

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.25752 of 2022

*M/s. Kamdhenu Trading Co.
Chattishgarh*

.....

Petitioner

Mr. S.S. Padhy, Advocate

Vs.

Union of India & Ors.

.....

*Opposite Parties
Mr. J. Naik, CGC*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

26.10.2022

Order No.

02

This matter is taken up through hybrid mode.

2. Heard Mr. S.S. Padhy, learned counsel appearing for the petitioner and Mr. J. Naik, learned Central Government Counsel appearing for the opposite parties.

3. The petitioner has filed this writ petition seeking to quash the letter dated 02.09.2022 under Annexure-1 imposing ground rent for the period from 24.03.2022 to 05.04.2022 and from 02.09.2022 to 01.10.2022 and further to issue direction to the opposite parties to allow the petitioner firm 40 days time without imposition of ground rent/penalty to lift the scrap materials e-auctioned in its favour vide Lot No.110740122DNM.

4. Mr. S.S. Padhy, learned counsel for the petitioner contended that the petitioner participated in e-tender process for lifting of the scrap materials and as per Annexure-3 dated 02.02.202, free delivery period was prescribed as 50 days i.e. by 23.03.2022, but the petitioner could not comply with the same. Thereafter, vide Annexure-3 series dated 04.03.2022 time was extended wherein it

was informed that free delivery period is up to 23.03.2022. Again on 22.03.2022, request was made for extension of the period without ground rent. The opposite party, vide letter dated 29.03.2022, allowed extension of delivery period for ten days i.e. from 24.03.2022 to 02.04.2022 with continuous ground rent after date of expiry of delivery period i.e. 23.03.2022. It is contended that due to delay in lifting scrap material by the petitioner, the Railway Administration has not sustained any loss as has been indicated in Annexure-6-COS proforma for extension of free delivery period. At this point of time, opposite party no.2, vide letter dated 02.09.2022 under Annexure-1, permitted the petitioner to lift the scrap materials by 01.10.2022 with ground rent. Therefore, the petitioner has approached this Court by filing this writ petition.

5. Mr. J. Naik, learned Central Government Counsel appearing for the opposite parties contended that as per Clause-10 of Uniform Sale Conditions for E-Auction, free delivery period shall be maximum 50/40 days from the date of bid acceptance, as indicated in para-6. However, Railway Administration in deserving cases may extend the delivery period by 15 days over and above the prescribed period of 50/40 days. It is also contended that Clause-19 deals with Ground Rent and in the event the purchaser could not make free delivery within the period prescribed for removal of the sold goods or materials, he has to pay the ground rent. Thereby, the determination of ground rent vide letter dated 02.09.2022 under Annexure-1 is well justified.

6. Considering the contentions raised by learned counsel appearing for the parties and after going through the records, it

appears that pursuant to E-auction sale held on 02.02.2022, the petitioner participated and was declared as successful. As such, he was allowed to lift the entire quantity of scraps within 50 days, i.e. by 23.03.2022 without any ground rent, but the petitioner could not lift the same. Again on the request of the petitioner, opposite parties vide letter dated 04.03.2022 granted time, but the free delivery period was prescribed in the said letter as 23.03.2022. Thereafter, the petitioner also could not comply with. Consequentially on 22.03.2022, the petitioner sought extension of time without any ground rent and the same was allowed vide letter dated 29.03.2022 under annexure-5 extending 10 days from 24.03.2022 to 02.04.2022 with continuous ground rent after date of expiry of delivery period, i.e. 23.03.2022. Learned counsel appearing for the petitioner contended that due to delay in lifting scrap material, the Railway Administration has not sustained any loss, as it is evident from Annexure-6. But fact remains even though the Railway Administration has not sustained any loss, but the petitioner is bound by the terms of the contract. As such, it has to do well within the time prescribed. If it could not able to do so, it has to pay ground rent as per Clause-19 of Uniform Sale conditions for E-Auction. Needless to say, opposite party no.2 has also taken a compassionate view waiving of the ground rent for the period from 06.04.2022 till 01.09.2022, but the petitioner could not able to discharge its responsibility and it has only lifted 6318 nos. of Sleepers and still 44228 nos. are pending to be lifted.

7. In that view of the matter, the substantial quantity of scrap materials has not been removed even though time was extended to the petitioner. Thereby, the petitioner has not adhered to the terms

and conditions of the contract itself. Thus, the ground rent raised by the opposite parties under Annexure-1 dated 02.09.2022 cannot be found faulted with.

8. In view of above, this Court does not find any merit in the writ petition, which is accordingly dismissed.

9. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE

Alok

