

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 667 of 2020**

M/s Bedford Earth Movers Inc. A Proprietorship Company Having Its Registered Office At Rajeev Gandhi Square, Raipur Road Bilaspur, Through Its Authorized Signatory Shri J.P. Moulik, Son Of Late Shri P.K. Moulik, Aged About 72 Years, Resident Of Vivekanand Nagar, Mopka, Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. South Eastern Coal Field Limited A Duly Constituted Company Under The Provisions Of The Companies Act, 1956, Being A Subsidiary Of Coal India Limited, Through Its Chairman-Cum-Managing Director, SECL Headquarter, Seepat Road, District- Bilaspur, Chhattisgarh
2. General Manager South Eastern Coalfields Limited, Raigarh Area, Post Office- Raigarh, District- Raigarh (Chhattisgarh)
3. General Manager South Eastern Coalfields Limited, Sohagpur Area, Post Office- Dhanpuri, District- Shahdol (Madhya Pradesh)
4. General Manager South Eastern Coalfields Limited, Contract Management Cell, SECL Bhawan, Seepat Road, District- Bilaspur (Chhattisgarh)
5. Sub- Area Manager South Eastern Coalfields Limited, Jampali, OCM, Post Office- Gharghoda, District Raigarh, Chhattisgarh
6. Sub- Area Manager South Eastern Coalfields Limited, Amlai OCM, Post Office- Sanjay Nagar, District Anuppur (Madhya Pradesh)
7. M/s Bihar Construction Company SECL-Jampali, Raigarh Area, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Abhyuday Singh, Advocate
For State	:	Mr. Ashutosh Mishra, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****18/02/2020**

1. The present writ petition has been filed seeking for the following reliefs:

“10.1 It is prayed that this Hon'ble Court may kindly be pleased to issue appropriate writ directing the respondents to immediately release and handover the Surface Miner of the petitioner illegally being seized by it at Jampali, Raigarh.

10.2 It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ directing the respondents to refrain from taking any coercive action against the petitioner and thus refrain from cancelling the LOI dated 30.11.2019.

10.3 It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ directing respondents to compassionately consider the case of the petitioner and thus grant extension of time for executing the work awarded vide LOI dated 30.11.2019 in parity with the date of release of the Surface Miner being held under their custody at Jampali, Raigarh.

10.4 It is prayed that this Hon'ble Court may kindly be pleased to issue an appropriate writ directing respondents to grant at least 10 days time to start the work at Amlai OCM, Sohagpur after releasing and handing over of the Surface Miner seized at Jampali, Raigarh to the petitioner."

2. The relief sought for in the present writ petition is primarily in two parts, first part is in respect of immediate release of the Surface Miner belonging to the petitioner seized by the respondents No.1 to 6. The second part of the relief sought for is in respect of an LOI which was issued in favour of the petitioner dated 30.11.2019 arising out of NIT dated 19.07.2019 so far as hiring of a Surface Miner and Allied Equipment for mechanical excavation of coal at the Amlai Open Cast Expansion Sector-3 under the Sohagpur area of the SECL falling the State of Madhya Pradesh.
3. The grievance of the petitioner primarily seems to be in respect of the seizure/detention of the Surface Miner of the petitioner deployed at the Jampali Mines of SECL at the Raigarh area. The Surface Miner of the petitioner was given on lease to the respondent No.7 at the instance of Larsen & Toubro vide work order issued by the Larsen & Toubro Limited dated 13.03.2018. It appears that the SECL had issued an LOI in favour of the respondent No.7-M/s. Bihar Construction Company for excavation of coal at Jampali, Raigarh area. The said respondent No.7 had obtained the Surface Miner from the petitioner on lease. Subsequently, it is reflected that the said respondent No.7 has dumped the project and has abandoned the work awarded to him and has left the Machineries putting the SECL to great loss so far as production and other incidental losses.

4. Meanwhile, the petitioner is said to have participated in an NIT issued for the same nature of work at the Sohagpur area of SECL falling in the State of Madhya Pradesh and they were successful. Now the petitioner for the execution of the said work wants a Surface Miner, which they had leased to the respondent No.7 on an earlier occasion for the execution of the LOI which they have received and the present writ petition has been filed for the said reason. According to the petitioner, if the petitioner is not provided with the seized Surface Miner they would not be in a position to execute the LOI, which they have received on 30.11.2019 and thereby the petitioner faces a threat of being blacklisted from entering into any business dealing with the respondent-company which would be a substantial loss to the company as such.
5. Given the aforesaid facts and circumstances of the case and if we look into the relief that the petitioner has sought for, this Court has no hesitation in reaching to the conclusion that there is no privity between the petitioner and the respondents No.1 to 6 at any point of time. The privity if at all is between the respondents No.1 to 6 with the respondent No.7. Thus, in the event of the respondent No.7 abandoning the work the respondents No.1 to 6 have got all the rights to take action against the respondent No.7 in terms of the contract/agreement that was entered between the respondents No.1 to 6 qua the respondent No.7.
6. So far as the threat of the petitioner being blacklisted or any coercive steps that the respondents No.1 to 6 may take against the petitioner are concerned, that cannot be a ground for permitting the petitioner for the release of the vehicle which the respondent No.7 had deployed at

Jampali Mines at Raigarh area of the SECL arising out of an entirely different contract.

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 was a settled position of law since long, as would also be evident from judgment in the 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. The petitioner has got appropriate remedies available for taking appropriate action against the respondent No.7 including that of the release of the vehicle. Such dispute which arise of a contractual nature are not one which can be decided or resolved or redressed invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India. The first part of the relief as well as the second part of the relief as discussed in the preceding paragraphs have got no connection whatsoever, both these are reliefs are independent in itself. Those cannot be decided by entertaining a writ petition under Article 226 of the Constitution of India.
12. The writ petition thus fails and is accordingly dismissed, reserving the right of the petitioner to avail appropriate remedy available to him.

Sd/-
(P. Sam Koshy)
Judge

Ved