

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 675 of 2020**

M/s Prakash Industries Limited, Champa Through Its Authorized Representative, Shri Arun Kumar Singh, S/o Late Shri Shivdayal Singh, Aged 53 Years, Post Assistant Vice President (Corporate Affairs) Having Office At M/s Prakash Industries Limited Having Office At Champa - 495671, District Janjgir Champa Chhattisgarh.

---- Petitioner**Versus**

1. South Eastern Coalfields Limited Through Its Chairman/Managing Director, Seepat Road, Bilaspur, Chhattisgarh - 495006.
2. General Manager (Sales And Marketing) South Eastern Coalfields Ltd. Seepat Raod, Bilaspur Chhattisgarh- 495006.

---- Respondents

For Petitioner	:	Mr. Prafull N. Bharat, Advocate along with Ms. Ruchi Nagar, Advocate
For Respondents	:	Mr. Vaibhav Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****19/02/2020**

1. The grievance of the petitioner in the instant case is that of the inferior quality of coal, which is being supplied to the petitioner under the Fuel Supply Agreement (FSA) entered into between the petitioner and the respondents.
2. According to the petitioner, as per the FSA the petitioner was to be supplied Grade-7 Quality of Coal, whereas subsequently, the quality of coal supplied got deteriorated and as per the SECL themselves the quality of coal generated from the said Mines was either G-9 or G-8, which again was not the contracted grade of coal. According to the petitioner, as per the tri-party agreement, the Agency decided for testing the quality of grade was the Quality Council of India, who on multiple occasions in the year 2017, 2018 & 2019 got the coal tested

and have found the grade of coal to be varying between G-11 to G-17 and of late the petitioner is being supplied huge boulders along with coal, whereas as per the FSA itself, the seller was required to remove all those stones and boulders, etc. above 250mm in size. This also is not being adhered to by the respondent-Management and the respondents are forcing the petitioner to pay the price for the Grade-7 quality of coal. The limited prayer that the petitioner prays for is an appropriate direction to the respondents to either supply them Grade-7 quality of coal or charge the petitioner for the grade of coal, which is being supplied to them.

3. The counsel appearing for the respondents submits that the samples collected by the third agency and the test conducted were all ex-party and at no point of time were the respondents intimated in this regard either by the petitioner or by the third agency. The counsel for the respondents further submits that the petitioner, so far as the inferior quality of coal supplied for the years 2017 & 2018, has never raised any objection or protest at any point of time. He further submits that there is a prescribed procedure in the FSA itself in the event of the supply of coal being of an inferior quality and the respondents ought to have resorted to the said measure instead of approaching the High Court at this juncture.

4. Given the facts and circumstances of the case it would be relevant at this juncture to refer clause No.6 of the FSA:

“6. QUALITY

The quality of the Contracted Grade of Coal to be supplied at the Delivery Point shall as far as possible, be within the specifications as set out in **Annexure VI**. The Seller shall take all reasonable steps to remove stones above 250 mm (in size), shale and extraneous

matters before the loading of the Contracted Grade of Coal. A complaint, if any, regarding the quality of the Contracted Grade of Coal shall be made by the Purchaser giving specific details of the consignment to the general manager (sales and marketing) of the Seller.”

5. Further, for effective disposal of the writ petition it would also be relevant to quote the provisions of Clause 2.3 & 9:

“2. COMMENCEMENT AND TERM OF THE AGREEMENT

2.1 xxxxxxxx

2.2 xxxxxxxx

2.3 Notwithstanding the provisions of Clause 2.2, in the event of any change in the Grade structure of the Contracted Grade of Coal, such changed Grade structure shall be binding and complied with by the Parties. The Seller shall, within 7 (seven) days of introduction of such Grade change, provide a written notice to the Purchaser calling for a joint review of such provisions of this Agreement on which such change in the Grade structure has a bearing. Upon such joint review, this Agreement shall be duly amended in writing to bring it in full conformity with such change. However, if despite their efforts the Parties Assistant Engineer unable to arrive at a mutually agreed position with respect to the subject matter of review, within a period of 3 (three) months from the date of the above mentioned notice, the aggrieved Party shall have the right to terminate the Agreement subject to a further notice of 3 (three) months given in writing to the other Party.

9. DETERMINATION OF COAL QUALITY

9.1 Notwithstanding anything to the contrary contained herein, the Purchaser shall be required to inform the Seller in writing, on the Signature Date, whether it proposes to avail third party sampling from a Third Party Agency in accordance with the terms hereof. In the event the Purchaser intimates the Seller that it is:

(a) desirous of availing third party sampling by the Third Party Agency, such facility shall be allowed at the Delivery Pint only and such third party sampling shall be undertaken throughout the Term in accordance with the procedure set out in **Annexure VII**. In the event that the Purchaser is desirous of availing third party sampling by the Third Party Agency and for any reason whatsoever, the third party sampling cannot be conducted in accordance with the procedure set out in **Annexure VII**, the Purchaser may opt for joint sampling and analysis to be carried out by the |Seller in presence of the Purchaser at the Delivery Point in accordance with such procedures as may be agreed upon between the Parties; and

(b) not desirous of availing third party sampling, the Purchaser would not be entitled to avail the said facility at any time during the Term.

9.2 Notwithstanding anything to the contrary contained herein, in the event that the Purchaser does not opt for third party sampling by a Third Party Agency, it shall be obligated to pay, throughout the Term, the As Delivered Price in respect of the Contracted Grade of Coal delivered to it and shall not, in any way be entitled to benefit

from or rely on the results of third party sampling availed by any other purchaser of Coal.

In case of a variation of Grade of Coal (decided on the basis of third party sampling by a the Third Party Agency) as compared to the Contracted Grade of Coal, the Purchaser shall pay the Notified Price (or the latest Indexed Notified Price, as the case may be) of the supplied Grade of Coal plus the Winning Premium of the supplied Grade of Coal, without factoring in royalty payments, taxes etc.”

6. Considering the aforesaid clauses in the FSA, this Court is of the opinion that it would be larger interest of justice if the writ petition itself is disposed of directing the petitioner to appear before the respondent no.2 in respect of the entire grievance of the inferior quality of coal, which is being supplied supported with all relevant documents that they have in their possession including the quality of coal tested from the third agency. The respondent No.2 in turn is further directed to immediately take steps without any further lapse and delay in terms of the agreement entered into between the parties, particularly Clause 2.3, 6 & 9 of the said FSA. If required, the coal being supplied to the petitioner can also be subjected to a fresh quality test with the third agency and the samples be collected in the presence of the officers of both, the petitioner and the respondents-establishment and based upon the said report, let a decision be taken by the respondent No.2 in respect of both the supply of coal as also in respect of the pricing of the coal to be made at the earliest preferably within a period of 60 days from the date of receipt of the copy of this order.
7. With the aforesaid observations, the present writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge