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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4371 of 2019

- M/s Niranjan Lal Agrawal, A Proprietorship Firm having its office at Tulsi Marg, Korba, Chhattisgarh having its Proprietor Shri Raj Agrawal, S/o Late Niranjan Lal Agrawal, Aged 37 Years, R/o Hause No.3, Tulsi Marg, Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coal Field Limited, Mini Ratna Company Subsidry of Coal India Limited through its Chirman-cum-Managing Director, SECL Bhawan, Sipat Road, Sarkanda, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Chief General Manager, South Eastern Coalfield Limited, Dipka Area, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh
3. General Manager, South Eastern Coalfield Limited, Dipka Area, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh
4. Deputy General Manager, South Eastern Coalfield Limited, Dipka Area, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh
5. Staff Officer (Mining), South Eastern Coalfield Limited, Dipka Area, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh
6. Project Finance Manager, Dipka Extension Project, Korba, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Respondents

For Petitioner – Shri Malay Shrivastava, Advocate.
For Respondents – Shri V.R. Tiwari, Senior Advocate with Shri Atul Kumar Kesharwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

30-11-2021

1. This petition has been brought for issuance of appropriate writ and to quash the impugned order dated 13-02-2019 (Annexure-P/1) and order dated 22-06-2017 (Annexure-P/2).

2. It is submitted by learned counsel for the petitioner that, the petitioner is proprietorship firm, which was granted a work order of hiring of pay loader for mechanical transfer of uncrushed coal into tippers and its transportation from Dipka Expansion OC coal stock No.1, 2 and 3 to Dipka Siding and for hiring of pay loader for mechanical transfer of uncrushed coal in wagons at Dipka siding including leveling of coal loaded into wagons. This work order (Annexure-P/4)

was issued on 08-07-2007 and cost of work was Rs.322.50 lacs. The petitioner firm worked as per the order, but the prescribed quantity of coal could not be transported to the Dipka siding. The final bill (Annexure-P/5) was prepared in which amount of Rs. 24,52, 250/- was deducted as demurrage charges and total amount of Rs.31,55,485/- was deducted as penalty.

3. It is submitted that according to the agreement (Annexure-P/3), clause 6.2 provides for charging penalty from the contractor in case of his lapses. Clause 6.2 a)(iii) provides that the aggregate of the penalties so levied shall not exceed 10% of the total contract value. In the present case the penalty imposed upon the petitioner is exceeding the limit as provided under clause 6.2 a)(iii) of the agreement. It is also submitted that the demurrage charges are levieable according to clause 23.01 of the special terms and conditions of the contract.

It is submitted that Annexure-P/1, a letter to the petitioner by respondent No.3, a communication regarding the prayer of the petitioner for settlement of the dispute and the deduction made from the petitioner vide Annexure-P/2 both are illegal and arbitrary. No opportunity of hearing was given to the petitioner before making deduction and charges for demurrage and penalizing the petitioner. Therefore, the impugned action of the respondent is totally unlawful and the petitioner is entitled for refund of the amount deducted form his bills. Hence, it is prayed that appropriate orders be passed.

4. Learned counsel for the respondents firstly raises the ground of maintainability of this petition. Relying on the judgment of Hon'ble the Supreme Court in the case of **Kerala State Electricity Board and Ors. Vs. Kurien E. Kalathil and Ors.**, (2000) 6 SCC 293 it is submitted that dispute relating to interpretation of clause in contract and implementation of such clause cannot be made subject matter of wit petition. The person aggrieved in such a case shall approach Civil Court. It is submitted that the contract of the petitioner with

the respondents is a contract of private nature and therefore, the petitioner have civil remedy available and they cannot invoke writ jurisdiction of this court under Article 226 of the Constitution of India. Hence, the petition may be dismissed and disposed off.

5. Learned counsel for the petitioner submits in rebuttal that in reply submitted by the respondents there is no ground raised on the maintainability of the present petition. Hence, the petition should be decided on merits.

6. Considered on the submissions.

7. The dispute present between the petitioner and the respondents is with respect to the deductions made from the bills raised by the petitioner regarding demurrage and penalty which the petitioner claims to be arbitrary and against the provisions of the contract. According to General Terms and Conditions of the Contract, clause 6.2 authorizes the company to penalize in case the contractor is unable to comply with the required progress in terms of the agreed time and progress chart or to complete the work etc. The statement of the respondent side is this, that the petitioner failed to transport the coal to the siding where the wagons of the railways were available, but the coal was not available for loading. Clause 23.1 authorizes the company to charge for demurrage. This is admission of the petitioner that, in the performance of work he could not transport sufficient coal to the siding.

8. Clause 12 of the General Terms and Conditions of the contract is as follows:-

> "12. SETTLEMENT OF DISPUTES:
>
> It is incumbent upon the contractor to avoid litigation and disputes during he course of execution. However, if such disputes take place between the contractor and the department, effort shall be made first to settle the dispute at company level.

> The contractor should make request in writing to the Engineer-in-charge for settlement of such disputes/claims within 30 (thirty) days of arising of the cause of dispute/claim, failing which no disputes/claims of the contractor shall be entertained by the company.
>
> If differences still persist, the settlement of the dispute with Govt. Agencies shall be dealt with, as per the Guidelines issued by the Ministry of Finance, Government of India in this regard. In case of parties other than Govt. Agencies, the redresal of the dispute may be sought in the Court of Law."

9. It is submitted by learned counsel for the petitioner that the demurrage and the total penalty imposed upon the petitioner exceeds the limit of 10% which is against the clause 6.2 a)(iii) of the contract. The petitioner has earlier preferred WPC No.2075 of 2018 which was disposed off by this Court vide order dated 31-07-2018 directing to resort to clause 12 of the agreement for dispute redressal, subsequent to that the claim of the petitioner was dismissed vide Annexure-P/1. Clause 12 of the agreement is very much clear that in case of dissatisfaction of the one of the parties with respect of the dispute redressal mechanism the parties have remedy available to approach civil court, which does not mean the constitutional Court. Hence, the petitioner has civil remedy available to him for the dispute present in this case. In the case of **Kerala State Electricity Board and Ors. Vs. Kurien E. Kalathil and Ors.** (supra) Hon'ble the Supreme Court has expressed in paragraph No.11 as follows:-

> "11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes

about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies."

10. In view of the discussions made hereinabove and also taking guidance from the law laid down by Hon'ble the Supreme Court in the case of **Kerala State Electricity Board and Ors. Vs. Kurien E. Kalathil and Ors.** (supra), it is held that this petition is without any substance, hence, it is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil