

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.8097 OF 2020

M/S. Amit Mines Pvt. Limited

Petitioner(s)
Mr.M.Agarwal,
Advocate

-versus-

***Director of Industries, Odisha-cum-
Chairman, Micro and Small
Enterprises Facilitation Council,
Cuttack & Anr.***

Opposite Party(s)
Mr.S.P.Panda,AGA
Mr.C.Panigrahi,
(Opp. Party No.2)

CORAM:
JUSTICE BISWANATH RATH

ORDER
10.03.2022

Order No.
03.

1. Heard learned counsel appearing for the petitioner and opposite party State. However there is no appearance on behalf of contesting opposite party.
2. Mr. Agarwal, learned counsel appearing for the petitioner taking this Court to the nature of order being ex-parte through the sub Paragraphs and Paragraph-3 at Page-29 of the brief attempted to submit that looking to the serious nature of dispute in the event the petitioner filed application seeking time to come prepare for attending the finality of the dispute, at least one adjournment should have been provided to such party. It is alleged instead the Competent Authority in rejection of request of petitioner proceeded on the basis of the pleadings and decided without opportunity of hearing to the petitioner. Counsel for the petitioner also relies on a decision of Hon'ble Apex Court ***Jharkhand Urja Vikas Nigam Limited Vrs. State of Rajasthan and Ors.*** reported in (2021) 4 CCC 476 / 2021 (4) SCC 476 appears to be

involving similar situation and claimed to have direct application to the case at hand.

3. There is no dispute that ultimately a decision taken in the matter by way of impugned order ex-parte in absence of the opposite parties therein the petitioner herein. Looking to the heavy financial burden involving against the opposite party No.1 and the nature of proceeding required to be adjudicated on participation of the parties, unless there is hard situation and repeated non-cooperation of the party and attempt obstructing hearing there was no necessity of disposing such contest matter in ex-parte. Perusal of judgment relied on in the case of *Jharkhand Urja Vikas Nigam Limited Vrs. State of Rajasthan and Ors. in Civil Appeal No.2899 of 2021* decided by Hon'ble Apex Court this Court finds the decision has also direct application to the case at hand. There is no contest to the writ petition by the contesting opposite party in spite of appearance.

4. Keeping the ex-parte nature of order and as this Court finds heavy amount of money is involved by way of ex-parte award, this Court declaring the order at Annexure-4 bad. However for fresh adjudication of the dispute involved therein, this Court remits the order back to the Competent Authority undertaking the fresh exercise of MSEFC Case No.10 of 2019 by entering into fresh hearing and disposing the matter in participation of the parties at least within two months from service of copy of this order. This Court directs the petitioner to bring the order of this Court to the Competent Authority for re-fixing the date of hearing. In taking a fresh decision, there shall be however no effect to the observation of the impugned order and independent decision has to be taken. This Court fixed the date of appearance of the petitioner before the Competent Authority along with copy of the order on 29.03.2022. Since the matter is decided in

non-cooperation of the contesting opposite party notice be issued to the claimant therein by special messenger at the cost of present petitioner and matter be decided fresh in the involvement of all parties.

(Biswanath Rath)
Judge

S.P. Dash

