

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 20646 of 2022

***M/s Nabadurga Engineering
Construction, Andhra Pradesh***

.....

Petitioner

Mr. S.K. Dalai, Adv.

Vs.

***Mahanadi Coalfield Ltd. Sambalpur
and others***

.....

Opposite Parties

*Mr. K.M. Nataraj, ASGI along with
Mr. R. Shamar, Adv. and
Mr. S. Pani, Adv.*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE G. SATAPATHY

ORDER

19.10.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. S.K. Dalai, learned counsel for the petitioner and Mr. K.M. Nataraj, learned Addl. Solicitor General of India appearing for the opposite parties.
3. The petitioner has filed this writ petition seeking to quash the tender call notice dated 05.08.2022 under Annexure-10 on the ground that the same is violative of principles of natural justice and to issue direction to the opposite parties to allow it to complete the contract as per terms of the advertisement and agreement in view of the reply and performance of the petitioner under Annexure-9.
4. Mr. S.K. Dalai, learned counsel for the petitioner at the outset contended that clause-10 of the DTCN provides for termination, cancellation, supervision and foreclosure of contract, whether the date of completion has or has not elapsed, by notice in writing, if the contractor makes default in proceeding with the works with due diligence and continues to do so even after a

notice in writing from the Engineer-in-Chief, then on the expiry of the period as specified in the notice. It is contended that notice was issued by the opposite parties on 02.08.2022 under Annexure-8, wherein it was specifically mentioned that the petitioner has to improve its performance by 16.08.2022 and that the said letter be treated as a final notice for termination of contract as per clause-10(a), (b) of the contract agreement without any further notice. It is contended that when such time was granted by the authority, without allowing the petitioner to improve its performance, on 05.08.2022, e-tender notice has been issued vide Annexure-10. It is contended that the opposite parties have already pre-judged the issue and, therefore, compliance of notice thereof, is an empty formality, which violates Article 14 of the Constitution of India. It is further contended that even if clause-10(a) (b) requires that if the petitioner does not improve its performance within the time specified, in that case termination of contract has to be made. But without adhering to such condition, fresh tender has been issued, which cannot sustain in the eye of law.

5. Mr. K.M. Nataraj, learned Addl. Solicitor General of India appearing for the opposite parties raised preliminary objection with regard to maintainability of the writ petition and contended that the termination order has already been effected w.e.f. 31.08.2022. Therefore, the petitioner can only resort to the condition stipulated in the contract itself and cannot go beyond the same and, as such, this writ petition may not be entertained by this Court. He, however, fairly contended that since time was granted till 16.08.2022, the fresh tender issued on 05.08.2022 may not be

justified, in view of the letter issued on 02.08.2022.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the authority had given a notice of termination to the petitioner on 02.08.2022 giving time till 16.08.2022 for improvement of its performance and before expiry of that period on 05.08.2022 the fresh tender call notice was issued by the authority, which cannot sustain in the eye of law, in view of the fact that the authorities have already pre-judged their mind and, as such, to dislodge the petitioner for showing its performance by 16.08.2022, such fresh tender notice has been issued. Accordingly, the said fresh tender call notification is liable to be quashed and is hereby quashed. But fact remains, after the fresh tender notice was issued, there is an order of termination of the tender on 31.08.2022. Therefore, this Court is of the considered view that since the same emanates from the tender documents itself, it is open to the petitioner to pursue its remedy in terms of the tender itself.

7. With the aforesaid observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(G. SATAPATHY)
JUDGE