

20.12.2021
Court No.13
Item No. 23
pk

**W.P.A. No. 18623 of 2021
(Through Video Conference)**

**STA-UCC (Joint Venture Enterprise)
Versus
Coal India Limited & Ors.**

Mr. Kartik Kurmy,
Mr. Vinay Shraff,
Ms. Priya Sarah Paul.

...For the petitioner.

Mr. Aniruddha Chatterjee,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh.

..For the respondent nos.2 to 5.

Mr. Probal Kumar Mukherjee,
Mr. Avirup Mondal,
Mr. Sayantan Mukherjee,
Ms. Ahana Ghosh Mondal

... for the respondent no. 7.

The respondent no. 7 and the ECL have also been heard today.

Learned counsel for the ECL submits that the orders of banning dated 31.03.2020 and 13.09.2021 have been stayed by the learned Civil Judge (Junior Division), Second Court at Asansol in T. S. No. 670 of 2021 by order dated 28.09.2021.

Counsel for the petitioner would argue that at the time when the objection against the 6th respondent was being considered by ECL, the only issue was whether the 7th respondent was a Director or partner of the impliedly banned entities.

Reference is made to a joint venture agreement dated 15th June, 2021 in which the 7th respondent

represented himself to be a director and partner. It is submitted that the said agreement dated 15th June, 2021 contradicts the statement of the 7th respondent, that he was not connected with M/s. Ashirbad Real Estate and Transport Pvt. Ltd., as on the date of consideration of his technical bid.

Reference is made to the decision of the Supreme Court in the case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others** reported in **(1978) 1 SCC 405**. Based on the dicta in the said decision, it is submitted that this Court should test the decision clearing the private respondent's tender only in the above facts. The subsequent stay of ban should not be taken into consideration by this Court.

This Court has carefully considered the arguments of the parties. In terms of the dicta of Mohinder Singh Gill (supra), the propriety of a decision of an authority is indeed to be tested only on the basis of the material considered by such authority at the time of taking the impugned decision and not by any subsequent event.

This Court notices that Mohinder Singh Gill decision was rendered in the context of an election dispute. The subject matter of the present writ petition is award of a tender, which is guided by different principles. It is now well settled that a State Authority, while awarding tenders and in distribution of State Largess, has to be allowed "play in the joints". This has been

mandated in the case of Tata Celluler Vs. Union of India reported in (1994) 6 SCC 651 and the subsequent decisions that have followed.

Even if one accepts the fact that the banning order and the stay thereof by the Civil Court was not available before the tender evaluation committee, the subsequent stay of the banning order puts to rest all objections against the 6th and 7th respondent. The arguments of the petitioner are therefore academic.

Taking a holistic view of the whole matter, this Court finds that the ECL was not totally unjustified in awarding the contract to the respondent no. 6. It is equally well settled now that relief under Article 226 is discretionary. This Court in exercise of such discretionary jurisdiction is not inclined to interfere of award of tender to this Respondent No.6.

The writ petition is therefore dismissed.

Interim order, if any, shall stand vacated.

There will be no order as to costs.

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

(Rajasekhar Mantha, J.)