

Writ Jurisdiction Available Even In Contracts With Arbitration Clauses – High Court Of Uttarakhand

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Writ Petition can be entertained in a contractual matter with a Government organisation, even though there an arbitration clause in the contract in a case where the State has acted in a totally illegal way, violating a statute and without jurisdiction says High Court of Uttarakhand in a Judgement dated 26th May 2015 in the case of **Nikesh Chandra Agarwal Vs Cantonment Board. 2015 SCC online UTT 272.**

Brief Facts and Contentions:

The Respondent Board called for an auction the right to collect entry tax for the vehicles using a particular Road. The Petitioner was declared as the highest bidder and was directed to deposit 25% of the bid amount and he also deposited the same as per the Rules. After two months the Respondent sent an agreement to the petitioner. The petitioner requested for a reduced rate because the important festival which brings large number of vehicles to that road was over by that time. As per the Cantonments Act for any auction, the sanction of the Chief Executive Officer is necessary. After one month since the respondent could not get the sanction/approval from the cantonment board, the petitioner withdrew his bid and asked for the refund of the deposit money made by him. After two more months the Respondent sent a letter stating that the Cantonment Board has approved the bid of the petitioner and asked him to deposit the balance amount. But a letter was sent by the board asking the petitioner to sign the contract otherwise the amount deposited by him shall be forfeited. Hence the petitioner filed a Writ Petition.

Decision of the Court:

The Court accepted the contention of the petitioner and issued a mandamus directing the board to return the deposited money with interest and refused to refer the matter to arbitration.

The said decision was taken on the following grounds:

1. The State and its organisations have to ensure fairness in all its actions including contractual matters. Writ Jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked when the action of the State is patently illegal virus of a statute and beyond the jurisdiction. The High Court in support of the above decision, relied on the Judgment of the Supreme Court of India in **Harbansilal Sahnia Vs Indian Oil Corporation Ltd.**, reported in (2003) 2 SCC 107 Para 7. In the present case the auction was done without the sanction of the Board which is mandatory as per S. 127 of the Act.
2. The issue involved is a pure question of law and hence it need not be referred to arbitration for an adjudication.

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