

15th May, 2023
(S/L No.2)
(SKB)

RVW 213 of 2022
With
CAN 1 of 2022
In
W.P.A.7470 of 2022
With
RVW 214 of 2022
With
CAN 1 of 2022
In
W.P.A.17023 of 2022
With
W.P.A.20588 of 2022
With
CAN 1 of 2022
With
W.P.A.26095 of 2022

Eastern Coal Fields Ltd. and others
Versus
M/S DNB Transport and another

Mr. Srijib Chakraborty,
Mr. Sunny Nandy
... for the petitioners.

Mr. Jishnu Choudhury,
Mr. Syed Nurul Arefin,
Mr. Rahul Singh,
Ms. Rashmi Binayak
... for the ECL.

Mr. Samrat Sen, Id. AAAG,
Mr. Nilotpall Chatterjee,
Mr. Amrita Lal Chatterjee
... for the State in
RVW 214 of 2022.

Mr. Suddhasatva Banerjee,
Mr. Shayak Chakraborty,
Mr. Abdul Zahid
... for the respondent no.8
in WPA 26095 of 2022.

1. The respondent no.3, Eastern Coalfield Limited (ECL) is particularly prejudiced by an order passed by this court on 20th September, 2022 recording the submission of learned counsel appearing for ECL that ECL shall not issue a work order to any third party until the matter is heard out.
2. Learned counsel appearing for the petitioners submits that ECL is entitled to proceed with the tender and issue a work-order to the successful bidder. ECL has taken out an application being CAN 1 of 2022 for clarification of the order dated 20th September, 2022.
3. The undisputed fact which appears from the submissions made on behalf of the petitioners and ECL is that the writ petition was filed by the petitioner on 5th September, 2022 challenging a tender issued by ECL on 11th August, 2022. The petitioners filed other writ petitions thereafter challenging an order dated 12th July, 2022 blacklisting the petitioners. The writ petition challenging the blacklisting being W.P.A.17023 of 2022 may be treated as on the day's list.
4. ECL has also filed applications for review of an order passed by this court on 11th August, 2022 granting interim protection to the petitioners by staying the order of banning the business dated 12th July, 2022.

These applications are also treated as on the day's list.

5. The fact of the matter is that the petitioners were awarded two contracts for loading of coal and transportation. The duration of the contract expired on 28th March, 2023. The petitioners were blacklisted in the meantime on 12th July, 2022 with regard to one of the tenders. The ECL, on the other hand, claims damages for the failure of the petitioners to perform the contract and for the intervening loss of time.
6. Learned counsel appearing for ECL submits that ECL should not continue to suffer by reason of a self-imposed fetter on ECL to issue a work order as would be reflected from the order passed by this court on 20th September, 2022.
7. Learned counsel appearing for the petitioners is concerned about the effect of the order of blacklisting which counsel says would continue for a period of two more years and would irrevocably prejudice the petitioners.
8. The proposals made on behalf of the ECL and shared with the petitioners persuade this court to resolve and dispose of all the pending writ petitions as well as the connected applications.

9. ECL proposes to withdraw the letter of banning of business dated 12th July, 2022 and give a fresh opportunity of hearing to the petitioners on the question whether the petitioners should be banned for their alleged non-performance/conduct. ECL proposes to pass a reasoned order upon giving a hearing to the petitioners on the question of banning.
10. ECL also proposes to resolve its claim on the damages and loss suffered by the ECL on the petitioners' failure to perform the contract by way of arbitration or by filing a suit. The question of legality of termination of the letter of acceptance dated 20th August, 2022 shall be adjudicated by the proposed forum.
11. Nothing, hence, remains of the writ petitions. Since the petitioners' primary and continuing grievance is the letter of banning of business dated 12th July, 2022, ECL shall dilute the challenge before the court. ECL has taken a reasonable stand which must be taken into consideration.
12. All the writ petitions and the connected applications are disposed of with a direction on ECL to withdraw the letter of banning of business dated 12th July, 2022 with immediate effect and to give a fresh opportunity of hearing to the petitioners within two weeks from today. ECL shall pass a reasoned

order within a week from the date on which the petitioners are heard and a copy of the reasoned order shall be made available to the petitioners within a week from the date on which the reasoned order is passed. The respondent ECL shall be at liberty of seeking damages for the loss allegedly suffered by ECL by way of arbitration or by way of a suit before an appropriate forum, as it may be advised.

13. The orders passed by this court on 20th September, 2022 and 11th August, 2022 are recalled.

(Moushumi Bhattacharya, J.)