

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3629 OF 2022
WITH WRIT PETITION NO. 3630 OF 2022

(Vimla Infrastructure (India) Pvt. Ltd. Vs. Madhya Pradesh Power Generating Company Ltd. (MPPGCL),
thr. Chief Engineer (Fuel Management))

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri J.M. Gandhi, Advocate for the petitioner.
Shri Arpan Pawar with Shri Shishir Dongre, Advocate for the respondent.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.
DATE : JULY 18, 2022.

Since similar challenges are raised in these Writ Petitions, they are being decided together by this common order.

The respondent published a notice on 17/6/2022 inviting offers for transportation of coal from Western Coalfields Limited, Yekona Opencast Mine to Railway Siding and Loading in Indian Railway Wagons for onward transportation to Shri Singaji Thermal Power Project, Khandwa (M.P.). A second notice was also published on the same day for transportation of coal from Western Coalfields Limited (Pouni, Sasti and Gouri Mine) to the same thermal power project. As per Clause 8.1 of the instructions mentioned in both the tender notices, it was stated that Vimla Private Railway Siding (PVIT) was not allowed to quote for dispatch of coal. In the special terms and conditions that were annexed to the tender notices while furnishing information of the project work, it was specifically stated that dispatch of coal from Vimla Private Railway Siding was not allowed.

The petitioner being aggrieved by the aforesaid condition mentioned in the tender notices alleged that the same amounted to excluding the petitioner's railway siding and hence issued a legal notice dated 20/6/2022 to the respondent calling upon it to delete the aforesaid condition since the same was detrimental to its interest and goodwill.

As there was no response to the aforesaid legal notice, the petitioner approached this Court through the aforesaid Writ Petitions and has challenged

the aforesaid condition mentioned in the tender notices. According to the petitioner, such condition was illegal, unwarranted and contrary to public policy.

After notice was issued in the Writ Petitions, learned Counsel for the respondent on 8/7/2022 submitted that though initially, the last date of opening of the bids was 4/7/2022, the same had been extended to 18/7/2022. Thereafter, reply was filed by the respondent and it was stated therein that on 9/7/2022, Corrigendum 3 had been published and certain Clauses of the notice inviting tender and the tender documents were amended. Insofar as the Clauses that were subjected to challenge by the petitioner, it was stated in the Corrigendum that Clause 8(1) in both the notices inviting tender was replaced by stating that private railway siding would not be allowed to be quoted for dispatch of coal. Similarly, insofar as Clause 4.1 of the information mentioned in the special terms and conditions of the tenders was concerned, it was stated that reference to Vimla Private Railway Siding was deleted and it was specifically stated that dispatch of coal from Private Railway Siding was not allowed.

With the issuance of this Corrigendum, it is the case of the respondent that it has complied with the legal notice issued to it by the petitioner and has deleted the offending condition. It is also submitted that with the issuance of that Corrigendum, the prayers made in the Writ Petitions do not survive.

We find that the challenge raised in these Writ Petitions as initially filed was that the respondent should be directed to delete the aforesaid condition by which dispatch of coal from Vimla Private Railway Siding was not allowed. With deletion of that condition in the notice inviting tender, the prayers made in the Writ Petitions as filed would not survive.

After the reply was filed by the respondent, the petitioner has moved Civil Application (W) Nos. 1504/2022 and 1505/2022 seeking amendment to the Writ Petitions and has further sought to challenge the Corrigendum 3 dated 9/7/2022 as being illegal and unwarranted. In that context, we have heard the learned Counsel for the parties.

The learned Counsel for the petitioner submitted that the initial condition incorporated in the notice inviting tender and stipulating that dispatch of coal from Vimla Private Railway Siding was not allowed was illegal and caused grave

prejudice as well as injury to the petitioner. Such condition was incorporated without considering the impact of the same on the petitioner. The petitioner's railway siding being the only private railway siding in the area, the same was being referred to by various bidders while submitting their bids for transportation of coal. The reputation of the petitioner of being an efficient private railway siding was acknowledged by the Central Railway by issuing a notification in that regard and recognising it as 'Brownfield Private Freight Terminal'. Without any justifiable reason, the respondent prevented dispatch of coal from its siding. By issuing Corrigendum on 9/7/2022, though reference to the petitioner had been deleted, the effect of the same continued. It was thus submitted that the arbitrary act of the respondent of not permitting dispatch of coal from any private railway siding ought to be set aside. In support of the said submissions, the learned Counsel for the petitioner relied upon the decisions in i) *Tata Cellular Vs. Union of India* [(1994) 6 SCC 651] ii) *Reliance Energy Ltd. And Another Vs. Maharashtra State Road Development Corpn. Ltd. And Others* [(2007) 8 SCC 1] iii) *Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. And Anr.* [AIR 2016 SC 4305]. It was thus submitted that relief ought to be granted to the petitioner.

On the other hand, the learned Counsel for the respondent opposed the aforesaid submissions. It was submitted that with the issuance of the Corrigendum on 9/7/2022, the grievance as raised in the Writ Petitions did not survive and they were rendered infructuous. The learned Counsel referred to the reply and the documents placed on record along with the same to justify the tender condition by which dispatch of coal from the petitioner's railway siding was not allowed. With the issuance of the Corrigendum, the petitioner had no locus to challenge the tender conditions as amended on 9/7/2022. The petitioner was neither a prospective bidder nor a contractor who could raise grievance with the tender conditions as amended. Without prejudice to the aforesaid submissions, the learned Counsel referred to the communications entered into with the Western Coalfields Limited, since the respondent was informed that the Western Coalfields Limited had imposed a restriction on the movement of coal from the petitioner's siding. The communication was entered

into with the General Manager, Western Coalfields Limited and a request was made to confirm as to whether coal transportation from the petitioner's siding would be allowed by the Western Coalfields Limited or not. Acting on the report of the Resident Officer, the offending condition in the tender notice had been incorporated. It was not that such condition was included in the tender documents with a view to cause any injury to the petitioner. There were justifiable reasons as indicated by the documents on record to support that action. In absence of any allegations of malafides raised by the petitioner, there was no reason to accept the challenge to the issuance of the Corrigendum dated 9/7/2022. The learned Counsel placed reliance on the decisions in i) *SLP (C) No. 1616/2022 with another connected SLP decided on 11/2/2022 (Balaji Ventures Pvt. Ltd. Vs. MSPGCL)* ii) *N.G. Projects Limited Vs. Vinod Kumar Jain And Others [(2022) 6 SCC 127]* iii) *Bharat Coking Coal Limited And Others Vs. Amr Dev Prabha And Others [(2020) 16 SCC 759]* and submitted that the Writ Petitions were liable to be dismissed.

On hearing the learned Counsel for the parties and on perusing the documents on record, we find that the petitioner is not entitled for any relief whatsoever. Though the grievance of the petitioner was to the reference of its siding by stating that dispatch of coal from that siding was not allowed, with the issuance of the Corrigendum on 9/7/2022, the reference to the petitioner's siding stands deleted. Instead, it has been stipulated that dispatch of coal from private railway siding was not allowed. Thus, the reason for issuance of legal notice and thereafter filing of the Writ Petitions does not survive after issuance of the Corrigendum.

We also find substance in the submission made on behalf of the respondent that with the issuance of the Corrigendum, the petitioner had no locus to challenge the tender conditions as amended. The petitioner operates its private railway siding and hence cannot be termed to be either prospective bidder or a contractor. The petitioner cannot insist upon the respondent that dispatch of coal should be from its own railway siding. It is for the respondent as tender issuing authority to determine what is best in its interest. The petitioner cannot force the respondent to compel the bidders to dispatch coal from its

siding. If the respondent has decided not to seek dispatch of coal from any railway siding, there can hardly be any reason for one such private railway siding to insist upon its railway siding being used for dispatch of coal. It may be true that the petitioner has been recognized by the Railway Department and notified as Brownfield Private Freight Terminal, but that cannot be a reason to compel the respondent to ensure dispatch of coal from the petitioner's siding. Even otherwise, we find from various documents on record annexed to the reply filed by the respondent that it had taken attempts to enquire from the Western Coalfields Limited as to whether it had any objection to usage of the petitioner's private railway siding. Acting on the report of the Resident Officer, the authorities of the respondent and the Tender Evaluation Committee decided to do away with any private railway siding while seeking dispatch of coal. It therefore cannot be said that by issuing the Corrigendum, the respondent had acted in an arbitrary manner. There is material on record to support its decision to issue the Corrigendum. There are no allegations of malafides in the Writ Petitions for the Court to interfere under Article 226 of the Constitution of India.

After considering the law laid down in the decisions cited by the learned Counsel for the petitioner as well the respondent, it can hardly be said that by issuing Corrigendum on 9/7/2022, the respondent has acted unreasonably or in an arbitrary manner. As the tender issuing authority, the respondent is best suited to determine its needs.

Hence, for the aforesaid reasons, we do not find any merit in the Writ Petitions. They are accordingly dismissed with no order as to costs. The Civil Applications are also disposed of.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

SUMIT