

April 6, 2022
Court No.1.
AD-8
SG

*FMA 339 of 2022
with
CAN 1 of 2022*

*M/s. Essal Infrastructure Pvt Ltd and another
-versus-
The Coal India Limited and others*

Mr. Srijib Chakraborty,
Mr. Sunny Nandy, Advocates
... for the appellants.

Syed Nurul Arefin, Advocate
... for the respondent Nos.3 to 7.

By this appeal the writ petitioners had challenged the order of learned Single Judge dated 13.12.2021 whereby WPA 17182 of 2021 has been dismissed.

The appellants had approached the writ Court with several prayers, in the background of the fact that the contract was awarded to the appellants and in terms of clause 6.2.6 of the terms of the contract, it was found that the progress of the work was unsatisfactory, there was an option to employ another agency for executing the job without cancelling or terminating the contract by debiting the contractor with cost involved in engaging another agency or with the cost of labour and the prices of materials, as the case may be.

The notice dated 19.04.2018 was given by respondents under clause 6.2.6 GTC governing the contract which was replied by appellants on 27.04.2018. Thereafter Senior Manager had

sent opinion on 16.05.2020 in respect of clause 6.2.6 of GTC.

Submission of learned counsel for the appellants is that after the above steps no decision was taken by the official respondents. Appellants had submitted the representation dated 21.08.2021 before the CMD of the respondent Eastern Coalfields Limited. The second representation was submitted on 16.09.2021 but the same was also not responded.

Further submission of learned counsel for the appellants is that before learned Single Judge instead of pressing various prayers made in the writ petition, a limited argument was advanced to issue a direction to respondent No.4 to decide the pending representation, which has been wrongly denied.

Placing reliance upon the judgment of Supreme Court in the matter of **Unitech Limited and others versus Telangana State Industrial Infrastructure Corporation (TSIIC) and others** reported in **2021 SCC OnLine SC 99**, he has submitted that the State authorities are expected to act fairly and in a non-arbitrary manner even in the contractual matters.

Though the appeal has been opposed by learned counsel for the respondents but he has not disputed that the representation filed by the appellants can be decided within a period of 8 weeks.

In the aforesaid circumstances, without going into the merits of the matter, we dispose of the present appeal by directing the respondent No.4 to take an appropriate decision in

accordance with law on the pending representation as expeditiously as possible preferably within a period of 8 weeks from the date of receipt of a copy of this order.

Accordingly, FMA 339 of 2022 along with CAN 1 of 2022 is disposed of.

Urgent certified photostat copies of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)