

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI

SPECIAL APPEAL NO. 396 OF 2022

30TH NOVEMBER, 2022

BETWEEN:

Uttarakhand Power Corporation Ltd.Appellant.

And

M/s B.T.C. Industries Ltd.Respondent.

Counsel for the Appellant : Mr. V.K. Kohli, learned Senior Counsel assisted by Mr. Dharmendra Barthwal, learned counsel.

Counsel for the Respondent : Mr. Bhupesh Kandpal, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

Issue notice. Mr. Bhupesh Kandpal, learned counsel appears and accepts notice on behalf of the respondent. We have heard learned counsels and proceed to dispose of the appeal at this stage.

2. The present special appeal is directed against the order dated 07.11.2022, passed by the learned Single Judge in Writ Petition (M/S) No.2735 of 2022, which reads as follows:-

"Mr. Bhupesh Kandpal, learned counsel for the petitioner.

Mr. Dharmendra Barthwal, learned counsel for the respondents.

The defect is ignored for the time being.

Having heard learned counsel for the petitioner and learned counsel for the respondent, and keeping in view the financial hardships of the petitioner, issue Rule Nisi.

In the interregnum, it is directed that if the petitioner deposits a sum of Rupees Two Crores on or before 2nd December, 2022, the impugned Notification shall remain stayed till the next date of listing.

List this matter on 5th December, 2022.

In the meantime, counter affidavit may be filed."

3. From the impugned order, it would be seen that the same is an *ad interim* order. The writ petition is listed before the learned Single Judge on 05.12.2022, and time has been granted to the appellant, i.e. respondent in the writ petition, to file the counter-affidavit in the meantime.

4. The submission of Mr. Kohli, learned Senior Counsel for the appellant is that the respondent-writ petitioner, earlier also preferred a writ petition being Writ Petition (M/S) No.1551 of 2022. The Court had directed, in that writ petition that the writ petitioner should deposit the amount of Rs.1.40 crores before the Registrar General of this Court within the period of three weeks, and should continue to pay the current dues of electricity to the respondent-appellant *herein*. On that condition, protection was granted to the petitioner against the disconnection of the electric connection No.3937, till the next date of listing. This order was confirmed by the Division Bench of this Court *vide* order dated 18.08.2022, passed in

the appeal preferred by the respondent-writ petitioner, being Special Appeal No.273 of 2022.

5. He further submits that, admittedly, the respondent-writ petitioner has not deposited the charges for the months of September and October, 2022, which are to the tune of Rs.2.43 crores and more. Therefore, protection should not have been granted to the respondent-writ petitioner.

6. On the other hand, Mr. Bhupesh Kandpal, learned counsel for the respondent, submits that the impugned bills issued by the appellant, include the arrears computed on the basis of the Arbitral Award, which has been set-aside. He further submits that the respondent-writ petitioner has paid all the current charges for the months of June to August, 2022, punctually.

7. Having heard learned counsels, since the matter is coming up before the learned Single Judge on 05.12.2022, we dispose of the present special appeal by modifying the impugned order. The protection granted to the respondent-writ petition shall continue, provided the respondent-writ petition makes payment of the complete dues towards the consumption charges for the months of September and October, 2022 by 02.12.2022, and also towards the November, 2022. The bill for the month of November, 2022

shall be paid within time available under the law, once the bill is raised.

8. The appeal stands disposed of in the above terms.

9. All the issues are left open for the learned Single Judge to consider, without being influenced by our present order.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(MANOJ KUMAR TIWARI, J.)

Dated: 30th November, 2022

NISHANT