

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No. 338 of 2017

- M/s. Niranjnall Agrawal A Proprietorship Firm, Through Its Proprietor, Namely Shri Raj Agrawal, S/o Nirnjan Agrawal, Aged About 34 Years, R/o. Tulsi Marg, Korba, Police Station And Post Korba, Civil And Revenue District Korba Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coal Field Ltd. A Subsidiary Of Coal India Ltd., Through Its Chief General Manager, Bishrampur Area, Post Bishrampur, Amgaon Colliery, District Surguja Chhattisgarh
2. General Manager O P R N, S. E. C. L., Bishrampur Area, District : Surguja (Ambikapur), Chhattisgarh
3. Sub- Area Manager/ Engineer In- Charge, Bishrampur, Aamagaon Sub-Area, S. E. C. L., Bishrampur Area District : Surguja (Ambikapur), Chhattisgarh
4. General Manager, C M C, S. E. C. L. Bhawan, Seepat Road, Bilaspur, District Bilaspur Chhattisgarh

-----Respondents

For Petitioner	: Shri Manoj Paranjpe, Advocate
For Respondents	: Shri Vaibhav Shukla, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Ajay Kumar Tripathi, Chief Justice

07.02.2019

1. Petitioner was awarded the contract for a) hiring of pay loader for mechanical transfer of coal into tippers b) tippers for its transportation of coal from Amagaon OCP surface coal stock yard (i) Heap No.B and (ii) Heap No.C to Bishrampur Wharf Wall Railway Side at Amagaon OCP of Bishrampur area on 28.05.2014 for which, even a work order was issued on 17.08.2014. Shorn of all other details, the fact stands that the contract came to be terminated on 30.03.2015 for failure on the part of petitioner

to carry out the said contract. This compelled the respondents- SECL (South Eastern Coalfield Limited), to take work from other agencies.

2. In the present Writ Application, though an effort was made initially to argue the Writ Application on the validity of termination with regard to the decision of respondents of the contract but realising the futility of it, the matter is now being restricted and confined to the issue of recovery which has been ordered to be made from the petitioner. Recovery is supposed to be based on the difference between the cost, or bid amount of the petitioner *vis-a-vis* the actual cost which was incurred by SECL in execution of the contract in question.

3. Counsel for the petitioner submits that there are many infirmities in the calculation so done by the respondents- SECL in working out the liability or the difference in the so called cost worked out by them or payment to other agencies.

4. One such aspect pointed out is that the bid amount of the petitioner was exclusive of the service tax component. However, when work was assigned to other agencies, they made a bid inclusive of service tax and this is one of the components also which is sought to be put on the head of the petitioner and recovered as well. According to him, some of his reflections emerge from Annexure P/2 as well as Annexure P/8 series.

5. Since these are matters of accounting, therefore, petitioner has two options, either to sit with the authorities of SECL, who will have an obligation to explain the accounts to the petitioner if he makes a demand thereof, and the petitioner will have an opportunity to offer his explanation

and if the objections or clarifications issued by the petitioner are found to be cogent and valid, the demand so made will be re-worked or else a speaking order will be passed by the respondents- SECL, giving their reasons as to why the stand of the petitioner on such objections would not be acceptable or be within the framework of the terms of contract.

6. If the above exercise does not yield a satisfactory result, the parties are free to even invoke the jurisdiction of an Arbitrator if so advised.

7. The Court keeping in mind the nature of order passed as above has deliberately kept itself away from some of the contentious issues which have been urged at the Bar on both sides so as to allow the contesting parties a clean slate to begin with.

8. Writ Application stands disposed off with observations and liberty as above.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge