

GAHC010125542014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3500/2014

BEHL COAL FUEL PVT. LTD.
A COMPANY REGD. UNDER THE COMAPANIES ACT, 1956 AND HAVING ITS
REGD. OFFICE AT TULSI NAGAR, HOSHIARPUR, PUNJAB AND IS
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE, SRI NARESH
KUMAR

VERSUS

THE NORTH EASTERN COAL FIELDS LIMITED and 3 ORS.
THROUGH ITS CHAIRMAN CUM MANAGING DIRECTOR, NORTH EASTERN
COALFIELDS LTD., CHRISTIAN BASTI, G.S. ROAD, GUWAHATI, DIST-
KAMRUP METRO, ASSAM

2:THE GENERAL MANAGER SandM
NORTH EASTERN COALFIELDS LTD.
TINSUKIA
ASSAM

3:COAL INDIA LTD.
NETAJI SUBHASH ROAD
KOLKATA
THROUGH ITS CHAIRMAN

4:CHIEF GENERAL MANAGER
NORTH EASTERN COALFIELDS
MARGHERITA
ASSAM
PIN-78618

For the Petitioner(s)

: Ms. B. S. Goyal, Advocate
: Ms. B. Chouhan, Advocate

For the Respondent(s) : Mr. M. Z. Ahmed, Advocate
: Ms. B. Dutta, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 04-08-2023

1. The Petitioner in the instant writ petition is registered for participation in the auction for sale of coal by the North Eastern Coalfields Ltd. At this stage, it is relevant to take note of that the North Eastern Coalfields Ltd. has a Scheme for coal distribution through e-Auction. The said scheme is known as the e-Auction Scheme, 2007.

2. In the backdrop of the above, let this Court therefore take note of the facts involved in the instant writ petition. The Petitioner had in pursuance to a notified auction sale of coal vide the notice dated 16.01.2014 participated in the said e-Auction. It is the case of the Petitioner that the Petitioner deposited EMD of Rs.13,75,000/- for one rake of coal of the grade G1 ROM, exceeding 7500 K.Cal/Kg and not exceeding 7600 K.Cal/Kg. In the said e-Auction, the Petitioner was placed at Serial No.11 out of 12 successful bidders.

3. This Court at this stage finds it relevant to take note of Annexure-III which is the bid sheet issued on 16.01.2014. In the said bid sheet, the Petitioner's name appeared at Serial No.11 and the Petitioner was allotted a quantity of 2750 MT at the price of Rs.6550/- per metric tonne and the total value of the allotment made in favour of the Petitioner was Rs.2,36,33,582.66p.

4. It further appears that in respect to another e-Auction, the Petitioner was also informed by a sale intimation letter that the Petitioner has been allotted 730 MT @ Rs.6100/- per MT and 770 MT @ Rs.6130/- per MT.

5. On the ground that the quality of the coal which was allotted to the Petitioner on the basis of the two e-Auctions were not of the requisite quality and marketable, the Petitioner refused to lift the coal and consequently, the Respondent Company forfeited the EMD so submitted by the Petitioner. Being aggrieved, the Petitioner has approached this Court challenging the terms of the e-Auction Scheme, 2007 and more particularly to Clause 11.8.

6. Ms. B. Goyal, the learned counsel appearing on behalf of the Petitioner has submitted that Clause 11.8 of the terms and conditions of the spot e-Auction Scheme, 2007 is arbitrary and unreasonable inasmuch as the bidder on account of non-suitability and/or sub-standard quality for allotted quantity of coal cannot refuse to lift. The learned counsel for the Petitioner submitted that although Clause 4.2 of the Scheme of 2007 gives an option to the bidders to satisfy themselves with the quality of coal being offered from a source before participating in e-Auction but in effect no opportunities are given to the bidders after issuance of notice of e-Auction. The learned counsel submitted that as that opportunity was not granted in the regular course, the bidders like the Petitioner in view of the monopoly of the Respondent Company is compelled to participate without having the opportunity to satisfy the quality of coal being offered from a source. It is therefore the submission of Ms. B. Goyal, the learned counsel appearing on behalf of the Petitioner that when no opportunity is being granted to inspect the coal prior to participation in the e-Auction, Clause 11.8 of the Scheme of 2007 holding that the bidder cannot refuse on

account of non-suitability and/or sub-standard quality for allotted quantity and if refused, the consequences of forfeiture of EMD on the basis of Clause 9 of the Scheme of 2007 is absolutely arbitrary, unreasonable and as well as irrational. The learned counsel therefore submitted that the Scheme of 2007 infringes the provisions of Article 14 of the Constitution.

7. On the other hand, Mr. M. Z. Ahmed, the learned Senior counsel appearing on behalf of the Respondents submitted that the Petitioner regularly participates in the auction process. The Petitioner knows very well about Clause 4.2 of the Scheme of 2007 and did not complain or ask the Respondent Authorities that the Petitioner wanted to inspect the coal prior to participating in the coal auction. The learned Senior counsel further submits that the Petitioner knowing very well the Scheme of 2007 has participated and thereupon for best reasons known, the Petitioner did not want to lift the coal by making the payment. Under such circumstances, the forfeiture of the EMD so done was in accordance with Clause 9 of the Scheme of 2007 and as such, no interference is called for in respect to the writ petition.

8. Ms. B. Goyal, the learned counsel rejoining the submissions so made by Mr. M. Z. Ahmed, the learned Senior counsel, submitted that the Petitioner duly made payment of the total amount but as the Petitioner did not lift the coal on account of quality of the coal being not good and marketable within 45 days, the amount so deposited by the Petitioner was refunded but the EMD was forfeited.

9. I have heard the learned counsels for the parties and also have perused the materials on record.

10. From a perusal of the materials on record, it appears that the forfeiture of the EMD was in accordance with the Scheme of 2007 and this aspect of the matter is not in dispute. The dispute involved herein is as to whether the Clause 11.8 which does not leave any option to the bidders to refuse on account of non-suitability and/or sub-standard quality for allotted quantity of coal is arbitrary, unreasonable and accordingly violates Article 14 of the Constitution.

11. This Court finds it relevant at this stage to take note of Clause 4.2, 9 and 11.8 of the Scheme of 2007 which are pivotal for the determination of the issue involved in the instant proceedings. The same are reproduced hereinunder:

“4.2 Before participating in e-Auction, bidders are to satisfy themselves with the quality of coal being offered from a source.

9. Forfeiture of EMD: -

The EMD submitted by the successful Bidders will be liable for forfeiture in the following cases: -

9.1 *If after completion of e-Auction, successful bidder fails to make payment for the coal value including all other charges within the stipulated time, the proportionate EMD equivalent to the failed quantity shall be forfeited subject to the provisions at Clause 6.4 and/or Clause 6.5 of this document and/or,*

9.2 *If the successful bidders does not lift the booked quantity within the stipulated validity period, the proportionate Security Deposit at the rate of Rs.500/- (Rupees Five Hundred) per tonne for coal having GCV more than 4300 KCal/Kg and at the rate of Rs. 400/- (Rupees Four Hundred) per tonne for coal having GCV of 4300 KCal/Kg and below, (as converted from the EMD amount) for the unlifted quantity would be forfeited. Such forfeiture shall be made only if the balance Unlifted Quantity is equal or more than a Truck Load i.e. 10 tonnes.*

Such forfeiture, however, would not take place if North Eastern Coalfields has failed to offer full or part of the successful bid quantity within the validity period. In such cases again, no forfeiture would take place if the balance quantity is less than a truck

load/rake load.

9.3 *If the Buyer cancels the order/Rake after booking, the EMD at the rate of Rs.500/- per tonne for coal of GCV more than 4300 KCal/Kg and at the rate of Rs. 400/- (Rupees Four Hundred) per tonne for coal having GCV of 4300 KCal/Kg and below shall be forfeited for the order/rake cancelled."*

11.8 *There will not be any joint/third party sampling facility extended to any buyer. Refusal on account of non-suitability and/or sub-standard quality for the allotted quantity of coal shall not be acceptable."*

12. From a perusal of the above Clause 4.2, it would show that the bidder(s) have an option to satisfy themselves with the quality of the coal being offered from a source before participation in e-Auction. The above aspect therefore means that merely because the bidder is registered with the Respondent Company as a bidder for e-Auction, it is not incumbent upon the bidder to participate. The bidder has an option to participate or not to participate taking into account the quality of the coal offered from a source. The learned counsel appearing on behalf of the Petitioner though submitted that there was no opportunity given for the purpose of inspection of the said coal so that the Petitioner could satisfy itself as regards the quality of the coal but there is nothing on record that the Petitioner had approached the Respondent Authorities seeking that the Petitioner wanted to inspect the quality of the coal before submitting the bid.

13. Now, coming to Clause No.11.8 which in the opinion of this Court is consequential to Clause 4.2 inasmuch as the bidders participates in the e-Auction after being satisfied with the quality of the coal being offered from the source. Clause 11.8 mandates that upon being offered the said coal, the bidder cannot refuse on the ground of non-suitability and/or sub-standard quality. In the opinion of this Court that as Clause 11.8 is consequential to Clause 4.2, the

said Clause 11.8 cannot be said to be arbitrary and illegal and as such violative of Article 14 of the Constitution. Clause 9 which have been quoted hereinabove stipulates that if the successful bidder fails to make payment for the coal value including all other charges within the stipulated time, the proportionate EMD equivalent to the failed quantity shall be forfeited subject to provisions of Clause 6.4 and/or 6.5 of the Scheme of 2007. Clause 9.2 is in relation to the bidders not lifting the booked quantity within the stipulated validity period, then the proportionate Security Deposit @ Rs.500/- per tonne for coal having GCV more than 4300 KCal/Kg and @ Rs.400/- per tonne for coal having GCV of 4300 KCal/Kg and below (as converted from the EMD amount) for the unlifted quantity would be forfeited. Taking into account that the Petitioner failed to lift the coal within the stipulated period, this Court is of the opinion that the actions on the part of the Respondent Authorities in the forfeiture of the EMD cannot be interfered with.

14. Consequently, this Court does not find any merits in the instant writ petition for which the instant writ petition stands dismissed.

15. It is however made clear that the instant judgment and observations made hereinabove would not preclude the Petitioner to challenge the actions of the Respondent Authorities, if in a given case the inspection sought for was not granted.

JUDGE

Comparing Assistant