

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2346 of 2019**

Hindustan Zinc Ltd. A Company Registered Under The Companies Act. 1956
Represented Through Its Authorized Representative Having Its Office At Yashad
Bhawan Swaroop Sagar Road, Udaypur Rajasthan., District : Udaipur, Rajasthan

----Petitioner**VERSUS**

1. South Eastern Coalfields Limited A Company Registered Under The Companies Act 1956 Having Its Office At Seepat Road, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Union Of India Through Its Secretary, Ministry Of Coal (India), Govt. Of India, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi., District : New Delhi, Delhi 110001

-----Respondents

For Petitioner	: Mr. Kishore Bhaduri, Advocate with Shri Sabyasachi Bhaduri, Advocate & Shri Pallav Mongia, Advocate along with authorized representative (OIC)
For Respondent No. 1	: Mr. Vaibhav Shukla, Advocate
For Respondent No. 2	: Mr. B.Gopa Kumar, Asst. Solicitor General

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, Chief Justice.****18/07/2019**

1. The prayers made by the petitioner are in the following terms:

“10.I Issue an appropriate writ directing the respondents to supply contracted grade of coal as per the terms and conditions of FSA; and

10.II Hold that the Respondent No. 1's continuous inability to supply the contracted grade is a force majeure event and all consequences under FSA in relation to force majeure event to follow; and

10.III Issue an appropriate writ directing the respondents not to undertake any unilateral/one-sided and arbitrary amendment of FSA contrary as against the

joint review process under clause 2.3 of the FSA; and

10.IV Hold that the Respondent No.1 is liable for short supply as per FSA upon failure to supply annual contracted grade or by non-adherence to joint review process as per FSA and failure to remedy the breach by 31st March 2019; and

10.V Issue appropriate writ to quash/set aside the letters dated 05.04.2019 and 10.04.2019 sent by the Respondent No.1; and/or

10.VI Hold that the Respondents have made a short supply of Coal as per the FSA and are entitled to compensation as per the FSA.

2. Heard learned counsel for the petitioner as well as learned Assistant Solicitor General appearing for respondent No.2, besides the learned Standing Counsel appearing for respondent No. 1
3. The grievance mainly is in respect of threat of coercive steps for non-lifting of coal, which according to the petitioner is of sub-standard quality, compelling the petitioner to yield to the unlawful directions / instructions being given by the 1st respondent/supplier.
4. The crux of the case is that the petitioner, which is also a Central Government undertaking, had participated in the auction concerned and based on the successful turn out a Coal and Fuel Supply Agreement (FSA-309) *vide* Annexure P/3 was executed in between. Initially, the agreement was for supply of the coal of a particular grade i.e. G-9, agreeing to the unit price per metric ton, which subsequently came to the revised, whereby a higher cost price was notified and agreed. Simultaneously, the grade of the coal was also improved, whereby, it was insisted to supply coal of G-8 grade, instead of G-9.
5. The case of the petitioner is that, without any regard to the specific terms of the agreement/undertaking, the 1st respondent started supplying coal of

much lower quality, particularly 'G-14' grade, which contains more ash adversely affecting the production and such other rights of the petitioner, besides causing serious threat to the environmental conditions. In the said circumstances, the matter was brought to the notice of the respondents, but it was of no avail. Recently, the 1st respondent issued notice to the petitioner and other similarly situated establishments/ entrepreneurs to the effect that, if the coal as now being supplied is not lifted by the buyers like the petitioner, adverse consequence will follow, which made them to approach to this Court by filing writ petition with the prayers as aforesaid.

6. When the matter came for consideration before this Court on 12-7-2019, the following order was passed;-

“Learned counsel for the petitioner submits that the petitioner-company is also a government company, who has entered into a contract with first-respondent herein for regular supply of coal of the requisite quality i.e G-8 (having changed the same from G-9 to G-8 in the course of the deal) and there is an agreement to this effect. But, all of a sudden, a unilateral decision has been taken by the first-respondent, compelling the petitioner to lift coal of lesser grade ie. G-14.

Learned counsel for the petitioner also submits that notice has been issued by the first-respondent directing the petitioner and such others to lift the coal of lower grade, failing which, coercive proceedings would follow, which includes encashment of the Bank guarantee given by the petitioner. It is pointed out that by virtue of Clause 2.3 of the Fuel Supply Agreement (FSA) dated 25.09.2017, the matter could be resolved by convening a joint meeting.

Learned counsel for first-respondent seeks for time to get instruction.

Post it on 18th of July 2019. Status quo, as on date, shall be maintained by the parties, till the next date of hearing.”

7. The learned Standing Counsel appearing for the 1st respondent submits that the submissions made on the part of the petitioner that the issue could be resolved by convening a joint meeting in terms of the relevant provisions of the agreement, is correct, and that the issue could be resolved accordingly. In the said circumstance, the learned counsel for the petitioner points out that the matter has to be considered with reference to the specific provisions provided in the 'FSA' and in particular, Annexure III, as mentioned therein. It is open for the petitioner to bring about all the relevant aspects in the course of joint meeting.
8. In view of the submissions made by the learned Standing Counsel for the 1st respondent, the writ petition is disposed of, for causing the matter to be considered and if possible, to be resolved by appropriate means/terms. A final decision as above shall be taken by the competent authority, as early as possible, preferably within one month from the date of receipt of certified copy of this verdict, after affording an opportunity of hearing in the joint meeting to be scheduled, the date of which shall be informed well in advance to the petitioner.
9. The further course of action as sought to be proposed, as per the communication dated 5-4-2019 & 10-4-2019 issued by the 1st respondent, shall be subject to the outcome of the decision to be taken in the joint meeting as aforesaid.
10. Writ petition stands disposed of.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge