. Since the specific stand of both the parties is that there was no further development regarding recovery of the balance scrap material after February 9, 2019, when the Joint Note was executed, there does not arise any scope of directing the respondents to deliver such balance material. Thus, no option is left but to direct refund of the costs of such balance material of 55 MT, along with interest, to the petitioner.

15. Accordingly, WPO 508 of 2019 is allowed. The respondents shall pay an amount of Rs.14,11,630/-, along with interest at the rate of 6 per cent per annum from February 9, 2019, till the date of payment, to the petitioner. Such amount will be paid within 90 days from date. In default, the respondents shall pay to the petitioner interest at the rate of 10 per cent per annum over and above the total awarded amount (principal plus interest), that is, Rs.14,11,630/- plus 6 per cent interest thereon till the expiry of 90 days, from the 91st day from this order.

16. There will be no order as to costs.

17. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)