

ORISSA HIGH COURT : C U T T A C K

O.J.C. No.13901 of 1998

*An application under Article 226 & 227 of
the Constitution of India, 1950*

M/s. Unique Metal Industries

: Petitioner

-Versus-

Steel Authority of India Ltd. & Ors.

: Opposite Parties

For Petitioner

: Mr. P.K. Rath

For Opposite Parties

: Mr. J. Patnaik,
Sr. Advocate with
Mr. T.K. Patnaik,
Advocate

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 07.09.2022

1. This Writ Petition has been filed in the year 1998 assailing the impugned order at Annexure-1, an order appearing to be intimating the Petitioner a firm in the matter of purchase from the Company i.e. the Steel Authority of India Ltd. (hereinafter in short be reflected as “SAIL”) and also intimating therein regarding forfeiture of P.F.A amount of Rs.1,00,000/- with immediate effect on account of suffering of the SAIL.

2. Background of the case is that the Petitioner is an SSI Unit and is a proprietary firm represented by its sole Proprietor. The Steel Authority of India Limited Opposite Party No.3 herein vide notice dated 7.08.1997 invited tenders for open sale of Iron Steel scrap items, which included defective C.R. Coils. It is pleaded that for the purchase remaining worthy the Petitioner became a candidate for purchase of 150 MT of defective coils from the SSSY Yard. The Petitioner put its offer vide Annexure-3. It is after the offer is accepted and sale order is provided under Annexure-4 to the extent one hundred Metric Tons, the Petitioner found, there is serious defect in the materials involving sale and also found, the same is not worthy in such purchase. Petitioner being disappointed with the same reported the matter to the competent authority vide Annexure-5. It is basing on consideration of the objection of the Petitioner, it appears, the Petitioner has been offered with the fresh order vide Annexure-8 dated 25.09.1997 to lift balance materials of 26.760 MT of defective C.R. Coils (11 Coils) and was also instructed to lift the same without any further delay, but what happens here the Petitioner finding defective materials did not lift such materials vide Annexure-8. As a result of facing loss for the failure in the deal on the part of the Petitioner it appears, the communication vide Annexure-1 forfeiting the P.F.A amount involving the Petitioner in the hand of the Opposite Party No.3 was issued which gave rise to file the Writ Petition.

3. Mr. Rath, learned counsel for the Petitioner in his challenge to the order at Annexure-1 took this Court to the notice of sale vide Annexure-2 issued on 7.08.1997. Reading through paragraph no.9 Mr. Rath, learned counsel for the Petitioner contended that for the Petitioner being initially offered with 150 MT following the condition at clause 9 of the notice at

Annexure-2 concerning SSSY site the Petitioner was required to deposit towards the P.F.A a sum of Rs.50,000/-. Finding that the Petitioner has already made the security deposit of higher amount the Petitioner's offer was entertained keeping the security of Rs.1,00,000/- in their hand as against the deposit of P.F.A. involving the transaction vide Annexure-2. It is taking this Court to the document at Annexure-4 Mr. Rath, learned counsel for the Petitioner demonstrated that there is already a sum of Rs.1,00,000/- kept towards security deposit / P.F.A vide Annexure-4 as against 100 MT as clearly reflected therein in the middle portion of the document appearing to be a sale order. It is again taking this Court to the objection of the Petitioner through Annexures-5, 6 & 7 as well and the reduction in the sale offer at the instance of the Company in response to the Petitioner's serious objection and for the Petitioner was permitted to lift 26.760 MT of defective C.R. Coils, Mr. Rath, learned counsel for the Petitioner taking this Court again back to the clause 9 of the condition in Annexure-2 contended that since there was requirement of deposit of Rs.50,000/- towards P.F.A. up to maximum 220 MT, Petitioner's offer since confines to 100 MT even relying on the offer of sale order, further Petitioner since was offered with 26.760 MT of defective C.R Coils in the maximum, looking to the loss of the Company, there would have been forfeiture of at least a sum of Rs.50,000/- and not the entire deposit of sum of Rs.1,00,000/- already lying in the hand of SAIL. It is, in this background of the matter and for unlawful reduction of excess amount by way of forfeiture Mr. Rath, learned counsel for the Petitioner while praying this Court to allow this Writ Petition requested this Court for refund of the balance amount with suitable interest.

4. In his opposition learned counsel for the SAIL through the counter affidavit attempted to oppose the claim of the Petitioner and in their attempt to satisfy the forfeiture of the whole sum. Attention of this Court was drawn to the Arbitration clause available in order to resolve the dispute between the parties. Referring to the order at Annexure-1 an attempt is also made to satisfy their claim on the entertainability of the Writ Petition. Further ground of challenge to the claim of the Petitioner appears to be for the Petitioner having the scope of inspection vide Annexure-2 and issuing his offer for purchase of 150 MT of defective C.R. coils from SSSY yard vide Annexure-3. Only after inspection of the site involving condition of materials, the Petitioner remains precluded from making claim otherwise.

It is, in the above background of the matter, learned counsel for the SAIL further contended that firstly the Petitioner is prohibited from raising allegation involving the forfeiture notice at Annexure-1 and secondly for the availability of an Arbitration clause the Petitioner is estopped from bringing the Writ Petition as he is otherwise bound by the condition in the agreement, thus a request is made for rejecting the Writ Petition on both the above grounds.

5. Considering the rival contentions of the parties, this Court first considering the claim of the Opposite Parties on the entertainability of the Writ Petition finds through Annexure-1 that undisputedly there is a condition vide Clause 19 authorizing the parties to the agreement to raise the dispute arising out of contract subject to sole arbitration. This Court here while proceeding to the other aspects involved, reserving answer on the question of maintainability of Writ Petition for arbitration clause, proceeds as follows:

Looking to the claim of the Petitioner and on perusal of the order at Annexure-2 this Court finds, there is clear description of limit quantity of the materials at Clause 9.0 in the sale notice dated 7.08.1997 dealing with the deposit aspect. The main dispute involved herein reads as follows:

“9.0 Order booking will be against PFA. Details of PFA are as follows:

PFA		
<u>Quantity in MT</u>	<u>Through SSSY</u>	<u>Other destinations</u>
Upto 220 T	Rs. 50,000/-	Rs.1,00,000/-
221 upto 440	Rs. 75,000/-	Rs. 1,50,000/-
441 and above	Rs. 1,00,000/-	Rs. 2,00,000/-

The customers already having PFA deposits under Open Sale / Consumer quota / Registered Traders mentioned above with RSP need not submit (illegible) PFA. However, they should give details of amount MR No. and date for cross-checking at our end.”

6. Reading the above this Court finds, firstly this condition was not applied as against the Petitioner for the Petitioner already being a listed client and already having a security deposit of a sum of Rs.1,00,000/- to match the P.F.A. requirement even in involvement of highest sale. Secondly for the SAIL authority being satisfied with the Petitioner, the Petitioner has already deposited a sum of Rs.1,00,000/- towards P.F.A deposit and the offer of the Petitioner was accepted vide Annexure-3 and sale order was accordingly issued with clear intimation regarding sale quantity of 100 MT vide Annexure-4. This Court here further finds, the Petitioner remained unsatisfied with the quality of materials offered vide Annexure-4 and therefore the Petitioner went on making request after request for withdrawal of the inferior quality involving the materials. Undisputedly the submission disclosed it is being satisfied with the continuous objection of the Petitioner the SAIL authority was pleased to

issue a modified sale order authorizing the Petitioner to lift the balance material of 26.760 MT of defective C.R. Coils in issuing such sale order on 25.09.1997. It is for the development taken place on resistance/ bargaining of the Petitioner, this Court finds, the parties are bound by the terms and conditions at Clause 9. In view of issuance of sale order at Annexure-8 and for the Petitioner's failing to be abided by the offer of sale vide Annexure-8, this Court finds, there is definite suffering of the SAIL attracting the condition at clause 9 at Annexure-2 and the SAIL is entitled to maximum forfeit the amount indicated towards the P.F.A deposit upto 220 MT the minimum requirement therein. In the circumstance this Court finds, merely because of a huge sum belonging to the Petitioner was lying with the SAIL towards P.F.A deposit, it will not be entitled to forfeit the entire amount lying with it as against the P.F.A deposit. This Court here finds, the entitlement of the SAIL is maximum up to Rs.50,000/-. For a clarity on the dispute involved herein and as there is no further dispute surviving and further since the Writ Petition of this nature was entertained by this Court in 1998 pending as of now, this Court, therefore, while declining to entertain the objection of the contesting Opposite Parties on the entertainability of the Writ Petition and for the availability of Arbitration Clause observes, the SAIL is maximum entitled to retain a sum of Rs.50,000/- towards P.F.A / security deposit by way of forfeiture for the failure of the Petitioner. Thus while allowing the Writ Petition in part, this Court directs the SAIL authority to refund the balance sum of Rs.50,000/- kept under security deposit / P.F.A to the Petitioner along with interest at the rate 6% per annum all through. It is further keeping in view the period of such illegal retention, this Court directs, the calculation, if any, be made and the balance amount along with interest shall be returned to the Petitioner as undertaken by the

learned counsel for the Opposite Parties within a period of two months from the date of communication of a certified copy of this judgment by the Petitioner.

8. The writ petition succeeds in part. There is, however, no order as to the costs.

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(*Biswanath Rath*)
Judge

Orissa High Court, Cuttack.
The 07th day of September 2022//
Ayaskanta Jena,
Senior Stenographer

