

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

W.P.A 27793 of 2022

M/s. STA-CC (JV) & Anr.

vs.

Eastern Coalfields Limited & Ors.

For the petitioners	:	Mr. Kishore Datta, Sr. Adv. Mr. Debajyoti Basu, Adv. Mr. Subhojit Seal, Adv. Ms. Reshmi Mukherjee, Adv.
For the ECL	:	Mr. Debnath Ghosh, Adv. Mr. Syed Nurul Arefin, Adv. Mr. Rahul Singh, Adv. Ms. Rashmi Binayak, Adv.
Last Heard on	:	28.04.2023.
Delivered on	:	15.05.2023.

Moushumi Bhattacharya, J.

1. The petitioners participated in a tender floated by the respondent Eastern Coalfields Limited (ECL) for hiring contractors for removal and transportation of coal in the Bhanora OC Patch at Sripur area. The

petitioners provided a performance guarantee of Rs. 2.60 crores on 28.12.2021. ECL placed the work order on the petitioner no. 1 on 10.1.2022. The work order provided for joint surveyor measurement and was to be completed in 2190 days i.e 6 years. An agreement was executed between the parties on 12.1.2022.

2. The petitioners seek release of all charges over the performance securities deposited by the petitioner no. 1 and an order in the nature of declaration that the petitioners are not in a position to perform the work due to the contingencies faced by them. The petitioners also seek foreclosure of the contract in full and refund of the performance securities.

3. Learned counsel appearing for the petitioners submits that the respondent ECL failed to obtain the necessary environment clearance and the Consent to Establish which compelled the petitioners to remain absent from the initial joint measurement. Counsel submits that there was gross delay on the part of the respondents and that the petitioners informed these reasons to the respondents by a letter dated 11.8.2022. Counsel submits that the preparatory work cannot be started without the consent to establish which was only received by ECL on 4.1.2023 which is after filing of the writ petition. It is further submitted that the land was not free from encumbrances and further that the entire project land was also not in possession of the respondents.

4. Learned counsel appearing for the respondent ECL disputes the contentions made on behalf of the petitioners and submits that ECL

obtained all the requisite permissions and certifications at the relevant point of time. Counsel submits that although the petitioners are seeking to foreclosure of the contract, clause 9.4 of the General Terms and Conditions of the e-Tender Notice makes it clear that foreclosure is solely at the option of ECL and not the petitioners contractors. Counsel submits that the security furnished by the petitioners is in the nature of unconditional bank guarantee and clause 6.1 provides that if the contractor fails or neglects to commence the work, ECL shall forfeit the same.

5. The material placed before the Court indicates that ECL made several requests to the petitioners to commence the work and start the preparatory work in terms of the initial measurement. This would be evident from letters dated 22.8.2022, 13.9.2022, 28.9.2022, 17.10.2022 and 9.11.2022. The Minutes of the Meeting held between the parties on 11.10.2022 records that the petitioners were also informed that sufficient land was available for starting the work of excavation at lease for two years. The Minutes further record the petitioners' commitment to start the work as soon as possible. It is also relevant that ECL obtained all the required permissions including the Environmental Clearance on 1.9.2022, Consent to Establish on 12.10.2022 and the Consent to Operate on 4.1.2023. All these certifications are part of the records.

6. Moreover the contention that it was impossible for the petitioners to execute the contract does not find any corroboration from the records. The fact that the ECL obtained the Consent to Operate and the requisite environmental clearance also disproves this contention. It is also significant

that the West Bengal Pollution Control Board issued a Notification dated 28.6.2016 envisaging the auto-renewal of the Consent to Operate. The Ministry of Environment, Forest and Climate Change also informed ECL on 19.3.2015 that the validity of the Environmental Clearance of the concerned mine is for the entirety of the life of the mine. Hence, it follows that the Environmental Clearance can also be extended at any time by ECL in aid of the work. The argument that no village road was made available to the petitioners for transportation of coal and that the petitioners were prevented from performing the work is also not substantiated by any document.

7. On the other hand, the respondent ECL has shown that the entire work of excavation and extraction of coal was to be carried out in the area belonging to ECL and roads were earmarked for this purpose and that the custom-built roads were on ECL's land and connected the land to the State Highway.

8. The petitioners have also not been able to show that ECL was under any statutory obligation to make the entirety of the land available to the petitioners at one go. The contract in fact provides that the land was to be provided in a phased manner and that the petitioners were under an obligation to examine the work site and only thereafter bid for the work. This Court is also satisfied from the document that the majority of the land is not encumbered and only a portion thereof is occupied by a bustee of ECL for accommodating the workers of ECL.

9. Even otherwise, Clause 9.4 of the General Terms and Conditions of the e-Tender Notice clearly provides that ECL shall have the sole option to take a decision whether to abandon or reduce the scope of the work in the circumstances stipulated under such clause. The petitioners clearly do not have any option for demanding the foreclosure of the contract and are hence precluded from seeking a direction from the Court to that effect. Clause 6.1 further provides that if a contractor commits default in commencing the execution of the work within the time stipulated and without reasonable cause ECL shall be at liberty of forfeiting the performance security deposit after giving 15 days' notice in writing to the contractor to commence the work.

10. The above reasons persuade this Court to refuse the relief prayed for. The petitioners have not been able to make out any case for seeking foreclosure of the contract or for refund of the performance securities furnished by the petitioners. The ground of impossibility of performance of the contract is also not made out from the records produced before the Court.

11. The petitioners shall however, in the interest of justice, be given an opportunity to commence the work within the time stipulated under the contract. ECL shall be at liberty of serving a fresh notice in writing to the petitioners to commence the work and give 15 days' time to the petitioners to do the same. The parties shall adhere to the Clauses in the tender and the contract including Clause 6.1 in this respect. ECL shall not take any steps which are prejudicial to the interest of the petitioners in the event the

petitioners commence the work within the notice period. ECL however shall be free to initiate steps, as per the contract, if the petitioners do not commence the work in terms of the notice. ECL shall not take any coercive measures against the petitioners until the time expires for the petitioners to commence the work in terms of the notice issued by ECL.

12. Since the Court has come to a finding on the merits of the matter, the other objections raised by ECL on the maintainability of the writ petition are not being gone into.

13. Learned counsel appearing for the petitioners seeks stay of the operation of the judgment. Counsel also seeks extension of the time given in the judgment till one week after the vacation.

14. Considering the facts discussed in the judgment, the prayer for stay is considered and refused. The petitioners shall however be given time till 5th June, 2023 in terms of any notice which ECL may issue to the petitioners. The other directions contained in the judgment shall remain same.

15. WPA 27793 of 2022 is disposed of in terms of the above.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)