

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No. 1260 of 2023

Central Board of Secondary Education
Regional Office Delhi (East),
PS, 1-2, Industrial Area,
I.P. Extension, Patparganj,
Delhi-110092 through its
Under Secretary

...Petitioner

Versus

State of Uttarakhand and others

...Respondents

Present:-

Mr. Shashank Upadhyaya, Advocate for the petitioner.
Mr. Lalit Miglani, A.G.A. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

By means of instant petition, the petitioner seeks
the following reliefs:-

- “(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned award dated 25.08.2015 (Annexure No.1) passed by Uttarakhand State Micro and Small Scale Industrial Council Dehradun.
- (ii) Issue a writ, order or direction in the nature of Certiorari quashing the impugned dismissal order dated 07.01.2019 (Annexure No.2) passed by District Judge Dehradun.
- (iii) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order

dated 01.03.2023 (Annexure No.3) passed by
Additional District Judge (Commercial)
Dehradun in execution suit no. 165/2019.

(iv) Issue any other order or direction which this
Hon'ble Court may deem fit and proper in the
circumstances of the case.

(v) Award cost of the petition.”

2. Heard learned counsel for the parties and perused
the record.

3. The petitioner floated a tender on 29.09.2011 for
printing and supplying various computer stationery items for
All India Exams, 2012 conducted by the petitioner. The
tender submitted by the respondent no.3 was accepted. But,
it appears that some dispute arose between the parties. The
matter was referred for arbitration under the provisions of
Micro, Small and Medium Enterprises Development Act,
2006 (“the Act”). The Arbitrator passed the award on
25.08.2015. The objections to the award under Section 34 of
the Arbitration and Conciliation Act, 1996 (“the Arbitration
Act”) was filed by the petitioner on 05.10.2015, which was
basis of Arbitration Case No. 115 of 2015, Central Board of
Secondary Education Vs. M/s Radex Stationary India
Ltd.(“the arbitration case”). In the arbitration case, the
petitioner did not appear for a long. Finally, on 07.01.2019,

it was dismissed in non-prosecution. Thereafter, it appears that the respondent no.3 moved an execution proceedings in which process was issued on 01.03.2023. All these, namely, award dated 25.08.2015, dismissal of the arbitration case order dated 07.01.2019, issuance of recovery proceedings dated 01.03.2023 are impugned herein.

4. Learned counsel for the petitioner would submit that the learned counsel for the petitioner did not inform the petitioner about the date of hearing in the arbitration case. Therefore, it was dismissed. It is argued that 75% of the awarded amount had already been deposited by the petitioner in the arbitration case, which ought to have been adjusted before issuing any process.

5. The award was challenged under Section 34 of the Arbitration Act. It was dismissed in non prosecution. Both these orders are impugned herein. An award cannot be in this manner be challenged in this petition. If the petitioner have reasons not to appear on the date of hearing in the arbitration case, the petitioner could have approached the same court. This Court cannot consider that aspect. Even otherwise, the order dated 07.01.2019 passed in the case records that learned counsel appearing for the petitioner on that date informed the court that the petitioner is not in touch with her. Thereafter, it was dismissed in non

prosecution. Under such circumstances, the Court would have no other option, but to dismiss the arbitration case in non prosecution.

6. Once the award has attained finality, after dismissal of the arbitration case, in execution proceedings, processes were issued. Now if the petitioner claims that he has deposited some amount in the court in the arbitration case that fact could be brought to the notice of the concerned court. Merely based on such statement, this Court cannot consider a challenge to a process issued in the execution case. Therefore, this Court is of the view that there is no merit in the petition. The petition deserves to be dismissed at the state of admission itself.

7. The petition is dismissed *in limine*.

(Ravindra Maithani, J.)
28.04.2023

Jitendra