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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.245 of 2019

Hindalco Industries Limited, a company incorporated under the Companies Act, 1956, and having its registered office at Ahura Centre, 1st Floor, B Wing, Mahakali Caves Road, Andheri (East), Mumbai – 400 093.

---- Petitioner

Versus

1. Union of India, Through Ministry of Coal, Central Secretariat, New Delhi – 110001.

2. The Nominated Authority, Ministry of Coal, Government of India, World Trade Tower, Ground Floor, Barakhamba Lane, New Delhi – 110001.

3. State of Chhattisgarh, Through the Resident Commissioner, 3rd Floor, Chanakya Bhawan, New Yashwant Palace, Chanakyapuri, New Delhi – 110021.

---- Respondents

For Petitioner: Mr. Kishore Bhaduri, Mr. B.D. Guru, Mr. Ashish Pradhan, Mr. Rohit Sharma, Mr. Pankaj Singh and Mr. Achyut Tiwari, Advocates.
For Respondents No.1 and 2 / Union of India: - Mr. B. Gopa Kumar, Assistant Solicitor General of India, on advance copy.
For Respondent No.3 / State: - Mr. S.K. Agrawal, Govt. Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/03/2019

1. Taking exception to the order passed by the learned District Judge acting as a Tribunal constituted under Section 27(2) of the Coal Mines (Special Provisions) Act, 2015 (for short, 'the Act of 2015'), this writ petition has been preferred by the petitioner herein stating that the order passed by the learned Tribunal is contrary to facts and law available on record and therefore it is liable to be set aside.

2. Mr. Kishore Bhaduri, learned counsel for the petitioner, would submit that the learned Tribunal is absolutely unjustified in rejecting the

application for interim relief filed by the petitioner, as pursuant to the order of the Delhi High Court, the petitioner has well in time approached the Tribunal constituted under Section 27(2) of the Act of 2015 for adjudication and it was required to be decided within 90 days in view of the provision contained in Section 27(3) of the Act of 2015 and meanwhile, the petitioner got the bank guarantee renewed from time to time and it was extended till 22nd of March, 2019 and the petitioner has incurred more than ₹ 44 lakhs and still, the reference petition has not been decided by the learned Tribunal, as the respondents are not co-operating and despite granting of several opportunities to them, they thought it expedient not to file return and again insisting for extension of bank guarantee which will again incur a cost of approximately ₹ 18 lakhs per quarter and which is unsustainable in law. He would further submit that in the meanwhile, the respondents are insisting for renewal as per the terms of the Coal Mines Development and Production Agreement (for short, 'CMDPA') and they are likely to cancel the lease, as such, the impugned order passed by the learned Tribunal deserves to be set-aside.

3. Mr. B. Gopa Kumar, learned Assistant Solicitor General of India appearing for respondents No.1 and 2 / Union of India, on advance copy, would submit that though Union of India did not file return, but a reasonable time be granted to file return, they will quickly respond to the original reference petition and come back with their response before the Tribunal, as such, the petitioner is required to keep the bank guarantee alive as per law and in case of cancellation, if any, for fresh cause of action, he is required to invoke the remedy available under the law.

4. Mr. S.K. Agrawal, learned Government Advocate appearing for

respondent No.3 / State, on advance copy, would support Mr. B. Gopa Kumar.

5. I have heard learned counsel for the parties on the question of admission of the writ petition and considered the rival submissions made herein-above and also went through the record with utmost circumspection.

6. The petitioner Company and respondents No.1 & 2 entered into an agreement called CMDPA pursuant to which on 18-3-2015, performance bank guarantee amounting to ₹ 3,68,54,00,000/- was deposited by the petitioner and mining lease was also granted on 20-10-2015. It is the case of the petitioner that upon achieving annual Peak Rated Capacity (PRC) for the year 2016-17, the petitioner requested for return of performance bank guarantee and thereafter, on 26-4-2018 (Annexure P-6), respondent No.2 is said to have misappropriated 20% of the amount of performance bank guarantee equivalent to ₹ 73,70,80,000/- which the petitioner Company questioned before the Delhi High Court seeking quashment of Annexure P-6 dated 26-4-2018 in W.P.(C)No.4651/2018 (Hindalco Industries Limited v. Union of India and others) in which the Delhi High Court was pleased to finally direct as under: -

> "(i) The petitioner is given liberty to approach the Tribunal within two weeks from today.
>
> (ii) Pending adjudication by the Tribunal, the operation of the impugned communication dated 26.4.2018 shall remain stayed.
>
> (iii) In case the decision rendered by the Tribunal is against the interest of the petitioner, the said decision will not be enforced for a period of two weeks thereafter.
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> (iv) It is made clear that if the petitioner does not approach the Tribunal within two weeks from today the interim protection granted will stand dissolved.

6. Pending application shall stand closed.

17. Dasti under the signatures of the Court Master."

7. Complying the order of the Delhi High Court, the petitioner herein preferred reference petition before the District Judge i.e. the Tribunal constituted under Section 27(2) of the Act of 2015 on 14-5-2018. Meanwhile, thrice on 22-6-2018, 22-9-2018 and 12-12-2018, performance bank guarantee was renewed from time to time and validity extended up to 22-3-2019. Any how, the reference petition could not be decided within the stipulated period of 90 days prescribed under Section 27(3) of the Act of 2015, as the learned District Judge has recorded in the order sheet that the State and the Union of India did not file return well in time and that led the petitioner for filing application for interim relief before the said Court on 18-1-2019 claiming following interim reliefs: -

> "(a) Direct the Respondent No.2 to return the Performance Bank Guarantee bearing number 1637617BG0000355 dated 18.03.2018 submitted by the Petitioner.
>
> (b) Direct the Respondent No.2 to not seek any further renewals of Performance Bank Guarantee bearing number 1637617BG0000355 dated 18.03.2018 submitted by the Petitioner.
>
> (c) Direct the Respondent No.2 to pay to the Petitioner the costs towards keeping the PBG alive as enumerated in Para 7 above.
>
> (d) Pass any other order or further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

8. The learned District Judge after hearing the parties rejected the application finding no merit holding that the petitioner is not likely to suffer any irreparable loss, if interim order is not granted. It is this order which has been questioned by the petitioner in this writ petition.

9. After arguing for fairly long time, Mr. Kishore Bhaduri ably assisted by

Mr. Ashish Pradhan and Mr. B.D. Guru, would submit that the petitioner would further renew the bank guarantee for a further period of three months, but he submits that within a stipulated period, the Tribunal constituted under Section 27(2) of the Act of 2015 be directed to dispose of the said reference which appears to be not only just and proper, but also fair in view of the provision contained in Section 27(3) of the Act of 2015 which states as under: -

> "(3) The Tribunal referred to in sub-section (1) shall, after hearing the parties to the dispute, make an award in writing within a period of ninety days from the institution or reference of the dispute."

10. Since the mandate of the competent legislature is to conclude the proceeding within a period of ninety days from the date of reference / institution and in this case, it has been instituted on 14-5-2018 and ninety days period had already expired long back, it would be expedient to direct for conclusion of the proceeding after hearing the parties within a period of 45 days from the date of receipt / production of a copy of this order by the parties. Parties will keep in mind that the Delhi High Court had already held that pending adjudication by the Tribunal, the operation of the impugned communication dated 26-4-2018 shall remain stayed. It is the further apprehension of learned counsel for the parties that rejection of application for grant of interim relief may not be construed as barring the petitioner to pursue the remedy, if any, for further and subsequent development. It is made clear that the order of the Tribunal and the order of this Court will not bar the petitioner from pursuing the remedy, if any, against the subsequent order passed against his interest.

11. Since learned counsel appearing for the respondents on advance copy, accept notice, the writ petition is being disposed of with certain

directions and it is accordingly disposed of with following directions: -

1. The learned Tribunal will do well to consider and dispose of the matter finally within 45 days from the date of receipt of a copy of this order without any further delay.

2. The petitioner will do well to keep the bank guarantee bearing No.1637617BG0000355 alive for a further period of three months, within ten days from today.

3. The petitioner is at liberty to proceed in accordance with law on the subsequent or new development that has arisen after passing of the order dated 19-3-2018 or during the pendency of this writ petition.

12. The writ petition stands finally disposed of. No order as to cost(s).

13. A copy of this order be sent to the learned Tribunal by E-mail / fax.

Sd/-
(Sanjay K. Agrawal)
Judge

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