

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No.287 of 2020

M/s Fly Ash Movers (I) Pvt. Ltd. A Company Registered Under The Companies Act, 1956, Having Its Registered Office At L-2, Khemka House, Vidya Nagar, Bilaspur Chhattisgarh 495004 Through Its Director Anand Khemka.

---Petitioner(s)

Versus

1. Bhilai Steel Plant, Steel Authority of India Limited, Through The Chief Executive Officer, Bhilai Steel Plant, Police Station Bhilai, District- Durg 490021, Chhattisgarh.
2. The Assistant General Manager Marketing and Business Planning Department, Bhilai Steel Plant, Steel Authority Of India Limited, Bhilai Steel Plant, Police Station Bhilai, District- Durg- 490021 Chhattisgarh.
3. Mjunction Services Limited Godrej Waterside, 3rd Floor, Tower 1, Plot V, Block DP, Sector V, Salt Lake, Kolkata- 700091, West Bengal.
4. M/s ACC Limited Jamul Cement Works, District- Durg 490024, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Kshitiz Sharma, Advocate.
For Respondent 1&2:		Dr. Saurabh Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28.01.2020

1. Challenge in the present writ petition is to the order dated 21.12.2019 and 24.12.2019 whereby the respondents No.1&2 have issued a fresh sale offer to the respondent No.4 and thereafter have intimated the petitioner in respect of cancellation of his sale offer.
2. The contention of the petitioner is that, the petitioner had already intimated the authorities concerned vide e-mail dated 26.12.2019 which was a legal notice issued on behalf of the petitioner to cancel the sale offer issued to other buyers and float a fresh offer letter. Further contention of the petitioner is that the sale offer issued to the respondent No.4 is before cancellation of the sale offer issued to the petitioner therefore also the action is bad in law.

3. The counsel appearing for the respondents, on the other hand, submits that the entire dispute in the present writ petition is arising out of a contract entered into between the parties and the tender condition itself very specifically mentions that on the issuance of sale offer, the party was required to submit security deposit within 15 calendar days excluding issuance of the date of sale offer, which according to the respondents, ought to have been submitted by 20.12.2019. Since the petitioner failed to submit the security deposit within 15 days and the nature of the work was one which had to be conducted on daily basis by implication of Clause-4.1 of the tender condition itself, the sale offer made to the petitioner stood automatically cancelled and the respondents were at liberty to get the work done from other persons.
4. Further contention of the respondents is that, since the dispute arose out of a contractual obligation, it would be beyond the scope of this court under writ jurisdiction to entertain the dispute arising out of contractual matter.
5. It would be appropriate to take note of the tender condition i.e. Clause-4.1 for proper adjudication of the dispute, which reads as under:

“4.1. Security deposit to be deposited by successful bidder under the sale offer shall be @ 10% of value of the sale offer quantity during the period of sale offer excluding Taxes & Duties in the form of Demand Draft/Banker's Cheque on any nationalized/scheduled Bank except Cooperative and Gram Bank, drawn in favour of SAIL /Bhilai Steel Plant payable at Bhilai. The afore said security deposit either in the form of Demand Draft (DD)/Banker's Cheque (BC) has to be submitted within fifteen (15) calendar days excluding the date of issue of sale offer. In case of failure to submit the Security Deposit within fifteen (15) calendar days excluding the date of issue of sale offer, the offer will stand cancelled and the EMD

will be forfeited and customer will be debarred from participation in two consecutive Forward auctions of BF Granulated SLAG from the date of issue of forfeiture letter.”

6. The undisputed facts in the present case is that, the petitioner was issued with a sale letter on 05.12.2019 and as per the said letter, the petitioner was supposed to submit the security deposit by 20.12.2019. From the pleadings and the submissions made by the counsel for the petitioner it is evidently clear that the petitioner had failed to submit the security deposit as per the requirement. There was no application moved by the petitioner for extension of time or anything as such.
7. In case of Kisan Sahkari Chini Mills Ltd. & Ors. Vs. Vardan Linkers & Ors, AIR 2008 SC 2160, it has been in a very categorical terms laid down by the Supreme Court that public law remedy under Article 226 of the Constitution of India is not available to seek specific performance of contract or even damages for breach of a contract unless the contractual dispute has a public law element. It has been time and again held by the Supreme Court that powers under Article 226 are to be exercised by applying the constitutional provision and judicial guidelines and violation, if any, of the fundamental rights, and the courts should be reluctant to exercise the power of judicial review in rights on the basis of contracts.
8. It is also settled position of law that a contract would not become statutory simply because it has been awarded by a statutory body and therefore, the writ petition to enforce contractual claim was not maintainable.
9. Similar view has also been taken by the Supreme Court in case of Jagdish Mandal Vs. State of Orissa & Others, 2007(14)SCC517, wherein it has been held that the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide the contractual disputes. It was also held that a writ petition in the

contractual matters would be entertained only if there is an element of public interest.

- 10.** The same view has been further re-iterated by the Supreme Court in case of Godavari Sugar Mills Ltd. Vs. State of Maharashtra, 2011(2)SCC 439, wherein discussing the judicial pronouncements on the subject, again laid down the legal proposition holding that normally a writ petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of breach of contract. The aggrieved party will have to agitate the question in a Civil Suit. The said view has already been a settled position of law since long, as would be evident from the case of Food Corporation of India & Ors. Vs. Jagannath Dutta & Ors., AIR 1993 SC 1494 and State of UP & Ors. Vs. Bridge & Roof Co. (India) Ltd., JT1996(7)395.
- 11.** Given the said facts and circumstances of the case and taking into consideration the aforementioned tender condition which were accepted by the petitioner with wide open eyes, and further there is no plausible explanation provided by the petitioner as to under what circumstances he could not submit the security deposit to the respondents particularly when there is no such correspondence made in this regard, this court is of the opinion that the action on the part of the respondents cannot be said to be one which could be adjudicated upon by way of a writ petition.
- 12.** The writ petition fails and accordingly stands rejected.

Sd/-
(P. Sam Koshy)
Judge