

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 781 of 2015**

M/S Kamal Kumar Mehrotra Security Agency Dover 004, Building 09, Grand Forte, Plot No. 76, Sector Sigma IV, Greater Noida, (Uttar Pradesh), Through Its Authorised Officer Akhilesh Kumar Singh, S/O Shri Tribhuvan Singh, Aged About 42 Years, R/O Sector New 8D, Qtr. No. 3187, Bokaro Steel City, P.S. Sector-9, District Bokaro, Jharkhand

---- Petitioner

Versus

1. South Eastern Coalfields Limited Through Chairman-Cum-Managing Director, South Eastern Coalfields Limited, Seepat Road, P.S. Sarkanda, Civil And Revenue District Bilaspur, (Chhattisgarh)
2. Chief General Manager, South Eastern Coalfields Limited, Kusmunda Area, P.O. Kusmunda Colliery, District Korba, (Chhattisgarh)
3. Deputy General Manager (Personnel), South Eastern Coalfields Limited, Kusmunda Area, P.O.- Kusmunda Colliery, District- Korba (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Chandresh Shrivastava, Advocate.
For Respondents	:	Shri Vaibhav Shukla, Advocate

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Order on Board**Per NAVIN SINHA, C.J.****30/6/2015**

1. Heard Learned Counsel for the Petitioner and the Respondents.
2. The Petitioner, a Security Agency registered with the Directorate General of Resettlement, Ministry of Defence, entered into a contract with the Respondents for Security Services. On 28.4.2014, a theft is stated to have occurred in Shed No.4 of the Regional Stores through the backside of the top of the roof. The Shed inter alia was in the security charge of the Petitioner.

3. Learned Counsel for the Petitioner sought to persuade us on facts that in fact no theft had actually taken place. The impugned order dated 9.4.2015 for recovery of the value of the alleged theft was issued in violation of the principles of natural justice without an opportunity of defence before arriving at the conclusion that the theft had occurred because of the negligence of the Petitioner.

4. It was additionally urged that since no theft had in fact taken place, the Police did not register any case on a complaint by the Respondents. Arbitrariness is writ large in the conduct of the Respondents which is a 'State' within the meaning of Article 12 of the Constitution of India, even if the relationship be contractual.

5. Learned Counsel for the Respondents has opposed the writ application submitting that there is an Arbitration Clause 17 in the Contract Agreement between the parties. The writ petition is therefore not maintainable. If the Petitioner invokes the Arbitration Clause, the Respondents are willing to refer the same to Arbitration.

6. We have considered the submissions on behalf of the parties and are of the opinion that the writ petition is not maintainable. The relationship between the parties is contractual under a written agreement. It is not the case of the Petitioner that the Respondents have acted dehors the Agreement. There is an Arbitration Clause in the Agreement. The controversy involves disputed questions of facts with regard to the theft and the manner it may have taken place including the quantum of the same. It is not in dispute that the Shed from which the theft is said to have taken place was in the Security charge of the Petitioner. Suffice it to state that thereafter matters go in the arena of disputed facts which cannot be examined in the writ jurisdiction. The Arbitrator has complete jurisdiction once he enters upon reference including to pass interim orders.

7. The writ application is therefore disposed declining interference with the observation that the Petitioner may avail such other appropriate and/or alternative remedies including Arbitration as it may be advised.

8. The writ petition is disposed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE