

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.5690 Of 2018

M/S Sivaswathi Constructions Pvt. Ltd., Hyderabad Thr. Its Authorised Signatory Vs
M/S Western Coal Fields Limited, Nagpur Thr. Its General Manager Rajendra Rai
And Another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri K.N. Shukul, Advocate for the Petitioner

Shri G.E. Moharir, Advocate for the respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.

DATED : 17th April 2023

1. Heard.
2. In this petition, a rejection of application Exh.13 moved at the behest of the petitioner (original defendant) to appoint Commissioner for measurement of work done by the WCL of balance excavation after termination of the contract of the petitioner, vide impugned order dated 17.01.2018 passed by the Special Commercial Court, Nagpur in Special Civil Suit No.5 of 2017, is under challenge.
3. Admittedly, the suit is for recovery of amount for completing the balance work after termination of contract with the defendant. It is the case of the petitioner that after filing suit by the Western Coal Fields Limited (WCL), they applied for information under the Right to Information Act and after receiving the information, it was noticed that the balance work which was shown to be carried out by the WCL is 52,38,990

cubic meters, whereas, the contract was for 41,21,000 cubic meters.

4. The learned counsel for the petitioner submits that when the WCL admits that the petitioner had to carry out certain work as per the contract and after termination if WCL carries out the balance work, the quantity of work done by the WCL could not be in any case more than the total quantity mentioned in the contract.

5. He therefore, tries to justify the purpose for making the application for appointment of Commissioner and submits that the rejection of application by the learned trial Court, is not just and proper.

6. The learned counsel for the respondent/WCL opposes the present writ petition and prays for dismissal of the present writ petition.

7. In the light of the rival submissions, I have perused the record and the impugned order.

8. With certainty it can be said that, it could not be possible that the balance excavation work done by the WCL in any case will be more than the total quantity of excavation mentioned in the contract with the petitioner.

9. However, it cannot be ignored that the suit is filed by the WCL and burden lies on the WCL to establish the quantity of work they have carried out after the termination of the contract with the petitioner.

10. Furthermore, the petitioner has every right to cross examine the witness(es) of the plaintiffs and also to lead evidence in his defence in this regard. But to establish the above referred facts, I am of the opinion that appointment of Commissioner is not necessary and the learned trial Court has rightly rejected the application of the petitioner. As there is no merit involved in the present petition, the petition is **dismissed**.

[ANIL S. KILOR, J.]