



2024:DHC:3599-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 336/2024, CM APPL. 24408/2024, CM APPL. 24409/2024 &
CM APPL. 24410/2024

TRIMULA INDUSTRIES LIMITED Appellant
Through: Mr. Ajit Kr. Sinha, Senior Advocate
with Mr. Ashwarya Sinha and Mr.
Aditya Malhotra, Advocates
versus

UNION OF INDIA, MINISTRY OF COAL & ORS. Respondents
Through: Mr. Kirtiman Singh, CGSC, UOI with
Mr. Waize Ali Noor, Mr. Varun
Rajawat, Ms. Vidhi Jain and Mr.
Aryan Agrawal, Advocates for R1
and R2
Mr. Sanjeev Sagar, Standing Counsel
with Ms. Nazia Praveen, Advocate for
Union Bank of India-R4

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Date of Decision: 29th April, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMOHAN, ACJ: (ORAL)****CM APPL. 24410/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 336/2024, CM APPL. 24408/2024 & CM APPL. 24409/2024

1. The present Letters Patent Appeal has been filed under Clause X of
the Letters Patent of the then High Court of Judicature at Lahore, which



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stands extended to the High Court of Delhi, challenging the impugned judgment dated 14th March, 2024 and order dated 02nd April, 2024 passed by the learned Single Judge in WP(C) 3789 of 2024.

2. The Appellant herein filed the underlying writ praying for quashing of the appropriation order dated 06th March, 2024 passed by the Nominated Authority under the Ministry of Coal i.e., the Respondent No.1, wherein the performance Bank Guarantee bearing no. 40800IGL0000415 dated 13th April, 2015 was directed to be invoked to the tune of Rs. 3,93,88,800/-.

3. The said writ petition has been disposed of vide the impugned judgment dated 14th March, 2024, whereby the learned Single Judge directed the Appellant herein to approach the Appellate Authority as mentioned under Section 27 of the Coal Mines (Special Provisions) Act, 2015 ('Act of 2015') for assailing the appropriation order dated 06th March, 2024.

4. The Appellant initially challenged the impugned judgment dated 14th March, 2024 before this Court in LPA 250 of 2024. The said LPA was dismissed as withdrawn vide order dated 28th March, 2024 with liberty to the Appellant to file application for recall of the concession recorded in the said impugned judgment. The Appellant, thereafter, filed CM APPL 19418 of 2024 in a disposed of WP(C) No. 3789 of 2024, for modification of the impugned judgment. The said application has been disposed by the learned Single Judge vide impugned order dated 02nd April, 2024 with the observation that the impugned judgment dated 14th March, 2024 does not require any modification. The learned Single Judge has reiterated that the Appellant should approach the Appellate Authority as per Section 27 of the Act of 2015 and has declined to entertain the writ petition.



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5. The Appellant has filed the present appeal impugning the judgment dated 14th March, 2024 and following order dated 2nd April, 2024 on the plea that the writ petition ought to have been entertained as the facts in question, which arise for determination are not in dispute.

Brief Facts

6. The Appellant herein participated in the e-auction process for Schedule III mines (as enumerated in the Act of 2015) pursuant to the Notice Inviting Tender (NIT) dated 07th January, 2015 by Respondent No.1. The said tender was specifically related to the allocation of Meral Coal Block for Captive Mining over the non-forest area of 949.87 hectares land, spread over nine villages. The summary published by the Respondent No.1 on the web-portal for auction categorically mentioned that Meral Coal Block does not have any forest area.

7. The Appellant was declared as the successful bidder and was allocated the Coal Mine at Meral, Jharkhand and it entered into an agreement dated 23rd March, 2015 [Coal Mines Development and Production Agreement (CMDPA)] with Respondent No. 1 i.e., Ministry of Coal. As per the CMDPA, the Appellant furnished a performance Bank Guarantee to the extent of Rs. 49,23,60,000/- on 13th April, 2015.

8. The vesting order dated 22nd April, 2015 was, thereafter, issued by Respondent No. 1 in favour of the Appellant, which indicated that the Coal Mine allocated to the Appellant does not have forest area. However, it is the case of the Appellant that vide letter dated 12th March, 2016 issued by the Respondent No.3, for the first time, it came to light that land allocated for mining to the Appellant also includes forest land of around 74 hectares. The Appellant contends that there was no mention of any forest area in the



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contents of the summary, which was uploaded on the website portal of Metal Scrap Trade Corporation Limited (MSTC) and therefore the Appellant verily believed that it has available a total mining lease area of 949.87 hectares and this does not include any forest area. The Appellant contends that non-disclosure of existence of forest area is a gross misrepresentation by Respondent No. 1.

9. However, disputes arose as a Show Cause Notice (SCN) dated 25th May, 2023 was issued by the Nominated Authority of Respondent No.1 to the Appellant for non-compliance with the efficiency parameters.

10. The Nominated Authority of Respondent No.1 thereafter passed [first] appropriation order on 02nd August, 2023 and directed appropriation of amount of Rs. 42,34,29,600/- against the performance Bank Guarantee for non-compliance of efficiency parameters. This appropriation order was challenged by the Appellant before the learned Single Judge in a separate writ petition i.e., WP(C) 10453/2023. The learned Single Judge vide interim order dated 08th August, 2023 stayed the encashment of bank guarantee primarily in view of the dispute pertaining to disclosure/non-disclosure of the forest area.

11. Subsequently, vide minutes of the 21st meeting of the Scrutiny Committee held on 10th January, 2024, the Respondent No.1 recommended for [further] appropriation of performance Bank Guarantee to the tune of Rs. 3,93,88,800/-, citing failure of Appellant in advancement of milestone within given timeline. In pursuance to the said recommendation, [second] appropriation order dated 06th March, 2024 was issued by the Nominated Authority of Respondent No. 1.



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12. The [second] appropriation order dated 06th March, 2024 passed by the Nominated Authority of Respondent No.1 was challenged by the Appellant before the learned Single Judge in the underlying writ petition i.e., WP(C) 3789 of 2024. This writ petition has been disposed of by the impugned judgment dated 14th March, 2024 and order dated 02nd April, 2024 with a direction to the Appellant to avail the statutory remedy of appeal against the second appropriation order.

Arguments of the counsel for the parties

13. Learned senior counsel for the Appellant states that the disposal of the underlying writ petition by the learned Single Judge is inconsistent with the interim order dated 08th August, 2023 passed by the learned Single Judge in WP(C) 10453/2023, which is still pending and is next listed on 21st August, 2024. He states that though the appropriation order challenged in the said writ is dated 02nd August, 2023, however, the performance Bank Guarantee which is sought to be encashed by Respondent No. 1 is common to both. He states that Respondent No.1 has been restrained from encashing the same Bank Guarantee in W.P.(C) 10453/2023. He states, therefore, on principles of consistency, the underlying writ petition ought to have been entertained and decided by the learned Single Judge along with W.P.(C) 10453/2023.

13.1. He states that Section 27 of the Act of 2015, which is relied upon by the learned Single Judge, itself in sub-clause (4), encompasses that the Supreme Court and the High Court have jurisdiction to entertain Appellant in the writ jurisdiction. He states that therefore, there is no bar in entertaining the writ petition. He states that the facts urged in the writ petition are not in dispute and, therefore, the controversy can be decided in the present writ proceedings.



13.2. He states that the Appellant made all efforts to adhere to the timeline specified in the CMDPA, but it is because of acts and omissions on the part of Respondent No. 1 in withholding material information that the Appellant was not able to fulfill the requisite efficiency parameters.

14. In reply, learned standing counsel for Respondents No. 1 and 2 relies upon compilation of orders passed consistently by the learned Single Judge relegating the parties to avail statutory remedy under Section 27 of the Act of 2015 against the orders of Nominated Authority of Respondent No. 1. He also places on record compilation of orders passed by the Appellate Authority i.e., Tribunal constituted under the Act of 2015 exercising its power to grant or refuse interim protection to the Appellant(s) before it. He states that the Tribunal is competent to adjudicate the application for interim reliefs sought by the Appellant in the writ petition with respect to stay of bank guarantee, pending the final adjudication of the appeal.

15. He states that all issues of fact raised in the writ petition can be raised before the Tribunal. He states that Respondents do not admit the facts alleged in the writ petition. He states that WP(C) 10453/2023 filed against the first appropriation order is also not maintainable in view of the remedy of appeal.

16. We have heard the learned counsel for the parties and perused the record.

17. The primary contention of the Appellant is that the impugned judgment dated 14th March, 2024 and impugned order dated 02nd April, 2024 declining to entertain the writ petition are inconsistent, inasmuch as, the learned Single Judge has entertained W.P.(C) No. 10453/2023 pertaining to



the first appropriation order, arising from the same CMDPA and pertaining to the same performance Bank Guarantee.

18. The Appellant does not dispute the existence of alternate remedy under Section 27 of the Act of 2015, especially after perusing the compilation of the orders of the Tribunal filed by Respondent No.1 during the course of the hearing. It, however, assails the direction to avail the same on the ground that since the facts in issue are admitted, the same can be adjudicated in the underlying writ petition.

19. The Supreme Court in *Radha Krishan Industries v. State of Himachal Pradesh and Ors.*¹ summarised the principles with respect to maintainability of a writ petition when the aggrieved person has an effective alternate remedy in law and held as under:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy

¹ (2021) 6 SCC 771.



under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(Emphasis supplied)

20. The principle laid down by the Supreme Court in paragraph 27.5 is attracted in the facts of this case and therefore, we find no infirmity in the impugned judgment directing the Appellant to avail its statutory remedy of appeal. The issues of fact agitated by the Appellant including non-declaration of forest land in the NIT are issues which the Appellate Authority is competent to decide.

21. Further, in our opinion, the passing of the interim order dated 08th August 2023 by the learned Single Judge in WP(C) 10453/2023 cannot act as a bar to the Court relegating a party to avail its statutory remedy of appeal. In fact, the impugned judgment/order is in consonance with the law laid down by the Supreme Court on this issue. The compilation of orders shown by Respondents No. 1 and 2 also evidence that the Court has in similar matters consistently directed the writ petitioner to assail the appellate remedy against the orders passed by the Nominated Authority.

22. The learned Single Judge vide orders dated 14th March, 2024 and 02nd April, 2024 granted interim protection to the Appellant in the application of stay by the Appellate Authority and directed the Appellant herein to approach the Appellate Authority on or before 30th April, 2024. We, hereby, extend the time for the Appellant to approach the Appellate Authority till 30th May, 2024 on the same terms and conditions.



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23. The Appellant is, however, directed to extend the validity of the Bank Guarantee for a period of six months, within one week from today.
24. The Appellate Authority is directed to hear and decide the appeal expeditiously preferably within two months from the first date of hearing.
25. The contention of the Appellant that the learned Single Judge ought to have entertained the underlying writ petition as the other writ petition i.e., W.P.(C) 10453/2023 remains pending, is without any merit. In our opinion, the Appellant ought to have challenged the first appropriation order dated 02nd August, 2023 also before the Appellate Authority under Section 27 of the Act of 2015. We, therefore, direct the Registry to list W.P.(C) 10453/2023 before the learned Single Judge on 08th May, 2024 for directions. The parties are directed to remain present before the learned Single Judge on the said date.
26. With the aforesaid observations, the present appeal along with applications is disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 29, 2024/rhc/sk

Click here to check corrigendum, if any