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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1792/2013

M/S KHUSHI COAL TRANSPORT PVT.
LTD AND ORS

..... Petitioners

Through: Mr T.L. Garg, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Manish Mohan, CGSC with Ms Puja
Sarkar & Ms Manisha Rana Singh, Advs. for R- 1,
2 & 6.

Ms Resmitha R. Chandran, Adv. for R- 4 & 5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **15.01.2015**

1. This is a petition which seeks to assail the decision taken by Coal India Ltd. (CIL), i.e., respondent no.3, with regard to revision of rates of transportation. The impugned decision is dated 08.08.2012. There is also a challenge to consequential orders which are appended as Annexures III, IV and V. These are, in effect, consequential orders categorized by respondent nos. 4 and 5 as “approval orders”. These approval orders are of even date, i.e., 09.10.2012.

2. In order to adjudicate upon the disputes raised in the petition, the following brief facts are required to be noticed.

2.1 The Government of India formulated a scheme, for rehabilitation of ex-servicemen by giving them an opportunity to carry out, inter alia, amongst others, the work of coal transportation. The said scheme enabled Ex-servicemen to form coal transportation companies.

2.2 This scheme was formulated with the intercession of the Union

Ministries of Energy and Defence, in 1979. For this purpose a Memorandum of Understanding dated 08.04.1993 (in short MOU) was drawn up between the Director General of Resettlement (DGR) and the CIL, i.e., respondent no.3.

2.3 Amongst, other obligations, undertaken by respondent no.3, in terms of paragraph 18 of the MOU, respondent no.3 was obliged to formulate modalities for fixing rates and escalation, on a *yearly basis*, in *consultation*, with other party to the aforementioned MOU, i.e., Directorate General of Resettlement (in short DGR).

2.4 It appears that, between 1993 and 2001, CIL fixed rates in consonance with the provisions of clause 18 of the MOU. Accordingly, the rates of transportation, it is averred by the petitioners, were raised by 7 to 8% per annum.

2.5 It is the case of the petitioners that the last revision of rates of transportation, in terms of clause 18 of the MOU, took place w.e.f. 01.04.2008.

2.6 Apparently, the petitioners have been making joint representations since 2009, for enhancement/ revision of rates of transportation, on a yearly basis, in terms of clause 18 of the MOU. The petitioners aver that there has been no movement in the matter in so far as respondent no.3, is concerned.

2.7 It is also the case of the petitioners that, while profits of CIL have enhanced from Rs. 5744 crores to Rs. 21272 crores, between the period 2008 to 2012, the Ex-Servicemen Transport Companies (in short ESM Transport Companies), have been denied their dues.

2.8 What has caused immediate grievance to the petitioners, is the decision taken by the board of respondent no.3, to revise the rates, at their meeting, held on 31.07.2012. By virtue of the decision taken by the board

of respondent no.3, the rates were revised, it appears, on the recommendation of Price Waterhouse Coopers (in short PWC), for a period of three (3) years. This recommendation of PWC was made, evidently, in 2011. This recommendation of PWC, I am told, was only with regard to revision in rates and not the period.

2.9 The consequential orders (which I have referred to right at the beginning), thereafter followed, and were issued by respondent nos.4 and 5. By virtue of the consequential orders, which are titled as: “approval orders”, the revision in the rates was made effective from 01.08.2012. As indicated above, the approval orders were issued on 09.10.2012.

3. Being aggrieved by the same, the captioned writ petition was filed in this court under Article 226 of the Constitution. Notice was issued in this petition on 19.03.2013. Notice was accepted on behalf of respondent nos. 1, 2 & 6 on that very date. Thereafter, despite service, respondent no.3 has not entered appearance. Though respondent nos. 4 & 5 entered appearance, rather late, they were given an opportunity to have their say in the matter. As a result, the said respondents also filed their return in the matter.

4. The arguments in the matter have been advanced by Mr T.L. Garg, on behalf of the petitioner, while on behalf of respondent nos. 1, 2 & 6, submissions have been made by Mr Manish. In so far as respondent nos. 4 and 5 are concerned, they are represented by Ms Chandran. There is, however, no representation on behalf of respondent no.3.

5. Mr Garg has confined his submissions to only following: It is Mr Garg’s submission that in terms of the aforementioned MOU, the revision in rates and/or escalation had to take place on a yearly basis and, that too, in consultation with respondent no.6, i.e., DGR. It is his submission that no consultation, whatsoever, has taken place with the DGR. For this purpose,

he has relied upon the affidavit filed on behalf of respondent no.6, i.e., the DGR. He also seeks to place reliance on several communications issued by the DGR in this behalf, which are appended to the said affidavit of DGR. It is thus, the contention of Mr Garg, that the impugned decision, having been made virtually behind the petitioners' back, cannot stand the scrutiny of law.

6. Mr Mohan, who appears for respondent nos. 1, 2 & 6, has in his usual fairness, stated that factually there has been no consultation with the DGR, in the fixation of rates. Mr Mohan has accepted the situation, obviously, based on the averments made to that effect, in the affidavit, filed on behalf of respondent no.6, i.e., DGR.

7. In so far as respondent nos. 4 & 5 are concerned, the submissions made by Ms Chandran, can broadly be paraphrased as follows:

- (i) That out of 47 ESM transport companies, only seven (7) have made a grievance and, therefore, the impugned action, according to respondent nos. 4 & 5, is obviously in the interest of a majority of ESM transport companies.
- (ii) The provisions of clause 18 of the MOU have been adhered to by respondent no.3 (i.e., the CIL), in as much as, the revision in rates commensurate with the increase in the input cost.
- (iii) The revision or escalation in rates is pivoted on recommendation of PWC, which carried out a scientific study, while setting out its recommendation in 2011 report.
- (iv) The revision/ escalation of rates, was regularly carried out between 2001 and 2008, based on the increase in input cost.
- (v) In so far as the other transporters are concerned, such as the Co-operative Societies for Project Affected People (PAP) and civil contractors, they are paid transportation charges which are at a rate equivalent to 90% and 95%, respectively, of the rate, payable to ESM transport companies. In

other words, the aforementioned category of transporters, i.e., PAP and civil contractors, are paid transportation rates which are less by 10% and 5%, as compared to ESM transport companies.

8. I have heard the learned counsels for the parties. The central issue is interpretation of clause 18 of the MOU. It is no-one's case, least of all, that of the respondents, that clause 18 of the MOU is not applicable to the petitioners. Therefore, for the sake of convenience, clause 18 of the MOU is extracted hereinbelow:

“....18. Policy on Fixation of Rates & Revision of Rates

Modalities of fixing rates and escalation to be paid **yearly** will be formulated by Coal India in **consultation** with DGR.....”

8.1 A perusal of the aforesaid clause 18 would show that in fixing rates and escalation, an exercise had to be carried out on a yearly basis and, that too, in consultation, with respondent no.6, i.e., the DGR. As indicated above, there is no dispute raised before me by respondent nos. 1, 2 & 6 that this exercise was not carried out on a yearly basis after 2008. This aspect clearly comes to fore on a bare perusal of the following averments made in the affidavit filed on behalf of respondent nos. 1, 2 & 6:

“....2. In reply to the contents of this para, it is submitted that the CIL letters for effecting rate revisions for the year 2008 and 2012 are enclosed as Annexure – B & C respectively. DGR has been regularly approaching the CIL for revision of rates on yearly basis. The various communications issued by this Office to CIL/ Coal Subsidiaries regarding the urgency and necessity of regular yearly rate revision and requirement to apply it retrospectively in case not done in time are enclosed as Annexure-D-1 to D-12. Also as and when the rates revisions were finalized and instructed for implementation, there were no prior finalized and instructed for implementation, there were no prior consultations regarding the same done by the CIL with the DGR (MoD)....”

8.2 Therefore, in so far as adherence to the provisions of clause 18 was concerned, respondent no.3 was clearly remiss in not following them. What has made matters worse, is that, respondent no.3, despite being noticed by this court, has not filed a return in the matter. The assertions made by the petitioner have gone untraversed and, therefore, will have to be accepted.

9. In so far as the submission of respondent nos. 4 & 5 are concerned, that revision has taken place after a scientific study was carried out, and that, the revision was based on the increase in the costs of inputs; in my view, can have no bearing on the issue raised by the petitioners. The central issue, as I have indicated above, was, as to whether the provisions of clause 18 of the MOU was adhered to by respondent no.3. As a matter of fact, respondent no. 4 and 5 are the subsidiaries of respondent no.3, which have only passed consequential orders based on the decision taken by the board of respondent no.3, at the meeting dated 31.07.2012. The entire exercise did not involve, though agreed to in the MOU, the DGR, and therefore, the so called study was, in a sense, futile. It is no-one's case that when PWC carried out its study, it involved the DGR which effectively represents the interest of ESM transport companies. The least that PWC could have done was to involve the DGR and then made its recommendations to respondent no.3.

10. The other submission of learned counsel for respondent nos. 4 and 5 that other contractors are given transportation rates which are less by nearly 5% and 10%, of those rates that are paid to ESM transport companies, in my view, will again, have no bearing, as each class of contractors are governed by their respective terms of engagement.

11. This court cannot also lose sight of the fact that, the instant scheme, and such like many other schemes, are formulated by the Government of India to enable robust rehabilitation of Ex-Servicemen, as a vast majority of

this class of personnel retire at a relatively young age when compared to their civilian counterparts.

12. Before I conclude, I may only note that Ms Chandran had made a request to file a sur-rejoinder. I had, in this connection, asked Ms Chandran as to which part of the rejoinder she would like to rebut by way of a sur-rejoinder. She was not able to demonstrate, with clarity, as to the averments made in rejoinder which required a sur-rejoinder. Therefore, this request of Ms Chandran, was declined.

13. In these circumstances, I have no hesitation in allowing the writ petition to the extent that the orders impugned will stand quashed. Accordingly, annexures II to IV shall stand quashed.

13.1 Mr Garg says that, for the moment, he is not pressing reliefs prayed for in prayer clause (iii) to (v).

14. Accordingly, the respondents will, therefore, take consequential steps in the light of the direction issued hereinabove. The petition is, thus disposed of in the aforesaid terms. The parties are, however, left to bear their own costs in the matter.

RAJIV SHAKDHER, J

JANUARY 15, 2015

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