IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7093 of 2017

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M/s. Unicon Commotrade Pvt. Ltd. Son of late Shriram Goenka Resident of Babupara, P.S. Siliguri, District- Siliguri.

... ... Petitioner/s

Versus

1. The Bihar State Power Transmission Company Ltd. and Ors
2. The Managing Director The Bihar State Power Transmission Company Ltd. Transmission Area, 132/33, KV
3. The General Manager Cum Chief Engineer, Transmission Area, 132/33, KV Grid, S/S Campus, Bhikhanpur,
4. The Electrical Superintending Engineer, Trans Circle, Purnea.
5. The Electrical Executive EngineerT, Trans Circle, Purnea.
6. The Assistant Electrical Engineer T/S/D, Trans Circle Store, Purnea.
7. The Assistant Electrical EngineerT, Bihar State Power Transmission Company Ltd., Purnea.
8. The Store Assistant , T/C/S Bihar State Power Transmission Company Ltd, Purnea.
9. M/S M.S.T.C. Ltd. having it's eastern regional office at 225 F, A J C Bose Road, 3rd Floor, Kolkat

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal,
Mr. Atal Bihari Pandey,
Mr. Alok Kumar Jha,
Mr. Mukund Kumar,
Mr. Akash Kumar,
Mr. Aditya Raman, Advocates

For the Electricity Department :Mr. Anand Ojha,
Mr. Ashok Kumar Karna,
Mr. Abhishek Raj, Advocates

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

3 08-02-2024 The present writ petition has been filed for the following relief:-

> a) For issuance of a writ in the nature of certiorari for quashing of the order dt. 19.04.2016 passed by the

respondent no.2 rejecting the claim of the petitioner for either release of balance of the scrap materials assured to the petitioner or refund of the proportionate amount of such undelivered scrap materials;

b) For issuance of a writ in the nature of mandamus directing the respondents to refund a sum of Rs. 79,60,514/- being the value of 95.475 MT of scrap materials admittedly not delivered by the respondents inspite of full amount of sale consideration being Rs. 2,59,82,253/- been already paid by the petitioner before issuance of sales/release order dated 2.09.14;

c) For a direction upon the respondents for payment of interest along with the refund of a sum of Rs. 79,60,514/- on account of compensation for withholding the genuine claim of the petitioner;

d) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

2. Learned counsel for the petitioner has stated that pursuant to auction conducted by the respondent, the petitioner has participated in the said auction and being the highest bidder the auction was concluded in his favour and the entire bid amount was paid. However, at the time of lifting the auctioned stock, the petitioner found that in the items put up for auction, there was a shortage of the material. Thereafter the petitioner has been doing the rounds of the official respondents either for refund of the amount for the shortage of material or for making

good the shortage of the material itself. However, the authority till date has not acted on the said representations made by the petitioner and therefore left with no other alternative, the petitioner had to approach this Hon'ble Court by way of CWJC.

3. Learned counsel stated that on the earlier occasion the writ petition bearing CWJC No. 18448/2015 was disposed of by this Hon'ble Court on 16.12.2015 directing the petitioner to make a representation to the authority concerned ventilating his grievance and the same was directed to be considered and passing necessary orders.

4. Learned counsel has stated that pursuant to the said order the petitioner had given detailed representation to the authority concerned, however, the authority without considering the merits of the case, has rejected the representation made by the petitioner in a mechanical manner. That the authority on some vague and legally untenable grounds has rejected the representation made by the petitioner vide Annexure-13 and the said order is impugned the present writ petition. Learned counsel has stated that the sale of the scrap was on the basis of the weightage which was advertised by the authority concerned, therefore, the authority is liable to make the good shortage if any at the time of lifting the stock. That the scrap could not be

weighed by the petitioner before participating in the auction and there was no way of knowing the shortage before the auction was conducted. That the petitioner cannot be made liable for the shortage of material and from the mistake committed by the authority concerned. Learned counsel has stated that though the respondents have initially filed a counter denying the claim of the petitioner, they have subsequently filed supplementary counter affidavit admitting their lapses in calculating the amount of scrap that was put up for auction. Therefore, learned counsel for the petitioner has prayed this Hon'ble Court to duly take into consideration the admission made by the authority concerned in the supplementary counter affidavit and allow the present writ petition and grant the prayer sought.

5. *Per contra*, the learned counsel appearing for respondents has vehemently opposed the very maintainability of the present writ petition and has stated that the present writ petition is liable to be dismissed on the ground that the petitioner was well aware of the quantity that was under auction and the same was on 'as is where is basis'. Therefore, even if there is any shortage in the quantity, the petitioner has to bear the consequence of the same and he cannot seek a direction from this Hon'ble Court to the authority concerned for either

refunding the amount on a pro-rata basis or for making good the shortage of the scrap. Learned counsel for the respondents has relied upon the following judgments:-

1. 2017 SCC OnLine Del 10258 (Sh Ram Kala v. Delhi Development Authority)
2. (2007) 14 SCC 517 (Jagdish Mandal v. State of Orissa).
3. (2015) 7 SCC 728 (Joshi Technologies Inc. v. Union of India.
4. 2022 LiveLaw (SC) 302
5. (1995) 6 SCC 749 (B.C. Chaturvedi v. Union of India)
6. (1986) 1 SCC 100 112 (Forward Construction Co.v. Prabhat Mandal.

6. Admittedly, in the present case, authorities have issued an auction notice for sale of the scrap. As per the terms and conditions of the said auction notice, the lot No. 15 consisted of the following scrap material which is the subject matter of the present CWJC:-

Sl. No.	Name of materials	Quantity
1.	ACSR Panther Conductor (Cut-Pieces)	199.18 MT
2.	Mix size aluminium conductor panther & zebra (Cut-pieces)	8892 Kg
3.	Mix size aluminium conductor panther & zebra (Cut-pieces)	400 Meter. /320 Kg
4.	G.I. Earth Wire 7/9 Swg.	1350 Meter
5.	Singe Zebra conductor of 132 KV Transfer bus	150 nos. /147 Kg
6.	Singe Zebra conductor for busbar of 132 KV main bus 33 KV main bus	53 nos./519 Kg
7.	Black Angle (Black Steel Tower	68.742 MT

	Member without number mix size)	
8.	Tower Member (Scrap)	18.635 MT
9.	Black Angle (Black Steel Tower Member without number mix size)	2.56217 MT
10.	Scrap Tower Member	2.539 MT
11.	Template used 1 set	2480 Kg.
12.	M/S Black Angle 130x130x10	4656 Kg.
13.	M/S Black Angle mix size	1356 Kg.
22	Fabricated Black Angle Mix	202.1 Kg.

7. However, as seen from the possession certificate issued to the petitioner at the time of lifting of the stock, the following items were shown to be less:-

Sl.No	Name of material	Quantity delivered as per weight	Shortage
1.	ACSR Panther conductor (cut piece)	136.264	62.916 MT
2.	Mixed size aluminium	Nil	8.892 MT
3.	Black angle/ Tower member scrap	52.572 MT	16.170 MT
4.	Tower member scrap	12.696 MT	5.939 MT
5.	M.S. Black Angle	Nil	1356 Kg
6.	Fabricated Black	Nil	202.1 Kg

8. In the supplementary counter affidavit filed by the authorities, they have fairly admitted that some lapses have been made by the authorities concerned with regard to the quantity of the material shown for auction. Irrespective of the fact as to whether in the auction notice it is stated that the goods which are being sold 'as is where is basis', the respondent authorities

in their advertisement have shown specific quantity put up for auction. Even if any physical inspection was carried out by the petitioner, it would be impossible to guess the weight of the material at the time of inspection. Moreover, the authorities have specifically given the quantity of each item of the scrap put up for auction and the same is not on approximate basis. Once the specific weight of each of the item of the scrap is advertised, the bidders will believe that the authority has weighed the items and participate accordingly. Even if it is on approximate basis the variation of one or two MT in cases of huge quantities can be taken into consideration, but in this particular case not only is the variation huge but some of the items are missing. Therefore, the authorities cannot take advantage of clause "as is where is basis" for the less quantity found at the time of delivery.

9. In the supplementary counter affidavit it is specifically stated as under:-

> "7. That as regards Item No. 1 of the delivery details, it submitted that there is bonafide apparent error in summation in the ledger in as much as that 199.18 MT of ACSR Panther Conductor was wrong because the ledger actually showed the existence of 190.54 MT which was wrongly summed as 199.18 which eventually transmitted to the sale order. Even this 190.54 MT Scrap could not be supplied because there was theft / disappearance of 63.430 MT from the store for which a

complaint in the Form of F.I.R. No. 791/2014 (Maranga Thana) dated 01.10.2014 was lodged. The Extract of the ledger showed that the calculation of 199.18 MT was wrong calculation.

Copy of the Extract of Ledger and of the Police Complaint are annexed herewith and marked as Annexure-C/1 & C/2

8. That the verification exercise with respect to Item No. 1 it transpired that delivery of only 136.4 MT of material took place and 62.916 material was short. There was some communication gap in as much as that the AEE of Store, Sri Ramjanam Singh had submitted remarks below the end of the ledger about issuance of material to the Petitioner's Firm through action against SRO No. 1695 dated 02.09.2014 of GM cum CE, Transmission, Muzaffarpur till 15.09.2014. It is in this connection that FIR was lodged against the retired Storekeeper Sri Prasad Singh on 26.09.2014.

9. That as regards Item No. 2 (Mixed Sized Aluminium) it is stated that the petitioner himself did not lift the scrap from Purnea, Katihar and Khagaria objecting the quality specifications. This is evident from the letter under Memo No. 928 dated 16.10.2014. It is stated that the Agency objected over difference of 1.828 MT between the actual delivery and the quantity in the sale order. At the same time the material was also objected on the ground that it was not as specification.

Copy of the Memo No. 928 dated 16.10.2014 is annexed herewith and marked as Annexure-C/3.

10. That the verification and inputs received from the field reveals that the ledger balance as on 12.07.2010 was 6401 kg. which was verified by store verification on 31.03.2012. Further, 1490 kg of material was issued which made the final balance as 4911

kg. The rest quantity of 1653 kg and 838 kg where present at the GSS, Katihar and GSS, Khagaria respectively but the Agency did not lift the material as per the MOM dated 15.10.2014.

11. That as regards Item No. 7 (Black Angle / Tower Member Scrap) it is stated that as according to the ledger and the quantity as per sale order, there had been no mismatch yet it appears that due to lack of Regularization of the ledger, the actual quantity available was not entered in the ledger. The mismatch between sale order and ledger was for this reason.

12. That as regards item No. 8 (Tower Member Scrap) it is stated that by bonafide mistake it was not noted that the AEE, Purnea was already issued with 5.939 MT material of Item No. 8 for Emergency work as mentioned in the Memo No. 928 dated 16.10.2014 as enclosed above.

13. That the verification revealed that final ledger showed 12.696 MT Tower Member Scrap as on 15.07.2014. it is stated that the Ledger Balance of 18.635 MT was existing on 12.04.2013 but after 06.09.2014, the quantity of material of 3.790 MT and MT was issued to AEE, TCS, Bhagalpur and AEE, TSD, Forbesganj, respectively.

14. That on item No. 13 and 14 it appears that the ledger was not regularized by updating the available quantity figure of MS Black Angle and Fabricated-Black Angle. The sale order wrongly carried 1356 kg. and 201.1 kg. despite absence of such quantity. There had been Non Regularization of Ledger Book at the time of Survey done on 02.04.2011. The petitioner failed to point out shortage at the time of inspection as per Clause 7.1 of the BSTC.

10. In view of the clear admission made by the

authority in the supplementary counter affidavit that some of the material put on auction was not available to begin with, was used by the authority, was stolen or wrongly calculated the petitioner cannot be expected to bear the loss for the said shortage. Once it is established that the difference of the material was due to the mistake of the authority itself. The judgments relied by the Respondents are of no help and cannot be relied upon.

11. Having regard to the above mentioned facts and circumstances the present CWJC is allowed.

12. The authorities are directed to calculate the pro-rata amount for the material that has not being delivered or given possession to the petitioner and refund the amount as expeditiously as possible preferably within a period of eight weeks from the date of receipt of this order. In case, the above directed amount is not refunded to the petitioner within the time frame fixed by this Court, the petitioner would be entitled to a simple interest at the rate of 6% P.A. from the date of deposit of the auction amount by the petitioner till the date of actual refund.

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(A. Abhishek Reddy , J)

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