

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1887 of 2015**

M/s. GJS Infratech Pvt. Limited, a Company duly incorporated under the Companies Act, 1956 having its registered office at plot No. 809, Flat No. 302, 3rd Floor, Venkoti Building, Ayyappa Society - Hitec City, Madhapur, Hyderabad (Telangana).

---- Petitioner

Versus

1. South Eastern Coalfields Limited, company duly registered under the provisions of the Companies Act, 1956 through its Chairman-cum-Managing Director, SECL Bhawan, Seepat Road, Bilaspur, Chhattisgarh.
2. General Manager, South Eastern Coalfields Limited, Contract Management Cell, SECL Bhawan, Seepat Road, Bilaspur, Chhattisgarh.
3. Deputy General Manager (M) Sub Area Manager, Amlai OCM, Sanjay Nagar, District Anuppur, Madhya Pradesh.
4. General Manager (M) SAM SECL Amlai OCM Sanjay Nagar District Anuppur, Madhya Pradesh.

---- Respondents

For Petitioner	:	Shri Amrito Das, Advocate.
For Respondents	:	Dr. N.K.Shukla, Senior Advocate with Shri Shailendra Shukla and Shri Rudra Nath Tiwari, Advocates.

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

Order on Board**Per Navin Sinha, Chief Justice****20/11/2015**

1. The Petitioner is aggrieved by show cause notice dated 2.10.2015 as to why the contract awarded to him by Letter of Intent (hereinafter referred to as 'the LOI') No. 604 dated 1.10.2012 be not cancelled alongwith forfeiture of earnest

money deposit and security deposit and the works in question be got executed by other sources at the risk and cost of the Petitioner.

2. Since the writ petition can be disposed on a single issue at this stage, we do not consider it necessary to deal with the facts of the case in detail except for the purpose of the present order.

3. Suffice it to notice that the LOI dated 1.10.2012 was issued to the Petitioner for execution of works relating to hiring of HEMM for overburden removal and its associated works at Amlai Open Cast Project of the Respondents at Sohagpur area. It is the case of the Petitioner that execution of the works came to be hampered by a Nalah bisecting the site from center approximately 20 meters deep making the execution of the works virtually impossible. On his pointing out the same, the Respondents issued fresh notice inviting tenders on 11.9.2012 for execution of the diversion works of the Nalah in which the Petitioner also participated. LOI for the same was issued to him on 2.4.2013. For reasons, which is not considered necessary to be discussed in the present order, execution of the NIT dated 11.9.2012 for diversion of the Nalah was foreclosed on 17.12.2014. The Petitioner for reasons assigned on 5.8.2014 requested for foreclosure of the main contract by LOI dated 1.10.2012.

4. Learned Counsel for the Petitioner submitted that earlier the Respondents accepted his requested and communicated decision for foreclosure of the works concerned in the LOI dated 1.10.2012 by their letter dated 1.5.2015. They suddenly retracted from the same without any opportunity to the Petitioner and have issued the impugned order which is but not a show cause notice at all. The language used makes it apparent that it is but the communication of a final decision to terminate the contract. Special emphasis was laid on the recitals in the second paragraph at page 2 of the order contending that not only was the show cause notice vitiated on that ground, but was an empty formality issued with completely closed mind. Reliance was placed on (2010) 13 SCC 427 (Oryx

Fisheries Private Limited v. Union of India).

5. Learned Senior Counsel for the Respondents, inter alia contended that there was never an executed agreement with the Petitioner. Grant of LOI does not amount to award of contract. It was next submitted that performance guarantee was not submitted by the Petitioner which was a mandatory condition under the LOI. Whether the contract was to be foreclosed or terminated has to be left to the discretion of the Respondents in terms of the agreement executed between the parties which in turn itself requires examination of fact situations on basis of which the final decision is taken.

6. We have considered the submissions.

7. Though a host of issues have been raised before us as discussed above, we are satisfied that all issues are clearly premature at this stage in view of our concurrence with the submission on behalf of the Petitioner that the impugned order dated 2.10.2015 cannot be described as show cause notice issued with an open mind calling upon the Petitioner to show cause why the contract be not terminated. The language of the show cause notice leaves us in no doubt that it has been issued with a closed mind having already taken a decision to terminate and only formality of show cause notice is sought to be complied with by the Respondents. We consider it proper to set out the relevant extracts of the notice as follows:

"Now SECL management has decided to terminate the contract awarded to you vide LOI No. 604 dated 01.10.2012, with forfeiture of Earnest Money Deposit (EMD) & Security Deposit (SD) and execute the works of 'Hiring of HEMM for OB removal and its associated work' at your risk and cost."

8. In Oryx Fisheries Private Limited (supra), show cause notice contained a final decision of default on the part of the Appellant and then asked to show cause why registration should not be cancelled. The Court held as follows:

"23. Relying on the underlined portions in the show-cause notice, the learned counsel for the appellant urged that even at the stage of the show-cause notice the third respondent has completely made up his mind and reached a definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show-cause proceeding. A show-cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusion of his alleged guilt. If that is done, as has been done in the instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony."

9. The show cause notice dated 2.10.2015 is therefore held to be not sustainable in its present form and is set aside but without prejudice to the rights of the Respondents afresh.

10. The writ petition is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE