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HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (C) NO. 297 OF 2015**

G.R. Sponge and Power Ltd., A Company under the Companies Act, 1956 and the Companies Act, 2013 (as applicable), having its Registered Office at Agrawal Complex, Samta Colony, Raipur, Chhattisgarh; through its Director Ramesh Kumar Agrawal, aged about 53 years, S/o Late Shri Ganpatrai Agrawal, R/o Agrawal Complex, Samta Colony, Raipur, C.G., Police Station Saraswati Nagar, Thana, Post Raipur Main, District – Raipur, Chhattisgarh

... Petitioner**Versus**

1. Union of India, Ministry of Coal, through its Secretary, Shastri Bhawan, New Delhi.
2. South Eastern Coalfields Ltd, through its Chairman and Managing Director, Registered Office: Seepat Road, Post Office: SECL Campus, Police Station: Sarkanda, District Bilaspur, Chhattisgarh
3. Coal India Ltd., through its CMD, 10 Netaji Subhash Road, Kolkata - 700001

... Respondents

For Petitioner	:	Mr. Ashish Anand Bernand, Advocate
For Respondent No.1	:	Mr. N.K. Vyas, Asstt. Solicitor General.
For Respondents No.2 & 3	:	Mr. V.R. Tiwari, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board**Per NAVIN SINHA, C.J.****25/08/2015**

1. Learned Counsel for the Petitioner submits that the present is a matter relating to Fuel Supply Agreement and not Coal Deallocation. It is therefore de-linked from the batch of cases lead by Writ Petition (C) No. 2136 of 2012 and is taken for consideration separately.
2. The Petitioner is aggrieved by orders dated 17.1.2015 and 24.1.2015 passed by Respondent No.2 forfeiting security deposit furnished by the Petitioner for the Fuel Supply Agreement, dated 30.4.2008, with regard to the period 2008 to 2013.

3. Learned Counsel for the Petitioner submits that the issue for forfeiture of the security deposit under the earlier Fuel Supply Agreement with regard to its 16MW Captive Power Plant, and which agreement has already run its course, is different and distinct from the Fuel Supply Agreement renewal now sought by it for its 8MW Captive Power Plant. The Respondents are unnecessarily mixing two issues to deny consideration of the request for renewal of the Fuel Supply Agreement which is a fresh grant, for a lesser capacity.

4. It is submitted that under the earlier Fuel Supply Agreement, the Petitioner on 24.12.2013 had invoked Clause 15 of the Fuel Supply Agreement providing for settlement of disputes. The Clause provides for a bilateral exercise sitting across the table through discussions and negotiations to arrive at a settlement of the dispute in writing signed by the parties. When the Respondents did not respond to the request dated 24.12.2013 for dispute settlement under the Fuel Supply Agreement for 2008- 2013, the Petitioner preferred Writ Petition (C) No. 77 of 2014. This Court on 22.1.2014 directed the Respondents to pass a speaking order in compliance with the procedures for settlement of disputes. The Respondents without following the procedure in Clause 15 interpreted the order of the Court as liberty to deviate from the procedure. There were no discussions and negotiations sitting across the table before the impugned orders were passed.

5. Learned Counsel for Respondent No.2 submitted that the impugned orders have been passed in pursuance of the directions in Writ Petition (C) No. 77 of 2014.

6. We have gone through the counter-affidavit and not find any material to suggest that the resolution of the dispute under the erstwhile Fuel Supply Agreement has been done in the manner prescribed under Clause 15 of the Agreement, agreed upon between the parties.

7. The Court never directed Respondent No.2 to adopt a procedure different from that provided in Clause 15. The orders dated 17.1.2015 and 24.1.2015 are therefore held to be unsustainable in its present form. They are accordingly set aside and the matter is remanded to Respondent No.2 for resolution of the dispute strictly in accordance with Clause 15 of the agreement and in the manner prescribed.

8. In so far as the request of the Petitioner for renewal of the Fuel Supply Agreement, now for a reduced capacity of 8MW Captive Power Plant in lieu of the earlier 16MW Captive Power Plant is concerned, though styled as renewal, it is essentially a request for a fresh grant which is required to be considered on its own merits in accordance with law. The Respondents are therefore directed to consider the request of the Petitioner for grant of a fresh Fuel Supply Agreement for 8MW Captive Power Plant strictly in accordance with law.

9. Considering that both the issues involve commercial matters for which there is necessarily an urgency in the interest of both the parties, it is expected that appropriate final orders on both the issues shall be passed separately within a maximum period of three months from the date of receipt and/or production of copy of the present order, without prejudice to the further rights of the Petitioner, if any in accordance with law.

10. The Writ Petition is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge