

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 18575 of 2017

*M/s BTL EPC Ltd.*

.....

*Petitioner*

*Mr. Swayamjit Rout, Advocate*

Vs.

*Mahanadi Coal Field Ltd. and  
others*

.....

*Opposite Parties*

*Mr. H.P. Mohanty, Advocate*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MISS JUSTICE SAVITRI RATHO**

**ORDER**

**20.05.2022**

**Order No.**

09.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Rout, learned counsel appearing for the petitioner and Mr. H.P. Mohanty, learned counsel appearing for opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 03.11.2015, passed by opposite party no.2 under Annexure-10, and to direct opposite parties 1 and 2 to refund a sum of Rs.1,36,50,559.55, which they have retained, and a further sum of Rs.64,56,268.00 towards performance bank guarantee which opposite parties 1 and 2 have illegally encashed. The petitioner also seeks to direct opposite parties 1 and 2 to refund a sum of Rs.1,03,66,676.00, 20% of the balance unpaid amount, which the petitioner is entitled to because of the fact that he has affected the supplies in pursuance to the purchase order dated 23.01.2006, and interest @ 24% on the amount of Rs.64,52,268.00 for performance bank guarantee from 01.12.2016, the day on which the opposite parties 1 & 2 encashed the bank guarantee.

4. Mr. S. Rout, learned counsel for the petitioner vehemently

contended that the impugned order dated 03.11.2015 has not been passed in terms of the direction given by this Court in Paragraph-19 of the judgment dated 25.09.2014 passed in W.P.(C) No. 12934 of 2007, meaning thereby while passing such order, they have not considered the Chartered Engineers report and they have not determined on the basis thereof the applicability of the Price Fall Clause, as such, the order under Annexure-10 has been passed without application of mind.

5. Mr. H.P. Mohanty, learned counsel for the opposite parties, after obtaining instruction from the opposite parties pursuant to the order dated 16.05.2022, contended that so far as Chartered Engineers report is concerned, the same has been taken into consideration and the impugned order has been passed in terms of the direction given by this Court in the aforesaid order.

6. Having heard learned counsel for the parties and after going through the record, it is evident that the petitioner had approached this Court earlier by filing W.P.(C) No. 12934 of 2007 and this Court vide judgment dated 25.09.2014 disposed of the said writ petition. At paragraph-19 of the said judgment, it has been directed as follows:-

*“Be that as it may, as the impugned decision is founded on the premise that the goods supplied by the petitioner to MCL and SECL when adjudged by their description/specifications were identical so as to attract the Price Fall Clause, we are of the considered opinion that to ensure even handed justice, more particularly, in the face of the Chartered Engineer’s Report laid by the petitioner that it would be expedient and in fitness of things that the matter be remitted to the opp. Party-company for fresh scrutiny of all relevant facts bearing on the identicalness or otherwise of the goods supplied by the petitioner to the MCL and SECL and to determine on the basis thereof the applicability of the Price Fall Clause. As the Chartered Engineer’s Report per se records a finding that the goods supplied were not identical, this document in*

*course of the fresh exercise would also be taken note of. In order to provide a quietus to the lingering controversy, we are of the view that an opportunity to the petitioner to participate and cooperate in the process should be given. The opp. party company would duly notify the petitioner of the exercise to be undertaken, as ordered, and complete the same within a period of four weeks from the date of receipt of a certified copy of this order. The petitioner would lay a certified copy of this order with the Chief General Manager (MM), MCL, District-Sambalpur, Odisha, within a week here from, where after the process, as ordered, would be undertaken and completed within the time frame fixed.”*

7. There is a specific direction by this Court that Chartered Engineer's Report per se records a finding that the goods supplied were not identical, this document in course of the fresh exercise would also be taken note of by the authorities, but while passing the order impugned in Annexure-10, even though Chartered Engineer's Report was made available, the same has not been taken into consideration and the order has been passed to the following effect:-

- 1) In case of gate belt conveyor 800mm x 950 mtrs long FLP 1x75 KW ordered by MCL vide item no. 1 of order no. 134 dated 23.01.2006, price fall cannot be made applicable as no comparable belt conveyor in items of structure length and motor KW is available in SECL order no. 311 dated 17.02.2007.*
- 2) In case of Gate Belt Conveyor 800mm x 950 mtrs long FLP 2 x 110 KW ordered by MCL vide item no.2 of order no.134 dated 23.01.2006, price fall cannot be made applicable as no comparable belt conveyor in items of structure length and motor KW is available in SECL order no. 311 dated 17.02.2007.*
- 3) In case of Pony Belt Conveyor 800mm x 100 mtrs long FLP 1 x 22 KW ordered by MCL vide item no. 3 of order no. 134 dated 23.01.2006, the item description and salient parameters such as structure length, motor KW are same as that of item no. 2 of SECL order no. 311 dated 17.02.2007*

*and price fall cause will be applicable.*

- 4) *In respect of item no.(1) and (2) of MCL order no.134 dated 23.01.2006,even though the conveyors ordered by SECL are of higher structure length, the price as per SECL order No. 311 dated 17.02.2007 is substantially low as compared to that of MCL order whereas it should have been otherwise. The difference in unit price of item No.3 i.e. the pony belt conveyors covered in both the orders is quite substantial, This implies that the price charged by M/s Bengal Tool to MCL is very much on the higher side.”*

8. This Clearly indicates that the direction of this Court in W.P.(C) No. 12934 of 2007, more particularly at paragraph-Annexure-19 thereof, has not been followed in its letter and spirit. When the matter was taken up today, even though no direction was given by this Court, the General Manager of the opposite party-MCL is present in Court today.

9. Mr. H.P. Mohnaty, learned counsel for the opposite parties contended that the opposite parties are willing to hear the matter afresh, by giving opportunity of hearing to the petitioner.

10. In that view of the matter, since irregularities have been committed by the opposite parties while passing the impugned dated 03.11.2015 under Annexure-10, the same is hereby quashed and the matter is remitted back to the opposite parties to re-hear the matter, taking into consideration the direction given by this Court in Paragraph-19 of the judgment dated 25.09.2014 passed in W.P.(C) No. 12934 of 2007 and giving opportunity of hearing to the petitioner. It is needless to say that the petitioner may raise such other points which has been raised in this writ petition before the authority at the time of giving opportunity of hearing by providing necessary documents to substantiate his case. The entire

exercise shall be completed within a period of six weeks from the date of communication of the order.

11. The writ petition is accordingly disposed of.
12. Issue urgent certified copy as per rules.

**(DR. B.R. SARANGI)**  
**JUDGE**

*Arun/Bichi*

**(SAVITRI RATHO)**  
**JUDGE**

