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28.05.2021.
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**W.P.A. 10528 of 2021
(Via Video Conference)**

**Utkarsh India Limited & Anr.
-versus-
Central Coalfield Limited & Anr.**

**Mr. Jishnu Chowdhury,
Mr. Chayan Gupta,
Mr. S. Banerjee,
Mr. Dwip Raj Basu.
...For the Petitioner.**

The petitioner No.1 is a Private Limited Company and the petitioner No. 2 is its Director.

The petitioners are aggrieved by the letter dated 21st May, 2021 issued by the Chief Manager, Material Management-Purchase of the Central Coalfields Limited.

By the said communication the petitioners have been intimated that the documents uploaded by the Company in two chances given for uploading shortfall/confirmatory documents was techno commercially evaluated and found to be technically unacceptable for item serial no. 7 of the NIT. The communicating letter was issued from the office of the respondents at Jharkhand. The respondents impleaded in the instant writ petition have their offices in Ranchi, Jharkhand.

At the very outset, the petitioners were requested to satisfy the Court as to how jurisdiction can be exercised by this Court under Article 226 of the Constitution of India in the instant matter.

The learned advocate representing the petitioners submitted that the communicating letter was served in the office of the petitioners within the territorial jurisdiction of this Court. It was further submitted that as per the impugned order the petitioners were found to be defaulters and penalty was imposed upon the Company without giving an opportunity of hearing. It was further submitted that the petitioners have been disqualified from participating in any tender for a period of one year and the said disqualification affected the right of business of the petitioners and the said affectation of right arose within the territorial jurisdiction of this Court.

A judgment delivered by this Court in the matter of Sri Pankaj Panwar vs. Lalit Kala Akademi & Ors., reported in AIR 2015 Cal 67 was relied upon.

In the said decision, the Court took into consideration a judgment passed by the Hon'ble Division Bench of this Court in the matter of Everest Coal Company –vs- Coal Controller, reported in 90 CWN 438 wherein the Court ruled as follows:-

“In order to maintain a writ application the petitioner has to establish that within the territorial limits of the court's jurisdiction, prima facie, a legal right claimed by him has been either infringed or is threatened to be infringed by the respondents. When the impugned act of the respondents takes effect within the territorial jurisdiction of a particular High Court, it may entertain the writ petition of the person aggrieved notwithstanding that the respondents have the offices or residences outside its territorial jurisdiction.” The court further held that in the event the order is given effect to against the petitioner within the jurisdiction of the said High Court then at least a part of the cause of action arose where the impugned order is implemented.

The petitioners also placed reliance upon paragraph 48 of the judgment in the case of Lalit Kala Akademi (supra) wherein the Court held that to hold that service of an order or a notice on the addressee would never give rise to a cause of action to move the court within whose territorial limits the order /notice is received, may not be reasonably sound. The plea of affectation of right or interest by reason of such order being served, if based on a substantial fact forming a part of the bundle of facts constituting the cause of action, would be relevant for determination of the question as to whether the writ petition ought to be entertained or not.

In the instant case, it appears that, the notice of tender was floated by the respondents from Ranchi, Jharkhand. The tender was an e-Tender and an intending participant could participate in the said tender from any part of the country.

The general condition of contract as mentioned in the Notice Inviting Tender specifically clarified that any notice given by one party to the other shall be at the address of the purchasers mentioned therein. The address of the purchaser was Ranchi, Jharkhand. The settlement of disputes was to be made by the Courts in whose territorial jurisdiction the place from where the contract was issued is located i.e., Ranchi, Jharkhand.

According to the petitioners, as the contract was yet to be entered by and between the parties, accordingly, the aforesaid instruction as mentioned in the Notice Inviting Tender shall not be applicable.

The impugned communication specifically mentions that the petitioners have been found defaulters and disqualified for the specific item of the NIT for which the default has been committed. The aforesaid disqualification does not stand in the way of the petitioners in participating in any other tender

items either of the respondent Company or any other Company.

Since the tender was floated in the electronic mode there may have been participants from all over the country. A communication which may appear to be disadvantageous to any of the participants ought not to be allowed to be challenged at a place where the alleged communication is made. In that case, the respondent Company would be compelled to defend cases throughout the country.

The Supreme Court in a catena of decisions specifically laid down that the Courts within whose jurisdiction the integral part of the cause of action arises can exercise jurisdiction to decide the issue.

Article 226 (2) of the Constitution of India empowers the High Courts to exercise jurisdiction within which the cause of action, wholly or in part, arises for the exercise of such power.

In the case at hand, it appears that the integral part of the cause of action i.e., the floating of tender, the scrutinization of the documents and the decision to disqualify the petitioners and impose penalty was taken at Ranchi, Jharkhand. The communication of the impugned order was, however, sent to the petitioners at the address which, incidentally, falls within the jurisdiction of this Court.

As regards the submission of the petitioners with regard to their affectation of the right to business being infringed by the respondents lies within the jurisdiction of this Court, does not appeal to the Court. The communication specifically mentions that the disqualification was in respect of the specific item only, which implies that the petitioners could carry on business in respect of the other items and in respect of the other Companies.

Whether the impugned order is valid in the eye of law or not is a different matter altogether.

The Court is not satisfied that the Calcutta High Court can exercise jurisdiction to decide the issue, accordingly, the instant writ petition stand dismissed on the ground of lack of jurisdiction of this Court to adjudicate the matter on merits.

The dismissal of the writ petition shall, however, not stand in the way of the petitioners from approaching the proper forum to decide the issue on merits.

WPA 10528 of 2021 stands dismissed.

Urgent photostat certified copy of this order, if applied for be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)