

06.08.2021

Ct. No.13

Sl. No.13

pk/akd

W.P.A. 11981 of 2021 [via video conference]

[Anand Carbo Private Limited & Anr. -Vs- Coal India Limited & Ors.]

Mr. Jishnu Saha
Mr. Kumar Gupta
Mr. Ishan Saha
Mr. Z. Haque
Mr. Abhishek Jain
Mr. Binay Kumar Jain

... for the petitioner

Mr. Varun Kedia

... for respondent no.1

Mr. Syed Nurul Arefin
Mr. Rahul Singh

... for respondent nos.5 & 6

Mr. Rajdip Biswas
Mr. Santanu Chatterjee

... for respondent no.9-UOI

Mr. Srijit Chakraborty
Mr. Joydeb Ghorai
Mr. Saugata Banerjee
Mr. Diptesh Ghorai

... for respondent no.11

The writ petitioner no.1 is aggrieved by an order withholding coal supplies to 17 nos. e-auction bidders including the petitioner passed by the Coal India Limited dated 5th July, 2021. The petitioner was communicated the same by the Northern Coalfields Limited. By a separate order the petitioner no.1 was also debarred from participating in a certain number of e-auctions to be conducted by the Coal India and its subsidiaries.

The petitioner no.1 would submit that the show cause notice dated 7th July, 2021 issued to the petitioner is vague and does not disclose the exact charge against the petitioner.

It appears from the said show cause that the Customs Authorities had addressed a communication dated 16th June, 2021 to the Coal India Limited, Marketing and Sales Department at Kolkata stating that the petitioner no.1 has exported coal during the period from 2013-14, 2018-19 and 2019-2020. Enquires were made by the customs authorities as to the steps taken by the Coal India for export of coal by the petitioner meant for domestic consumption.

The petitioner showed cause on 8th July, 2021. The petitioner no.1 submitted that coal was produced not only from the Coal India Limited but also from other sources meant for export. No formal order has yet been issued by the Coal India Limited dealing with the reply of the petitioner no.1 dated 8th July, 2021. The orders of restraint from lifting and debarment from participating in auctions on the petitioner were however continued. It is submitted that a sum of Rs.11 crores has already been paid by the petitioner no.1 to the Coal India Limited and hence the property therein had passed on to them and hence the said orders are illegal.

Learned counsel for the petitioners has also argued that the restraint order against lifting of coal and participation in the e-auction has been passed even before issuance of the show-cause notice.

The short question to be decided is with regard to the sufficiency of reasons in the show cause notice and the prejudice to the petitioner. This Court is of the view that the said orders of restraint do not become illegal merely because they have been passed immediately prior to the show cause notice.

Given the gravity and nature of the allegations against the petitioners that could amount to smuggling, the said orders cannot be termed totally unjustified.

It is now well settled that sufficiency of reasons and the prime facie views taken in a show cause notice cannot be weighed or tested by a writ court under Article 226 of the Constitution of India. In any event no formal final orders have not been passed against the petitioner. The writ petition is therefore premature.

Having considered the prima facie views on possibility of diversion of coal by the petitioner meant for domestic consumption, for export by the petitioner no.1, the findings of the respondents do not call for any interference at this stage.

This Court had offered the petitioner no.1 an opportunity to appear formally before the Coal India Limited and make detailed submissions and produce further evidence which has been declined.

The respondent authorities shall, however, pass a formal order dealing with the reply of the petitioner no.1 dated 8th July, 2021 mandatorily and positively within a period of ten days from date.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)