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W.P.A. No. 25287 of 2014

GlaxoSmithKline Consumer
Healthcare Limited & Anr.
Vs.
Eastern Coalfields Limited & Anr.

Mr. Suddhasatva Banerjee,
Mr. Snehashis Sen,
Mr. Abhishek Banerjee
...for the petitioners

Mr. Shaunak Sengupta,
Mr. Sudhakar Prasadd,
Mr. Pradipta Basu
...for the respondents

The conspectus of the present issue is extremely limited.

The primary argument of the petitioners is that the respondents, prior to terminating the fuel supply agreement with the petitioners vide termination letter dated July 28, 2014, did not comply with the appropriate clauses of the said agreement, which were mandatory prerequisites for terminating the contract.

It is submitted that none of the grounds stipulated in the agreement for termination has occurred or has been alleged, let alone established, by the respondents at any point of time.

The plinth of the argument of the respondents is on the premise of the show cause notice dated March 5/6, 2014, annexed at page 67 of the writ petition. It transpires from the said document that the petitioners were requested to “show cause” why the documents enumerated thereinabove were not submitted by the petitioners in terms of a notice dated September 09, 2013, wherein the respondents had asked for submission of the requisite documents in the prescribed format.

It is seen from the list of documents, which finds place in a short two-column chart in the said notice, that it pertains primarily to production licence, constitution status, factory running affidavit, factory licence and so on and so forth. The deficiency in the submitted documents, as indicated in the chart, was that critical machinery had apparently been authenticated by “CA” in place of “CE”. It also transpires from the said notice that the annual documents had been submitted by the petitioners for the period 2012-13.

However, the respondents, in the said notice, specifically rely on two particular clauses of the agreement, being Clause 4.4 and Clause 15.1.8.

Hence, the cause required to be shown by the petitioners, even as per the said show cause notice, was merely for non-production of the requisite documents, which, according to the respondents, were not properly authenticated.

However, Clause 4.4 stipulates that the total quantity of coal supplied pursuant to the agreement is meant for use at a particular location as listed in Schedule-I and the purchaser shall not sell/divert and/or transfer the coal for any purpose whatsoever and the same, if done, shall be treated as material breach of the agreement. In the event the purchaser engages or plans to engage in any such resale or trade, it was mentioned that the seller shall terminate the agreement forthwith without any liabilities or damages whatsoever payable to the purchaser. It was also stipulated therein that the seller shall reserve the right to verify, including the right to inspect/call for any document from the purchaser and physically verify the end-use of coal and satisfy itself of its authenticity.

Clause 15.1.8, on the other hand, stipulates that in the event any party commits a breach of term or condition of the agreement, not otherwise specified in Clause 15.1 preceding the said clause, the other party shall have the right to terminate the agreement *after providing the defaulting party thirty (30) days' prior notice and if the breach has not been cured or rectified to the satisfaction of the non-*

defaulting party within the said period of thirty (30) days (emphasis supplied).

However, it appears from the termination notice dated July 28, 2014, which has been impugned herein, that the respondents merely indicated that certain deficiencies were noticed by the Verification Committee in the submitted annual documents of the petitioners. It was next stated that, "therefore", the petitioners had failed to abide by the terms and conditions of the fuel supply agreement as stated therein and, therefore, breached the provisions of Clause 4.4 of the said agreement. In the last paragraph of the purported termination notice, the respondents indicated that in terms of clause 4.4 of the agreement, the same stood terminated with immediate effect. In terms of Clause 3.6 of the said agreement, it was further mentioned, security money deposited by the petitioners while executing the agreement stood forfeited.

Obviously, the alleged forfeiture would only follow in the event there was a valid termination of the agreement itself.

It is clearly seen from the purported show cause notice dated March 5/6, 2014 that the cause directed to be shown by the petitioners thereby was entirely pertaining to the alleged non-submission of the documents by the petitioners.

However, such mere non-submission of documents, although might arguably have created an adverse inference against the petitioners, could not be a justified ground within the four corners of the agreement for termination of the contract and/or forfeiture of the security deposit.

Clause 4.4 of the agreement, cited by the respondents in such termination notice, merely contemplates sale, diversion and/or transfer of the coal for any purpose whatsoever by the purchaser, which would be treated as material breach of agreement. Clause 15.1.8, at best, would mandate the respondents to give a prior show cause notice thirty days in advance and also to give an opportunity to the petitioners, if in default, to cure or rectify such default, to the satisfaction of the respondents, within such period of thirty days.

In the present case, no such period or opportunity has at all been given to the petitioners. Moreover, the purported show cause notice does not even allege that the petitioners are guilty of any of the breaches as indicated in Clause 4.4 of the agreement.

In absence of even any allegation regarding the sale/diversion and/or transfer of coal for any purpose whatsoever, let alone giving the petitioners an opportunity to show cause on the same, it was beyond the scope of the agreement to terminate the petitioners' agreement.

Hence, the termination notice dated July 28, 2014 (Annexure P-3 at page-66 of the writ petition) is palpably *de hors* the law as well as beyond the scope of the agreement itself. Being thus vitiated, the same is required to be set aside.

Accordingly, WPA No. 25287 of 2014 is allowed, thereby setting aside the termination notice dated July 28, 2014 (Annexure P-3 at page-66 of the writ petition). Threats given in the said notice with regard to the termination of the petitioners' agreement as well as the forfeiture of the security deposit of the petitioners stand recalled.

It is, however, made clear that nothing in this order shall prevent the respondents from proceeding against the petitioners in accordance with law and in consonance with the agreement in the event the respondents are of the opinion in future that any breach of such agreement has been committed by the petitioners.

The respondents shall refund the entire amount of security money, which was forfeited by the respondents by invocation of bank guarantee against the petitioners, to the petitioners by May 13, 2023.

However, the interest on such amount, prayed on behalf of the petitioners, is not granted, since the writ petition relied on an arguable point, as is established by the fact that the writ petition had initially been entertained and affidavits had been directed to be exchanged between the parties. Giving such benefit of doubt to the respondents, it cannot be held beyond doubt that the non-payment of the said sum and/or the forfeiture was *ex facie* mala fide on the part of the respondents and/or that the respondents could be held guilty therefor.

At this juncture, learned counsel for the respondents seeks a stay of the operation of the judgment rendered above.

However, in view of the period of about one month being given to the respondents to refund the amount-in-question, which is co-terminus with the appeal period, such stay is refused.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)