

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (C) NO. 1864 OF 2015

1. M/s Singh Transporters, a partnership concern, having its Head Office at B -78, Shanti Nagar, Ameri Road, Near M.P.E.B. Power Station, Post Office Mangla, District Bilaspur (Chhattisgarh), through its Partner Shri Davindar Singh Kalra S/o Late Shri Kartar Singh, aged about 43 years, R/o B 78, Shanti Nagar, Ameri Road, Near M.P.E.B. Power Station, Post Office - Mangla, District Bilaspur (C.G.)

... Petitioner

Versus

1. South Eastern Coalfields Limited, a duly constituted Company under the provisions of the Companies Act, 1956, being a subsidiary of Coal India Limited, through its Chairman-cum-Managing Director S.E.C.L. Head Quarter, Seepat Road, District Bilaspur (C.G.)

2. General Manager, South Eastern Coalfields Limited, Bhatgaon, Area, Post Office Bhatgaon, District Sarguja (C.G.)

3. Sub Area Manager, South Eastern Coalfields Limited, Mahaan Sub - Area, Bhatgaon Area, Post Office Bhatgaon, District Sarguja (C.G.)

4. General Manager, South Eastern Coalfields Limited, Contract Management Cell, S.E.C.L. Bhawan, Seepat Road, District Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Amrito Das, Advocate.
For Respondents	:	Dr. N.K. Shukla, Senior Advocate, along with Mr. Shailendra Shukla and Mr. Manoj Yadav, Advocates.

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

Order on Board

Per NAVIN SINHA, C.J.

28/10/2015

1. Heard Learned Counsel for the Petitioner and Learned Senior Counsel for the Respondents.

2. The Petitioner was awarded a contract pursuant to tender notice dated 6.11.2013 for hiring of (a) pay loader for mechanical transfer of coal into tippers at stockyard and (b) tippers for transportation of coal from Mahan-II Stock to Bhatgaon CHP. Lead distance for works was mentioned as 41-42 kms. Minimum handling required was 1800 tonnes of coal per day. The agreement was signed on 11.8.2014 for the period

17.7.2014 to 30.11.2017. It is aggrieved by order dated 21.9.2015 stating that due to construction of road the operational lead of the contract, one of the major parameters in scope of work, had reduced entailing foreclosure of the contract under Clause 9.4 of the agreement. The process of foreclosure was in process awaiting approval of competent authority at head quarters.

3. Earlier on 4.6.2015, the Respondents had ordered foreclosure unilaterally without hearing. Aggrieved, the Petitioner filed Writ Petition (C) No.1285 of 2015. The writ petition was disposed on the contention for directions to decide the pending representation leading to the impugned order.

4. One of the contentions raised today on behalf of the Respondents is that the writ petition was premature having been preferred against a show cause notice. Disputing it, Learned Counsel for the Petitioner contended that it was a communication of a final decision to foreclose relying upon (2010) 13 SCC 427 (Oryx Fisheries (P) Ltd v. Union of India). It was next submitted that there was complete variance in the grounds mentioned in the impugned order and that stated in paragraph 9 of the counter affidavit.

5. A document styled 'covering memo' has been filed today on behalf of the Respondents containing no index even and enclosing certain internal file notings. There are no pleadings much less supported by any affidavit with regard to the relevance of the same to the controversy. In a writ petition a party cannot suddenly place any documents before the Court unsupported by any pleadings on affidavit with regard to the same and then seek to rely upon it. The entire sanctity of proceedings under Article 226 shall get vitiated if this procedure is allowed. We are therefore left with no option but to reject the same.

6. We have considered the submissions on behalf of the parties. There is no reduction in the scope of work with regard to handling of 1800 tonnes of coal per day. Because of construction of a new road by the Respondents after execution of the agreement, the lead distance for the works had reduced by less than a kilometer from 41.60 kms to 40.70 kms as mentioned in the impugned order.

7. The impugned order refers to reduction of lead area, a major parameter in scope for reduction of work. But paragraph 9 of the counter affidavit states the reason for foreclosure was because in the new tender bids invited on 29.4.2015 for similar works lower rates had been quoted. There is no other reason mentioned for foreclosure. Clause 9.4 provides for complete or partial foreclosure. No reasons have been mentioned why partial foreclosure was not considered especially when the Petitioner had offered to continue the works on pro rata basis in view of the reduction in lead distance.

8. We are further satisfied that the impugned order cannot be stated to be a show cause notice but is the communication of a final order for foreclosure. In *Oryx Fisheries* (supra) it was observed :

“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.”

9. On both counts, the action of the Respondents is held to be arbitrary and contrary to Article 14 of the Constitution. The orders dated 4.6.2015 and 21.9.2015 are therefore set aside and the writ petition is allowed but without prejudice to the rights of the Respondents afresh in accordance with law.

10. The interim order dated 15.10.2015 with regard to the fresh tender published by the Respondents in the meantime, is made absolute.

11. The writ petition is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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