

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment Reserved on 23.11.2020****Judgment Delivered on 27.11.2020****Writ Appeal No.178 of 2020***(Arising out of order dated 14.01.2020 passed in Writ Petition (C)
No.2504 of 2019 by the learned Single Judge)*

M/s Niranjan Lal Agrawal A Proprietorship Firm Having Its Office
At Tulsi Marg, Korba Chhattisgarh Having Its Proprietor Shri Raj
Agrawal, S/o Late Niranjan Lal Agrawal, Aged About 38 Years,
R/o House No. 3, Tulsi Marg, Korba Chhattisgarh.

---- Appellant**Versus**

1. Coal India Limited Through Its Chairman, 10 Netaji Subhash Road, Kolkata, West Bengal.
2. South Eastern Coal Field Limited Mini Ratna Company Subsidiary Of Coal India Limited Through Its Chairman-Cum-Managing Director, Secl Bhawan, Sipat Road, Sarkanda Bilaspur, District : Bilaspur, Chhattisgarh.
3. General Manager(Operations) South Eastern Coal Field Limited, Jamuna And Kotma Area, Anuppur, (M.P.).
4. IDBI Bank Limited Through Its Branch Manager, Idbi Bank, Plot No. 26, Transport Nagar, Korba, Chhattisgarh.

---- Respondents

For Appellant	: Shri Malay Shrivastava, Advocate
For Respondent/Company	: Shri Shubham Pandey, Advocate on behalf of Shri Vivek Chopda, Advocate
For Respondent/Bank	: Shri J.A. Lohani, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****C A V Judgment****P.R. Ramachandra Menon, Chief Justice**

1. Interference declined by the learned Single Judge with regard to the prayer raised in the writ petition to cause disbursement of the amount due to the Appellant/Writ Petitioner under a work contract, despite the completion of work to the satisfaction of the Respondent-Company and issuance of Work Completion Certificate and in not causing release of the FDR (Fixed Deposit Receipt) arranged by the Appellant in favour of the

Respondent-Company towards 'performance security' forms the subject matter of challenge in this appeal.

2. The gist of the factual matrix is that, the Appellant turned to be successful in the tender floated by the Respondent-Company and the work was awarded to him in terms of the tender and agreement executed in this regard. 'Performance security' was to be arranged in the form of Bank Guarantee to the requisite extent and this was arranged by the Appellant through the 4th Respondent by effecting the Fixed Deposit in the prescribed manner (as borne by Annexure P/2) on account of the Appellant, clearly showing the interest of the Respondent therein. The work was admittedly completed within time, to the satisfaction of the Respondent-Company and Annexure P/7 Work Completion Certificate dated 05.07.2016 was issued in this regard. The Appellant submitted the final bill for a sum of Rs.1,03,13,737/- (after giving credit to periodical payments effected by the Respondent), but the same was kept pending by the Respondent-Company in cold storage, which made the Appellant to approach this Court by filing writ petition for immediate interference.

3. The factual position as to award of the work and satisfactory completion of the same by the Appellant/Writ Petitioner was conceded by the Respondents in the writ petition. It was however pointed out that, when steps were being taken to release the amount, some instructions were obtained from the authorities of the GST/Central Excise Department to withhold the payment including the security deposit, because of the liability to be cleared by the Writ Petitioner to the Government. It was in the said circumstance, that the payments were not effected and the FDR was not caused to be returned/released. It was also pointed out that some other work was also awarded to the Writ Petitioner vide NIT

No.SECL/BSP/CMC/17/610, but there was a failure in completing the said work; under which circumstance, the work order was terminated and it was ordered to be re-tendered at the risk and cost to the Writ Petitioner. Action was also being pursued to effect recovery of the alleged loss caused to the Respondent-Company (to an extent of about Rs.6 crores). The Writ Petitioner has challenged the said proceedings by filing some other writ petition, which is stated as pending.

4. In the instant case, the learned Single Judge observed that there were disputed questions of fact, which could not be resolved in a proceeding under Article 226 of the Constitution of India. It was also observed that the reasons for non-disbursement of the amount due to the Writ Petitioner was because of the instructions given from the part of the authorities of the Central Government. In the said circumstance, interference was declined and the writ petition was dismissed, which is put to challenge in this appeal.

5. As rightly observed by the learned Single Judge, it is settled law that the rights arising out a contract cannot be resolved through the discretionary jurisdiction of this Court under Article 226 of the Constitution of India; especially when disputed questions of facts are involved. When the Appellant/Writ Petitioner contends that the work involved in the present tender vide tender No.SECL/BSP/CMC/17/524 is admittedly complete (as certified by the Respondent-Company) but the amount due has not been released, the Respondent-Company contends that another work order given to the Writ Petitioner (under tender No.SECL/BSP/CMC/17/610) came to be terminated 'at the risk and cost' to the Writ Petitioner, for the default committed by him and that a sum of about Rs.6 Crores is due to the Respondent-Company. In view of the

disputed question of facts, the prayer sought for w.r.t. the amounts payable under the final bill in respect of the tender No.SECL/BSP/CMC/17/524 cannot be adjudicated by this Court and hence, interference is not possible. It is for the Writ Petitioner to avail appropriate remedy before other appropriate forum, in accordance with law w.r.t. this head.

6. However, the limited question to be considered in this appeal is only with regard to the justifiability to the action/inaction on the part of the Respondent-Company in not causing the FDR to be released to the Writ Petitioner.

7. Admittedly, the Fixed Deposit was effected and Annexure P/2 FDR was arranged by the Writ Petitioner through the 4th Respondent-Bank showing the interest of the Respondent-Company, in connection with the particular work towards the “performance guarantee” under tender No.**SECL/BSP/CMC/17/524**. In other words, if there was any failure on the part of the Appellant in completing the work as agreed in terms of the tender, it was open for the Respondent-Company to invoke the Bank guarantee clause and require the 4th Respondent to effect the payment under the FDR to the Respondent-Company, to the extent as payable. Admittedly, no such failure or lapse has occurred on the part of the Appellant/Writ Petitioner in performing the work under tender No.SECL/BSP/CMC/17/524 and it has been completed on time, to the satisfaction of the Respondent-Company, which led to issuance of Annexure P/7 Work Completion Certificate. This being the position, the Bank Guarantee offered towards performance security has served the purpose; which cannot be extended beyond the scope of tender No.SECL/BSP/CMC/17/524. To put it more clear, the said amount in the

Fixed Deposit on account of the Writ Petitioner can't be demanded by the Respondent-Company unless there is a failure in performance of the said contract; which hence has to be returned to the Writ Petitioner on completion of the work. There is no dispute in this regard by the Respondent-Company as well, but for their contention that the said amount was retained only on the basis of instructions received by the Central Government authorities to retain the security deposit as well. In other words, the said Fixed Deposit in the name of the Writ Petitioner is not an amount in the hands of the Respondent-Company (to be paid to the Appellant) which can be retained with reference to the alleged default in respect of some other work contract, so as to appropriated towards the alleged loss.

8. Paragraph-9 of the verdict passed by the learned Single Judge is relevant, as to the cause for retention of the said amount, which is extracted below :

“9. In the instant case, the entire claim of the petitioner arises out of a work contract entered into between the petitioner and the respondents. It is not a case between the parties of breach of contract. What has to be seen is that after the petitioner has discharged its contractual obligations, the respondent Management has itself released the periodical dues payable to the petitioner. However, by the time the contract was culminated, the respondents received a specific instruction from the Govt. of India, Ministry of Finance to firstly stop all the releasing of further dues payable to the petitioner and secondly to withhold the security amount lying with the respondents including any bank guarantee and other fixed deposits as security. This

aspect is not disputed by the counsel for the petitioner. The said Central Service Tax and Central Excise Department is not a party before this Court.”

9. It was pointed out that the GST authorities have already issued clearance as per Annexure P/14 pointing out that no amount is due from the Appellant to the Central Government and that the amount under the FDR could be released to the Appellant. Since the GST authorities have clarified the position as per Annexure P/14, there was no further justification for retaining the FDR without causing it to be released to the Appellant.

10. When the matter came up for consideration before this Court on 11.02.2020, it was submitted by the learned counsel for the Respondent-Company that in view of the turn of events, particularly, pursuant to Annexure P/14, necessary instructions have already been given to the Bankers to release the Bank Guarantee furnished by the Appellant/Writ Petitioner. The order passed on that date reads as follows :

“Shri Malay Shrivastava, Advocate for the Appellant.

Shri Vivek Chopda, Advocate for the Respondents/SECL.

The learned counsel for the Appellant submits that despite the completion of works and presentation of final bill in respect of the payment due to an extent of more than Rs. 1 crore, no amount is being paid by the Respondent-Company, referring to some 'stop memo' issued by the CGST authorities. The learned counsel submits that, on taking up the matter with the CGST authorities, the Appellant was given to understand that a

clearance letter has already been issued by the Respondent-Company. The intimation given to the Petitioner has been produced as Annexure P/14 dated 26.06.2019. Still, no steps are being taken and hence the writ petition; which came to be dismissed in limine and therefore the appeal.

The learned counsel appearing for the Respondent-Company submits that pursuant to Annexure P/14, necessary instructions have already been given to the bankers to release the bank guarantee furnished by the Appellant/Writ Petitioner. The learned counsel however, submits that amounts under different heads in respect of the various other contracts are due from the Appellant/Writ Petitioner to the Respondent-Company (to an extent of about Rs. 6 crores) and steps are being taken to have the said amount recovered. The learned counsel also points out that there was an attempt from the part of the Appellant/Writ Petitioner to resort to extra judicial means by winning over the police and this was subjected to challenge by the Respondent-Company and favorable verdict has already been obtained in this regard. The learned counsel seeks for time to put forth the sequence of events, also producing copies of the relevant materials.

Issue urgent notice to 4th Respondent by speed post. Process fee, as per rules.

List this matter for further consideration after two weeks.”

11. When the matter came up for further consideration on 19.03.2020, it was pointed out on behalf of the Appellant that the Respondent-Company has been informed by the 4th Respondent-Bank that the reverse

side of the FDR has not been properly signed by them to have the amount released and thus seeking to cure the defects. It was submitted by the learned counsel for the Respondent-Company that intimation has also been given to the Bank to release the amount and if any defect was there, it would be caused to be cured. This is recorded in the order dated 19.03.2020 in the following terms :

“Shri Malay Shrivastava, Advocate for the Appellant.

Shri Shubham Pandey, Advocate on behalf of Shri Vivek Chopda, Advocate for the Respondent/SECL.

The learned counsel for the Appellant points out that despite the completion of work to the satisfaction of the Respondents and submission of the bill, the amount due under the bill and the FDR has not been released. The reason stated by the Respondents is that the amount was withheld on the basis of instructions given by the authorities of the CGST Department with regard to pending dues from the Petitioner. On 11.02.2020, a reference was made to Annexure P/14 issued by the CGST authorities pointing out that instruction has been given to the Respondents to have released the amounts, holding that no amount was due from the Petitioner towards tax.

With reference to Anneuxre P/14, it was submitted by the learned counsel for the Respondents on 11.02.2020 that they had already given instructions to the Bank to release the FDR amount to the Petitioner. It was accordingly, that the matter was adjourned to ascertain the position as on date.

Today, the learned counsel for the Appellant points out that the Respondent/SECL has been informed by the Bank that the reverse side of the FDR has not been properly signed by them to have the amount released and no specific instructions have been given to them in this regard.

The learned counsel for the Respondents concedes that the intimation was given to the Bank to release the amount and if any defect is there, it will be caused to be cured. Time is sought for to get instructions in this regard.

Post the matter tomorrow i.e. on 20.03.2020.”

12. Despite the clearance given by the Central Government authorities vide Annexure P/14, the assurance and undertaking given from the part of the Respondent-Company (which has been recorded in the interim orders extracted above) and the specific pleading/admission from the part of the Respondent-Company as put-forth in the reply-statement as to the completion of work, the eligibility of the Appellant to get back the FDR and the instructions stated as given by the Respondent-Company to the Banker, it was not honoured. The learned counsel for the Respondent-Company submits that there was some mistake in the submissions made, leading to the order dated “19.03.2020”, which has been sought to be corrected by filing I.A. No.03 of 2020. In paragraphs-5 and 6 of the said IA, it is stated that when the order was passed on 19.03.2020, the learned counsel could not inform about the order regarding the recovery issued against the Appellant; because of which, the amount under the FDR could not be released. We find absolutely no merit in the said submission, for the reason that the amount under the FDR does not form an amount in the hands of the Respondent-Company to be adjusted or appropriated against the amounts, if any, to be recovered by the Respondent-Company

from the Appellant. It is only w.r.t. the Bank Guarantee given through the 4th Respondent-Bank, arranged by the Appellant towards 'performance guarantee' in respect of the particular work under tender No.SECL/BSP/CMC/17/524. If only there was any failure on the part of the Appellant in performing the said work on time, would it give a cause of action to the Respondent-Company to point to the default and to demand the amount from the Bank. But this has never happened and on the other hand, the work under the above tender has been completed to the satisfaction of the Respondent-Company, leading to issuance of Annexure P/7 Work Completion Certificate. As such, the purpose of the Bank Guarantee is over and the amount covered by Annexure P/2 FDR on account of the Writ Petitioner still remains that of the Writ Petitioner and it is liable to be returned by the Bank, for which no claim or obstruction can be put-forth by the Respondent-Company, unlike, any amount 'due' under the bills raised in relation to the work performed.

13. In the above circumstance, the course and conduct pursued by the Respondent-Company in causing the FDR to be released does not appear to be correct or proper. In spite of the specific assertions made through the pleadings filed and also the submissions made before this Court, that in the light of Annexure P/14 issued by the Central Government authorities and the instructions already issued to the Bankers to release the FDR, no proper steps have been taken by the Respondent and retention of the FDR is sought to be justified with reference to the alleged loss sustained by the Respondent-Company as put-forth in I.A. No.03 of 2020. Obviously, nothing is mentioned in the said I.A. with regard to the submissions made on "11.02.2020" as to the instructions already issued to the Banker to release the FDR.

14. The pleadings filed by the Respondent-Company and the submissions made through the learned counsel do not reconcile with the deeds pursued. We record our displeasure as to the casual way in which the matter has been dealt with by the Respondent-Company by way of incorrect or inconsistent submissions as to the release of the FDR; at the same time, retaining the same at their hands as conceded in I.A. No.03 of 2020. It may amount to Contempt of Court as well, where serious action may be necessary in view of the verdict rendered by the Apex Court in case of **Dhananjay Sharma v. State of Haryana and Others** reported in **AIR 1995 SC 1795**.

15. However, in view of the fact that we are not interfering with the verdict passed by the learned Single Judge in respect of the amount due under the bill, but for modifying the same with regard to the right of the Appellant to get back the FDR provided/arranged through the 4th Respondent-Bank towards the 'performance security' under tender No.SECL/BSP/CMC/17/524, we restrict ourselves in disposing the appeal directing the Respondent-Company to take all further steps to return the FDR with necessary endorsement (if still retained by them) and cause the said amount to be released to the Appellant's account within one week from the date of receipt of a copy of the judgment. The 4th Respondent is directed to disburse the amount due to the Appellant towards the FDR forthwith, at any rate within one week thereafter. If there is any failure on the part of the Respondent-Company in acting as above, it shall be for the 4th Respondent-Bank to release the FDR to the account of the Appellant/Writ Petitioner, notwithstanding any such lapse on the part of the Respondent-Company and such payment will discharge the 4th Respondent from any liability to the Respondent-Company in connection with the FDR arranged towards the performance security under tender

No.SECL/BSP/CMC/17/524. The verdict passed by the learned Single Judge stands modified to the above limited extent.

16. The course and conduct pursued by the Respondent-Company w.r.t. the release of the security amount covered by the FDR is deprecated and we dispose of the writ appeal with a cost of Rs.10,000/- payable by the Respondent-Company to the Appellant/Writ Petitioner.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Anu