

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 724 of 2016**

R.K. Transport Co. Through Proprietor, Ramesh Kumar Jain, Navkaar
 Parisar, Pulgaon Naka, District Durg (Chhattisgarh)

---- **Petitioner****Versus**

1. State Of Chhattisgarh Through Its Secretary, Mineral Resource Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (Chhattisgarh)
2. Chhattisgarh Mineral Development Corporation Ltd., Through Managing Director Sonakhan Bhawan, Ring Road- 1, Village Puraina, P.O. Ravigram Raipur (Chhattisgarh)

-----**Respondents**

For Petitioner:	Shri Purushaindra Kaurav along with Shri Kapil Duggal and Shri Ashish Surana, Advocates.
For Respondent No.1/State:	Shri Prafull N. Bharat, Additional Advocate General.
For Respondent No.2:	Shri Yogesh Pandey, Advocate

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****4/04/2016**

1. We have heard Learned Counsel for the Petitioner and for Respondent No.2.
2. The Petitioner assails order dated 23.1.2016 passed by Respondent No.2 cancelling the agreement dated 18.1.2008 executed between the parties, granting mining rights to the Petitioner for extraction of Bauxite at Mainpat.
3. In the nature of the order that we propose to pass, it is considered

expedient to take notice of only relevant facts for purposes of the present order so as not to prejudice either party.

4. Respondent No.2 issued show cause notice dated 2.1.2015 to the Petitioner as to why the agreement be not cancelled, on grounds with regard to the modified mining plan and environmental clearance coupled with failure to deposit the advance monthly installment. The Petitioner submitted an exhaustive and detailed reply on 17.1.2015. The impugned order has then been passed stating that after detailed consideration of the cause shown, the grounds mentioned in it were not legally sound and therefore unacceptable. Additionally it also referred to the failure of the Petitioner to keep the Bank guarantee alive after 12.4.2015.

5. Apart from the other grounds urged, one of the contentions on behalf of the Petitioner is that the issue with regard to Bank guarantee was not part of the show cause notice dated 2.1.2015 culminating in the impugned order. Thus the order being also based on a ground beyond the show cause notice was bad for that additional reason.

6. Learned Counsel for Respondent No.2 opposing the submission contended that a separate notice regarding the Bank guarantee issue had been given. The cause shown has been considered and found unacceptable. It was next pointed out that the Writ Petition was not maintainable in view of Clause-20 of the agreement, providing an alternative procedure for settlement of disputes arising under the agreement and which would include termination of the same.

7. The Court is of the considered opinion that in matters relating to termination of contracts, the jurisdiction in judicial review under Article 226 of the Constitution is restricted in nature to primarily examining infirmities in the

decision making process. If the cause shown has not been considered or the order is arbitrary in nature on the face of it being non speaking in nature, the grounds were dehors the terms of the agreement, one of the parties seeks to take advantage of its own faults, no ordinary person would have to that conclusion on the same materials are but some of the grounds on which a Writ Petition may be entertained. If there are disputed facts involved, with allegations and counter allegations requiring further inquiry, verification of facts and documents and may be taking of evidence also, the Writ jurisdiction cannot be invoked. If the agreement between the parties provides a procedure for settlement of disputes inter se, the Writ jurisdiction cannot be invoked directly ignoring the same voluntarily agreed at the time of signing the agreement unless exceptional circumstances exist.

8. In the present case, undoubtedly a show cause notice was given to the Petitioner. Cause was shown and then the order of termination has been passed. Prima facie, it may reflect that there is no infirmity in the decision making process and the Petitioner ought to take recourse to Clause-20 of the agreement for settlement of the disputes. But a deeper insight reveals fundamental flaws in the decision making process.

9. The giving of a show cause notice is not an empty formality but is a far more serious matter giving a valuable right to the person likely to be affected by any order to be passed to its prejudice for persuading the authority not to pass such an order. It is therefore necessary that not only should the show cause notice be in clear terms on specified issues but equally that the cause shown must also be considered and application of mind to it reflected in the final order. The final order also cannot take into consideration materials not mentioned in the show cause notice as the concerned has had no opportunity to deal with it. At this stage, we are not concerned with the acceptability or

unacceptability of the cause shown. The only issue for our consideration is if the impugned order complies with the principles of natural justice or has Respondent No.2 paid mere lip service to the principles of natural justice. The impugned order does not refer to any other show cause notice except that dated 2.1.2015

10. The giving of reasons has always been considered a part of the principles of natural justice as reasons not only are a control on arbitrariness but also give an insight into the mind of its maker facilitating the aggrieved to understand and appreciate why the cause shown by it was not considered acceptable. It then facilitates the aggrieved to prefer an appeal or invoke any other remedy that may be available under the agreement. To hold that an authority can reject a cause shown by simply stating that it was not acceptable may be vesting arbitrary or uncanalised powers. What will happen if the authority is unable to find answers to the cause shown ? Will it not be convenient then for the authority to simply state that the cause shown was not acceptable, leaving the aggrieved with not even the bare minimum of understanding why the cause shown by it was not found acceptable and thus a festering severe of injustice.

11. The importance of giving reasons was considered in (2007) 11 SCC 241 (Daya Ram v. Raghunath) observing as follows:-

“9. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its

silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking order. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

12. In the facts of the present case, we are satisfied that the Petitioner has an alternative remedy under the agreement dated 18.1.2008, agreed upon by it to raise its disputes before a particular forum prescribed in the agreement. It therefore binds him. Had it been a case where the agreement was terminated without a show cause notice even, matters would have been entirely different and there would have been no impediment in invoking the Writ jurisdiction straightaway. But, the question that troubles our mind is that if the Petitioner were to invoke Clause-20, what does it assail. Is it required to tell the authorities its own perception and understanding of what the reasons for rejection may or may not be and risk order on a completely different ground. Unless it is first told the reasons why the cause shown by it was not acceptable and is given an opportunity to understand the thought process of Respondent No.2, how does it satisfy itself first that it has a case to take under Clause-20 or not. It is always possible that if the authorities pass a reasoned and speaking order considering the cause shown by it as unacceptable on grounds discussed, it may come to the conclusion that it really does not have a case to take under Clause-20. Conversely, in absence of any reasons, it suffers from a sense of injustice which virtually will leave it with no forum or remedy.

13. We are therefore unable to sustain the impugned order in its present

form. Mere recital that the cause shown had been considered and the grounds taken were not sustainable in with law and therefore unacceptable, are delightfully vague words which can conceal much. We therefore hold that the order dated 23.1.2016 is not sustainable in its present form. It is set aside.

14. Respondent No.2 is required to pass a fresh reasoned and speaking order showing due application of mind and consideration of the cause shown by the Petitioner within a maximum period of one month from the date of receipt and/or presentation of the copy of the present order before it.

15. If the Petitioner is dissatisfied, it shall be at liberty to invoke Clause-20 of the agreement within a period of 30 days from the date that the order is communicated whereafter, the parties shall abide by the stipulations contained under Clause-20.

16. Before parting with the order, we consider it proper to reiterate that nothing in the present order can be deemed or construed as any opinion or observation either favourable or adverse to either party since we are allowing the Writ Petition purely on technical grounds for non-compliance with the principles of natural justice.

17. The Writ Petition is allowed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE