

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6372/2016

(Sai Wardha Power Ltd. Hyderabad vs. Western Coalfields Ltd. And another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr.K.H.Deshpande, senior counsel with Shri Rajeev K. Deshpande
Advocate for the petitioner
Mr. S.P. Dharmadhikari, senior counsel with Shri K.N. Shukul,
Advocate for Respondent No.1
Mr. S.A. Chaudhari, Advocate for Respondent No.3

**CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.
DATED : 16th December, 2016.**

Heard.

By this Writ Petition, the petitioner challenges the notice of demand for payment of compensation on account of short-lifting of coal as being unjust, unlawful and arbitrary. The petitioner also challenges the demand-letters on account of performance incentives and seeks a direction against the respondent no.1 not to take coercive action for the encashment of bank guarantee deposited with the respondents.

We find that several disputed questions of facts arise for determination in this Writ Petition and it would not be proper to decide the issues involved in this Writ Petition, in exercise of the writ jurisdiction.

The learned senior counsel for the petitioner states that the petitioner is willing to withdraw the Writ Petition so that appropriate proceedings could be filed before the Competition Appellate Tribunal, however, the Competition Appellate Tribunal is presently not functioning due to the retirement of a Judicial Member. It is stated that the appointment of the Judicial Member on the Competition Appellate Tribunal may take a couple of months. It is stated by the learned senior counsel that since the Competition Tribunal has allowed the complaint filed by the petitioner and has directed the respondents to make necessary modification in its agreement, thereby requiring the re-structuring of the pricing structure, it cannot be said that the amount claimed by the respondents by the demand-letters and notices is payable by the petitioner to the respondents. It is stated that if the pricing structure is modified as per the directions of the Competition Tribunal that are upheld by the Competition Appellate Tribunal, a larger amount would be due and payable by the respondents to the petitioner. It is stated that the invocation of the bank guarantees in the aforesaid set of facts would cause serious prejudice to the petitioner and hence till the Competition Appellate Tribunal starts functioning, the respondents may be restrained from invoking the bank guarantees.

Shri S.P. Dharmadhikari, the learned senior counsel for the respondent no.1 opposes the petition and also opposes the prayer made by the learned counsel for the petitioner seeking a restraintment order against the invocation of the bank guarantees. It is stated that time may not be granted to the petitioner to approach the Appellate Tribunal.

Since we find some force in the submissions made on behalf

of the petitioner that in terms of the order of the Competition Tribunal that is upheld by the Competition Appellate Tribunal, the respondents would be required to restructure the pricing structure that may be beneficial to the petitioner, thereby resulting in the reduction of the amount claimed by the respondents by the impugned demand notices and communications, it would be necessary in the interest of justice to restrain the respondents from invoking the bank guarantees for a period of two months, so as to grant an opportunity to the petitioner to approach the appropriate forum, for the redressal of the grievance.

Hence, in the circumstances of the case, while we permit the petitioner to withdraw the Writ Petition and dispose of the same as such, we restrain the respondents from invoking the bank guarantees for two months.

Order accordingly. No costs.

JUDGE

JUDGE

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