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HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 1380 OF 2015

M/s. Vinay Kumar Upadhyay, a Proprietorship Firm, through its Proprietor, Vinay Kumar Upadhyay, S/o M. N. Upadhyay, aged about 40 years, R/o Duman Hill Colliery, Post Office Sonwani, P.S. Chirmiri, Tahsil Khadgawan, Civil and Revenue District Korea (C.G.)

... Petitioner

Versus

1. South Eastern Coalfields Limited (A Mini Ratna Company), Contract Management Cell, S.E.C.L. Bhawan, Seepat Road, Bilaspur. through its General Manager (CMC), S.E.C.L., Bilaspur, District Bilaspur (C.G.)

2. General Manager (CMC), South Eastern Coalfields Limited, (A Mini Ratna Company), Contract Management Cell, S.E.C.L. Bhawan, Seepat Road, Bilaspur, District Bilaspur (C.G.)

3. Director (T) (Oprn), South Eastern Coalfields Limited, (A Mini Ratna Company), Contract Management Cell, S.E.C.L. Bhawan, Seepat Road, Bilaspur, District Bilaspur (C.G.)

4. Staff Officer (P&P), Bishrampur Area, South Eastern Coalfields Limited, office of the General Manager, Bishrampur Area, District Korea, (C.G.)

... Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate.
For Respondents	:	Mr. Sudeep Agrawal, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

05/10/2015

1. The Petitioner is aggrieved by order dated 19.5.2015 keeping in abeyance the Letter of Intent (hereinafter called 'the LOI') issued to it on 28.4.2015, due to technical reasons. The challenge is also to order dated 15.9.2015, subsequently canceling the LOI with directions for refund of the earnest money deposited.

2. Learned Counsel for the Petitioner submits that a Notice Inviting Tender (hereinafter called 'the NIT') was published by the Respondents for hiring of Pay Loader for mechanical transfer of coal into railway wagons at Kumda Wharf Wall siding including leveling, dressing of coal loaded wagons to avoid over/under loading, picking of stones from top of wagons, cleaning of siding of railway track.

3. Pursuant to a corrigendum published, the extended date for opening of tenders was fixed on 22.1.2015. The Petitioner inter-alia was one of the bidders. The bidder was required to quote the diesel rate also accompanied by a diesel price certificate. The Petitioner submitted a certificate dated 22.1.2015 from M/s. Singh Service Centre, Bistrampur, a dealer of the Indian Oil Corporation quoting the rate for diesel as Rs. 53.65 per liter. The bid of the Petitioner having been found to be the lowest, work order was issued to the petitioner on 28.4.2015. Therefore it did not explicitly state that it was an LOI but that it may be deemed to be so. It did not stipulate fulfillment of any conditions by the Petitioner within a prescribed time frame failing which the offer would be withdrawn or that after fulfillment of conditions the work order would be issued. The mere fact that performance security deposit with signing of integrity pact only remained to be done it did not make it an LOI as understood in the commercial world. Reliance was placed on AIR 2014 SCW 4613 (Rishi Kiran Logistics Pvt. Ltd. v. Board of Trustees of Kandla Port Trust and Others) and 2006 (1) SCC 751 (Dresser Rand S.A. v. Bindal Agro Chem Ltd. and Another).

4. It was next submitted that the Respondents of their own mentioned the rate of diesel in the communication dated 28.4.2015 as Rs. 60.63 per liter, an offer never made by the Petitioner. The

Respondents in their reply dated 9.9.2015 have specifically admitted that this rate was obtained by their Staff Officer from M/s. Singh Service Center and that it was not the rate quoted by the Petitioner. The General Manager, Bistrampur Area, for that reason on 6.5.2015 and 11.8.2015 had requested for urgent necessary correction in the communication dated 28.4.2015 by correcting the rate of diesel as Rs. 53.65 per liter because pending the same the works were being got done by local tender at much higher rates. There was no other reason for keeping the order dated 28.4.2015 in abeyance and subsequently canceling the same.

5. Assailing the actions of the Respondents in the facts and circumstances of the case, it was urged to be completely arbitrary, whimsical and irrational. The Petitioner was sought to be visited with the consequences of what was essentially and exclusively the fault of the Respondents themselves. Even otherwise, the price of diesel is fixed by the Government including variations in the same which are all in the public domain known to all. The price of diesel has never reached the high of Rs. 60.63 per liter till date.

6. Learned Counsel for the Respondents submitted that being a public sector enterprise, they have acted fairly and bonafide in the facts and circumstances of the case. Cross-verification of diesel price was done by them from the very same M/s. Singh Service Center who had furnished the certificate to the Petitioner. Therefore, it cannot be said that the Respondents acted arbitrarily by incorporating the rate of diesel at their whims and fancies. Since the work order issued to the Petitioner would get materially altered by change in the rate of diesel, a bonafide

decision was taken to cancel the LOI and proceed afresh in accordance with law.

7. It was next submitted that the order dated 28.4.2015 was an LOI as performance security remained to be deposited and the integrity pact signed leading to a formal agreement. No vested right had accrued to the Petitioner till such time that these formalities were concluded. It was very fairly acknowledged that the Petitioner at no point of time had furnished any wrong information to the Respondent-Corporation or resciled from any terms of the offer made by him.

8. We have considered the submissions on behalf of the parties. To our understanding, the controversy involved is extremely short. No complicated issues are involved. The Respondents appear to have unnecessarily complicated issues where none really existed.

9. Since the matter can be disposed on a very short issue, the facts otherwise not being in dispute, the question of law whether the order dated 28.4.2015 was an LOI or a work order is not considered necessary to be decided. It is not the case of the Respondents that the order dated 28.4.2015 was being withdrawn for non-fulfillment of any stipulations contained therein. The rate of diesel was never quoted by the Petitioner as Rs.60.63 per litre. In fact, the communication dated 5.3.2015 was obtained by the Respondents after issuance of the order dated 28.4.2015 by them. If that be the correct position, the Respondents could not have unilaterally withdrawn or cancelled the order dated 28.4.2015 for reasons attributable to them alone. The General Manager, Bistrampur had twice requested for correction of the diesel rate in order dated 28.4.2015 because it was causing financial loss to the Respondent-Corporation.

10. Apart from limited issue with regard to the rate of diesel, there appears to be no other controversy between the parties.

11. The entire controversy therefore rests on the issue with regard to the rate of diesel as quoted by the Petitioner and as opined by the Respondents. The price of diesel even after deregulation is primarily controlled by the Government and is in the public domain. With the availability of technology, the prevalent rate of diesel on a particular date is accessible to one and all even on the website of the concerned authorities. Moreover, the Respondent-Company is a public sector corporation. Given the nature of activities that it is engaged in, we take judicial notice of the fact that it has a large number of vehicles if not light, heavy in nature consuming diesel also. It is therefore a regular consumer and purchaser of diesel itself. The transport department of the Respondent-Corporation will have available before it the daily rates of diesel including any fluctuation in the same. Had there been any discord on this issue with the rate quoted by the Petitioner, the matter would have been entirely different. We fail to understand and appreciate the conduct of the Respondents in *suo motu* collecting information from the petrol pump with regard to the rates of diesel and relying upon the same, when the Petitioner had already quoted the rate and the Respondent-Corporation is a consumer of diesel by itself.

12. In the facts and circumstances of the case, we are satisfied that the conduct of the Respondents in introducing a new rate in the order dated 28.4.2015 not quoted by the Petitioner, and visiting him with the consequences of the same, especially in the background of the pleas of the General Manager for rectification of the rate of diesel in the order dated 28.4.2015 to facilitate expediting works, the impugned orders

dated 19.5.2015 and 15.9.2015 are not sustainable. They are set aside and the matter is remanded to the Respondents for proceeding afresh in accordance with law as per the rates quoted by the Petitioner on basis of which he was found to be L1.

13. The writ petition is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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