

23.09.2021

Sl. No. 2

Court No.8

B. M.

WPA 15141 of 2021

The Durgapur Projects Limited & Anr.

Vs.

Union of India & Ors.

(Via Video Conference)

Mr. Jishnu Choudhury
Mr. Chayan Gupta
Mr. Sandip Dasgupta
Mr. Pourush Bandyopadhyay ... for the petitioners

Mr. Y. J. Dastoor, learned ASG
Mr. Siddhartha Lahiri
Mr. Tapan Bhanja ... for the Union of India

The petitioner No.1 The Durgapur Projects Limited, a Government of West Bengal Enterprise being represented by the Deputy Manager (Legal) of the petitioner no.1 have approached this court after cancellation of all coal blocks through out the country pursuant to the judgement of the Hon'ble Supreme Court in case of Manohar Lal Sharma, the Trans Damodar Coal Block which was allotted in favour of the petitioner no.1, as per tender floated by the respondent authorities. A Coal Mine Development and Production Agreement (for short, 'CMDPA') was executed which had various efficiency parameters indicating the milestones and the dates for achieving such milestones by the petitioner no.1.

Initially, show-cause notices were issued against the petitioners by the respondent authorities, to which the petitioners have duly replied as per the submission so made on behalf of the petitioner by Mr. Jishnu Chowdhury.

After the show cause notices were given they have been replied by the petitioners.

The show cause notice dated 26th February, 2021 issued to the petitioners was lastly issued to the Managing Director of the petitioner company for non-compliance of the Efficiency Parameter of the Coal Mine Development And Production Agreement in respect of Trans Damodar Coal Mine, calling upon the petitioners company to show cause as to why action as deemed suitable including termination under Clause 24.3 of the CMDPA should not be taken against the petitioner company and in response thereto that the petitioner company submitted reply with regard to Efficiency Parameter in terms of agreement aforesaid contending that the required land in the mining area belonged to the prior allottee, West Bengal Mineral Development & Trading Corporation Limited (WBMDTCL) and also prior MDO engaged by the WBMDTCL. Therefore, the finalisation of the land related issue is a major concern to the DPL for setting up of the infrastructure. Besides this, DPL had to obtain "No Objection Certificate" from the prior allottee for transfer of the explosive licence in favour of the DPL.

Secondly, it is contended that with regard to land, mutation, the due date for achievement of the milestone in respect of submission of application for land mutation was on 01.05.2015 which DPL, however, did on 02.05.2015. It was submitted that on receipt of the Vesting Order with relevant Deed numbers, DPL had to obtain all the details with regard to the RS Plot Nos., LR Plot No., classification of the land, total area in each RS Plot and thereafter made an application to the Block Land and Land Reforms Officer, Barjora for mutation of the land.

Finally it was submitted in the letter of reply that an area of 12.48 acres of land only has been vested in favour of the DPL at Trans Damodar Coal Mine in terms of the Vesting Order No.104/7/2015/NA dated 23.03.2015 issued by the Nominated Authority against the total mining lease area of 694.68 acre and the entire area of the vested land has been fully dumped with overburden by the allottee and, as such, no further mining activity, including dumping of OB, could be carried out in the said tract of land which resulted in delay in compliance with the parameters as embodied in the agreement and such delay was sought to be condoned by the reply to the show cause notice given by the respondent authority.

It is submitted that show cause notices which were issued against the petitioners were replied to and one

meeting was held on 18.06.2021 and in the said meeting necessary recommendation was given which is depicted from pages 332 to 348.

Mr. Chowdhury invites my attention in particular to pages 343 and 344 wherein the recommendation of the committee is given for the milestone i.e. delay in execution of Mining Lease and consent to operate, reasons for delay are not attributable to the allottee since these delays are procedural in nature. Therefore, relaxation should be provided to the allottee by not penalizing them. It was also pointed out that delay regarding MOP, the Committee directed the allottee to provide the documents to the O/o Nominated Authority in support of their submission made during the meeting, i.e. "Secretary(Coal) has agreed to revise the date of operationalization of mine on the request made by the Chief Secretary, West Bengal" and the said milestone along with the submission of the allottee was to be taken up in the next Scrutiny Committee meeting.

In respect of show cause notice dated 26.02.2021 issued for non-compliance regarding reporting of deviations from approved Mining Plan, ratification of deviations/approval of revised Mining Plan including Mine Closure Plan and Opening of Escrow account within scheduled timeline and the recommendation to call explanation was given by the Scrutiny Committee to the extent that they were not satisfied with the reply of the

M/s. Durgapur Projects Limited and observed that the delay in achieving of these three milestones were attributable to the allottee. The Committee further recommended that the nominated authority should appropriate the Performance Bank Guarantee as per CMDPA. However, as regards the non-compliance regarding the schedule coal production during the financial 2015-16, FY 2016-17, FY 2017-18, FY 2018-19 and FY 2019-20 within the said timeline the recommendation of the Committee was to provide documents to the nominated authority in respect of their submission made in the meeting i.e. Secretary who has approached for operationalization of mine on the request made by the Chief Secretary, West Bengal. The above milestone along with the submission of the allottee was to be considered in the next Scrutiny Committee meeting.

It is pointed out that the Scrutiny Committee had given the full opportunity to the petitioner company and the petitioner company represented its case before the Scrutiny Committee and accordingly, recommendations were given with the reconsideration of the corrigendum.

Ultimately, a penalty has been imposed by issuance of a letter dated September 10, 2021 to the Managing Director, Durgapur Projects Limited on behalf of the Government of India, Ministry of Coal being the O/o Nominated Authority therein. It has been pointed out that there has been reporting of deviation from approved

mining plan as per the show cause notice dated 26.02.2021 as the milestones as per the Efficiency Parameter and its due date for completion on 23.07.2015 and the actual date of achievement of milestones was scheduled to be completed by 17.12.2018 and therefore, it is assigned to milestone to its weightage and with regard to rectification of deviation/approval of revised Mining Plan including Mine Closure Plan including the plan that is fixed on 23.01.2016 and mine closure plan approved was on 10.07.2019 and the weightage assigned to mine closure was 15% and with regard to opening of escrow account the date was 23.09.2015 and mine closure plan approved was on 31.01.2019 with 15% weightage in total 38% of weightage and accordingly for non-compliance of the timeline of the said three milestones, an amount of INR 35,92,90,000/- (Thirty Five Crores Ninety Two Lakhs Ninety Thousand only) i.e. an amount equal to the sum of 38% the total Performance Security of INR 94,55,00,000/- (Ninety Four Crores Fifty Five Lakhs only) from Bank guarantee No.020418ILPER0013 constituting Performance Security submitted by M/s. Durgapur Projects Limited being appropriated in terms of clause 6.2.1(d) read with Clause 10.3 of the Coal Mine Development And Production Agreement (CMDPA) dated 02.03.2015 in respect of Trans Damodar Coal Mine.

Accordingly, the petitioners were advised to top up the Bank Guarantee constituting the Performance Security with fifteen business day on receipt of the notice as per Clause 6.3.3 of the CMDPA and any failure to do so shall be a termination event for the purposes of clause 24 of the Coal Mine Development and Production Agreement. Such letter was issued to the petitioners and that was received on 13.9.2021.

The ultimatum given by the respondent herein imposing penalty has given rise to the cause of action in the instant case for interim direction upon the respondents to withdraw the said recommendation/ decision of the scrutiny committee and the penalty imposed on.

It is now submitted by Mr. Chowdhury, learned counsel for the petitioners that supply electricity to the entire city of Durgapur and the adjoining area would be affected if the allotment of the coal block is cancelled which will result in complete black out and in addition to that, the water supply of Durgapur and adjoining areas would also be affected thereof. It is further submitted that the petitioners have already spent amounts in excess of Rs.150 crores to make the said coal block functioning and in any event, cancellation of the CMDPA and the re-allotment of the same by a tender process would take a considerable time and it would not be possible for the new contractor to start production within a year or two,

after compliance of the entire formalities and transfer of all the leases, licenses and permissions which are associated with a coal block.

It is pointed out that interim relief in the matter relating to the issue involved in the case is required to be decided by a Tribunal constituted under the Coal Mines (Special Provision) Act, 2015 and seeks bonus time for five days to move before the tribunal.

Learned counsel has relied on a decision rendered by a Division Bench of this Hon'ble Court in A.S.T 53 of 2018 with ASTA 18 of 2018 with W.P. 12635 (W) of 2018 (The West Bengal Power Development Corporation Limited & Anr. v. Union of India & Ors.) wherein liberty was given to the appellant corporation to approach the Tribunal within a fortnight from the date.

It is further submitted that availability of an efficacious alternative remedy does not bar the jurisdiction of the writ court, yet generally, the writ court would not exercise its high prerogative jurisdiction where an efficacious alternative remedy is available, particularly if, complicated disputed questions of fact are involved.

I absolutely agree regard to the factual aspect as put forth by learned counsel on the factual aspect which has to be gone into by the Tribunal under the said Act (constituted under the said provision).

In rebuttal Mr. Y. J. Dastoor, learned Additional Solicitor General submits that admittedly the petitioner

had received the notice of penalty on 13.09.2021 and they have lost ten days time unnecessarily by approaching this court. When the issue can be decided by the Tribunal, petitioners ought to have approached the Tribunal in stead of approaching writ jurisdiction.

I do agree with such submission. However, this Court by taking cue from the unreported decision of the Hon'ble Division Bench of this Hon'ble Court in the above cited case, grants liberty to the petitioner to approach the Tribunal to get the issue decided. The respondent authority shall not act in terms of penalty imposed on the petitioners till 28th September, 2021 and will keep the order of penalty till the said date but in case of failure on the part of the petitioners in approaching the tribunal, the order of penalty shall be operative and the interim relief for a period of five days will lapse and the petitioners would be obliged to comply with the order of penalty imposed on them by the respondent authority.

I make it clear that this Court has not entered into the merit of the case and the Tribunal shall not be influenced by any observation made in this order on being approached by the petitioners.

Since, the respondents have not been given liberty to use their affidavit in opposition, the averments made in the writ application be treated as disputed and not admitted.

With the above observations and directions the writ application being WPA 15141 of 2021 is disposed of.

All parties shall act in terms of copy of this order downloaded from the Official Website of this Hon'ble Court.

(Shivakant Prasad, J.)