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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

(Via Video Conference)

WPA 3749 of 2021

Imperium Energy Utility Services LLP & Anr.
Vs.
Coal India Limited & Ors.

Mr. Kishore Datta,
Mr. Kumar Gupta,
Ms. Susmita Shaw,
Mr. Ramendu Agarwal
... For the petitioners.

Mr. Varun Kedia
... For the respondents no. 1 and 2.

Mr. Manik Das
... For the respondents no. 3 to 6.

Affidavit of service filed in Court today is
taken on record.

The petitioner no.1 was awarded a contract
for (i) Repair, refurbish and bringing back the 3 x 10
MW Chinakuri TPP in running condition at ECL's
cost (ii) Erection of 33KV transmission network [2
Nos. lines each having route length of 15 km
(approx.)] with associated civil and structural works
and synchronization with the grid of facilitate
evacuation of generated power from Chinakuri TPP
upto Kanyapur grid substation of West Bengal State
Electricity Transmission Company Limited (in short,
WBSETCL) and (iii)Leasing of the 3 x 10 MW Thermal

Power Plant (TPP) at Chinakuri of Eastern Coalfields Ltd. (ECL) after completion of job under serial no. (i) & (ii) above for power generation, operation and maintenance of the plant, transmission line etc. and evacuation of generated power for a period of twenty (20) years. The three jobs taken together for the sake of convenience is referred to as the awarded work.

The petitioner has completed the job under serial no.(i) and (ii), which has been duly certified by ECL as will appear from the letter of ECL dated 25th June, 2019 annexed to the writ petition.

The petitioner says that for the work under serial no.(iii), the petitioner was allotted 5800 tons of G5 grade coal. The petitioner had completed all formalities but the said amount of coal or any part thereof has not yet been supplied. The petitioner says that in absence of such coal being made over to the petitioner, the trial operation and maintenance of the plant, transmission line and evacuation of generated power has become an impossible act. The petitioner says that on one hand the petitioner by virtue of the awarded work and the lease executed by ECL in favour of the petitioner on 7th August, 2019, is bound to operate and maintain the plant and the connected transmission line but in absence of coal being supplied by ECL the petitioner will not be able to operate the plant even on trial basis and maintain

the same for which the petitioner is likely to be hauled up for violation of the terms of the lease and the contract terms without any fault on the part of the petitioner. The petitioner also refers to a letter dated 1st June, 2019, issued by ECL, which clearly demonstrate the obligation of ECL to supply 5800 tons G5 grade coal on one time basis from suitable mine of ECL within 40 km from the plant for trial operation of 3 x 10 MW Chinakuri Thermal Power Plant. The petitioner says that on the failure of ECL to make over such coal, the petitioner is unable to go ahead with the trial event.

On behalf of respondents no.3 to 6, it is submitted that ECL was always and still is ready to comply with its contractual obligation to supply 5800 tons of G5 grade coal from any mine of ECL situated within 40 km from the plant to be operated and maintained by the petitioner in terms of the contract. The said respondents further submits that due to certain procedural intervention owing to policy matters the coal has not been supplied.

On behalf of the respondent no. 1 and 2 it is submitted that agreement between the petitioner and the ECL contains an arbitration clause and as such the petitioner should be relegated to pursue its remedies available under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the

said Act) for enforcement of its contractual obligation. The respondents no. 1 and 2 further submit that they have no obligation in the supply of coal promised by ECL and have been unnecessarily dragged into the instant litigation.

After hearing the submissions of the parties and considering the materials on record, I find that there is, as such, no dispute, which requires to be referred to arbitration for adjudication as ECL has not denied its obligation. In absence of such dispute, particularly when ECL accepts its obligation to supply coal in terms of the contract, it will be harsh to relegate the petitioner to avail its rights under the arbitration act on the ground of alternative efficacious remedy. The writ Court in the instant case in exercise of its jurisdiction, in a justice oriented approach, should make an attempt to reduce the scope of unnecessary litigation when it is clear that there is no dispute *inter se* between the contracting parties which requires subjective adjudication. So far as the claim of respondent nos. 1 and 2 as to its obligation is concerned, it is correct that the respondent no.1 is neither a party to the agreement nor had made any promise. However, ECL being one of the parties, is admittedly a subsidiary of respondent no.1. The functioning of ECL is substantially controlled by the guidelines issued by

the respondent no.1 from time to time. The policy matter which ECL complains of to be an impediment to supply coal has been formulated by respondent no.1. That apart and in any event ECL made the promise with open eyes when the policy which it now cites as an impediment to supply was in existence. In such circumstances, the respondent no.1 cannot shirk its responsibility in the matter particularly when it relates to operation and maintenance of a project of public importance awarded to the petitioner by its subsidiary.

Considering the facts and circumstances of the instant case, I think justice will be sub-served if the respondents are directed to make arrangements for supply of the onetime allotment of 5800 tons of G5 grade coal to the petitioner in phase wise manner with the first instalment of 2800 tons of G5 grade coal within a month from date and the balance 3000 tons should be supplied within a period of two months from date. The supply of onetime allotment of 5800 tons of G5 grade coal will be on contractual terms for trial operation of the plant.

So far as the other prayers of the petitioner regarding continuous supply of coal after the onetime allotment of 5800 tons are concerned, the petitioner will be free to agitate the same, as may be advised in an appropriate proceeding, if occasion so arise.

Nothing remains further to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Arindam Mukherjee, J.)