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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 806 of 2015**

M/s. Niranjnall Agrawal, A proprietorship firm, through: its Proprietor, namely Shri Raj Agrawal, S/o Nirajan Agrawal, aged about 34 years, R/o Tulsi Marg, Korba Police Station and Post Korba, Civil and Revenue District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. South Eastern Coalfield Limited, A Subsidiary of Coal India Ltd. through: its Chief General Manager, Bishrampur Area, Post Bishrampur, Aamagaon Colliery, District Surguja Chhattisgarh.
2. General Manager (OPRN), SECL Bishrampur Area, District Surguja Chhattisgarh.
3. Sub-Area Manager/Engineer Incharge Bishrampur, Aamagaon Sub Area, SECL Bishrampur Area, District Surguja Chhattisgarh.
4. General Manager, CMC, SECL Bhawan, Seepat Road, Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Manoj Paranjpe, Advocate.
For Respondent	:	Shri Vaibhav Shukla, Advocate.

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

Order on Board**Per Navin Sinha, Chief Justice****11/05/2015**

1. The Petitioner is aggrieved by orders dated 30.3.2015 and 19/21.4.2015 terminating the works awarded to it on 28.5.2015 and 17.8.2014 for "Hiring of (a) pay loader for mechanical transfer of coal into tippers (b) tippers for its transportation of coal from Amagaon OCP surface coal stock yard (i) Heap No. B and (ii) Heap No. C to Bishrampur Wharf Wall Railway Siding at Amgaon OCP of Bishrampur Area". The impugned orders also communicate execution of remaining works at the risk and cost of Petitioner alongwith penalty and black-listing from future tenders for a period of three years.

2. Learned Counsel for the Petitioner submits that reserving all rights to urge all available grounds of facts and law before the authorities themselves,

confining the present submission for purposes of Article 226 in a contractual matter, the Respondents could not have unilaterally determined the alleged liabilities of the Petitioner without a show cause notice and hearing him especially when he disputes the quantification and assumptions of the Respondents.

3. Referring to clause 12 of the General Conditions of Contract, he submits that in no uncertain terms dealing with the settlement of disputes, it provides for an adjudicatory process before liability, if any, is determined. The Petitioner preferred the writ petition within 30 days from the communication of the impugned orders and therefore, he may be permitted to avail remedies before the authorities under the settlement of disputes clause. No separate show cause notice was issued before black-listing the Petitioner which is sufficient to vitiate the impugned order in so far as that ground is concerned.

4. Learned Counsel for the Respondents submits that under the clause for settlement of disputes, the Petitioner was required to write to the Engineer Incharge within 30 days from the impugned orders. Instead of doing so, the Petitioner rushed to this Court. Time period for entertaining objection is now over. It is fairly acknowledged that neither do the impugned order nor the counter-affidavit states that show cause notice was given before directing black-listing.

5. Clause 12 of the General Conditions of Contract states that the contractor could make request in writing to the Engineer Incharge for settlement of such disputes/claims within 30 days of arising of the cause of dispute/claim failing which no dispute/claim of the contractor shall be entertained by the Company. Thereafter, further procedure is provided if difference still persists.

6. We find substance in submission on behalf of the Petitioner that there could be no unilateral determination of any alleged liability of the Petitioner by the Respondents on assumptions. The use of the term "settlement of such disputes/claims" makes it manifest that there has to be a bilateral adjudicatory

process where the Petitioner is required to be heard. In this context, Counsel for the Petitioner has appropriately relied on 2005 (4) MPHT 15 (CG) M/s. A.K.Construction Company v. The State of M.P. (Now Chhattisgarh) observing at paragraph 7 as follows:

"7. In the case of *State of Karnataka Vs. Rameshwar Rice Mills, Thirthahalli* (supra), a similar question as is raised in the present case came up for consideration before the Supreme Court. Clause 12 of the Agreement between the parties provided *inter alia* that for any breach of conditions set out in the agreement the first party shall pay damages to the second party as may be assessed by the second party, in addition to the forfeiture in part or whole of the amount deposited by him and any amount that may become due or payable by the first party to the second party under any part of the agreement shall be deemed to be and may be recovered from the first party as if they were arising out of land revenue. The Supreme Court interpreting the said Clause 12 of the Agreement held:-

"Even assuming for argument's sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the Officer regarding the breach of the contract can be sustained under law because a party to the agreement can not be an arbiter in his own cause interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will however be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the Officer of the State even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of clause 12."

7. The Petitioner came to this Court within 30 days of the issuance of the impugned order, well within the period mentioned in clause 12 of the General Conditions of Contract. Had he not approached this Court within the period of 30 days, mentioned in clause 12, matters may have been entirely different. Relying on (1996) 6 SCC 199 (*Danda Rajeshwari v. Bodavula Hanumayamma*), we therefore direct that if the Petitioner files such application

under clause 12 before the Respondents within 30 days from today, they are required to consider and dispose the same in accordance with law. The Respondents cannot act de hors the contract by making recovery without any opportunity to the Petitioner to decide its claims under clause 12 of the General Conditions of Contract as that would be hit by Article 14 of the Constitution of India. Clause 12 of the General Conditions of Contract binds not only the Petitioner but the Respondents also.

8. In view of the admitted fact that no notice was given before blacklisting, we are unable to sustain the impugned order to that extent and set aside the order for black listing only, but without prejudice to the rights of the Respondents afresh in accordance with law.

9. The writ application is allowed in part and disposed with observations for the remainder.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE