

08.01.2024
Item no.16.
Court No.6.
AB

M.A.T. 2219 of 2023
With
IA CAN 1 of 2023
IA CAN 2 of 2023
IA CAN 3 of 2023
(not in file)

M/s. STA-BGM & M-SRSC (JV) & Anr.
Vs
Eastern Coal-fields Limited & Others

Mr. Subhabrata Datta,
Mr. Subhojit Sealfor the Appellants.

Mr. Brajesh Jha,
Mr. Subit Majumdarfor the U. O. I.

Mr. Debnath Ghosh,
Mr. Aniruddha Chatterjee,
Mr. Syed Nurul Arefin,
Mr. Syed Moyeenul Arefin.....for the E. C. L.

This appeal is directed against a judgment and order dated October 16, 2023, whereby the writ petition of the appellants herein, being WPA No.22476 of 2023, was dismissed by a learned Judge of this Court.

The writ petition was dismissed solely on the ground that this Court does not have territorial jurisdiction to entertain the writ petition.

The material facts of the case are that a tender was floated by Eastern Coal-fields Limited (in short “ECL”) inviting offers for mining activities at the Kapasara Mine in Jharkhand. The appellants/writ petitioners participated in such tender process and

emerged as the highest bidder. Accordingly, Letter of Acceptance was issued by ECL in favour of the appellants. Work Order was also issued in their favour. A formal agreement was also entered by and between the ECL and the appellants.

The appellants contend that ECL was not project - ready. ECL was under obligation to do certain things including putting up proper fencing around the area where the mining activity was to be carried on. However, ECL failed to carry out such obligations. As a result, it became impossible for the appellants to perform the contract. By reason of such supervening impossibility, the contract, in effect, stood frustrated. The appellants made representations to ECL to put an end to the contract. ECL did not oblige. Accordingly, the appellants approached the learned Single Judge of this Court with the present writ petition.

As indicated above, the learned Single Judge dismissed the writ petition on the ground of lack of territorial jurisdiction of this Court. Hence, this appeal.

Learned Advocate for the appellants submitted that this Court has territorial jurisdiction since part of the cause of action of the appellants has clearly arisen within this Court's jurisdiction. He relied on Article 226(2) of the Constitution of India, which reads as follows:

“226(2). The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seal of such Government or authority or the residence of such person is not within those territories.”

Learned Advocate submitted that firstly, the tender was floated from the Registered Head Office of ECL in Paschim Burdwan; secondly, the offer of the appellants was accepted at the same office; thirdly, the Letter of Acceptance was issued from the same office; fourthly, the Work Order was issued from the same office; and fifthly, the formal contract was executed by and between the parties at the same Registered Head Office of ECL within this Court’s jurisdiction. Therefore, by no stretch of imagination, it can be said that no part of the cause of action of the appellants has arisen within this Court’s jurisdiction and just because the mine in question is situated within the territorial jurisdiction of Jharkhand, only the High Court of Jharkhand would have jurisdiction to entertain a writ application. Learned Counsel relied on a decision of the Hon’ble Supreme Court in the case of ***Kusum Ingots & Alloys Ltd. Vs Union of India & Anr.*** reported in **(2004) 6 SCC 254**, which essentially refers to Article 226(2) of the Constitution of India and Section 20(c) of the Code of Civil Procedure and reiterates that if part of the petitioner’s cause of action

arises within the territorial jurisdiction of a High Court, that High Court would be competent to entertain a writ petition.

Learned Advocate for ECL says that the present writ petition was filed classified as a “Group-I” writ petition. “Group-I” pertains to matters relating to land laws and orders and directions relating to land including mines and minerals as indicated in sub-clause (g). Since the mine for the land in question is located outside the territorial jurisdiction of this Court, learned Single Judge rightly held that this Court lacks territorial jurisdiction to entertain the writ petition of the appellants.

Secondly, learned Advocate points out that Clause 32 of Instructions to Bidders, which forms part of the contract and is captioned “Legal Jurisdiction”, provides that “matters relating to any dispute or difference arising out of this tender and subsequent contract awarded based on this tender shall be subject to the jurisdiction of District Court, where the subject work is to be executed.” Learned Advocate says that in view of such Forum Selection Clause, even if this Court has jurisdiction to entertain the writ application, it should not do so.

We are inclined to agree with Mr. Ghosh, learned Advocate for ECL insofar as his second submission is concerned. It is established law that if the parties to a contract agree on a particular forum for resolution of

possible future disputes arising out of or in relation to or in connection with the contract, the parties should be made to approach that forum alone. This is not a question of ouster of jurisdiction of any other forum. It may well be possible that 3 or 4 fora may have territorial jurisdiction to entertain a particular dispute between the parties to a contract, but if the parties have consciously inserted in the contract a “choice of forum clause”, they should be required to approach that forum only. This is simply a matter of agreement between the parties. They should be bound by the bargain they have made. It may well be that in the present case, part of cause of action may have arisen within this Court’s jurisdiction. However, in view of the “Forum Selection Clause” in the contract between the parties, we are of the view that this Court should decline to exercise jurisdiction and relegate the appellants/writ petitioners to the chosen forum.

Accordingly, although we may not agree with the reasoning of the learned Single Judge, we do not find any error in the conclusion reached by the learned Judge. We clarify that the present appeal and the writ petition are being dismissed only on the ground of territorial jurisdiction. No observation made by the learned Single Judge in the judgement and order impugned before us shall have any bearing on any future legal proceedings that may be instituted by the appellants herein before the appropriate forum.

The appeal is, accordingly, disposed of along with all the connected applications.

Since no affidavit has been called for, the allegations made in the stay petition are deemed not to be admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)