19.05.2025.
135
Ct.No.7.
as/pp

**WPA 12688 of 2017**

## Orissa Explosive
**Vs.**
**Coal India Limited & Ors.**

Mr. Subir Sanyal,
Mr. Chittapriya Ghosh,
Ms. Aiswarjya Gupta.
...for the Petitioner.

Mr. Pradip Kr. Dutta, Ld. Sr. Adv.,
Ms. Akanksha Mukherjee,
Mr. N. Banerjee,
Ms. Madhumanti Chakraborty.
...for the Respondents.

1. This writ petition raises a conundrum regarding the justification for applying the 'price fall clause' under the Running Contract (RC) executed between the petitioner and the respondents, particularly in relation to the pricing of explosives supplied by the petitioner. The petition primarily challenges the order dated 31st March 2017, by which respondent no. 3 revised the prices of explosives for specific periods, namely, from 02.05.2016 to 29.06.2016, from 20.06.2016 to 29.06.2016, from 30.09.2016 to 29.12.2016, and from 30.12.2016 to 29.03.2017. The order further indicated that the price applicable for the period from 30.03.2017 to 31.03.2017 would be communicated to the petitioner in due course.

2. To better appreciate the facts and the contours of the controversy involved in this writ petition, it is appropriate

to outline the key events that led to the filing of the petition before this Court.

3. The Coal India Limited (CIL, for short) issued a Notice Inviting Tender (in short, NIT) inviting bids from Indian manufacturers for the conclusion of a Running Contract (RC) and empanelment as Reserve RC holders for a period of two years from the date of issuance of the RC, for the supply of cartridge explosives and accessories to all subsidiaries of CIL and to the North Eastern Coalfields (NEC).

4. The petitioner is engaged in the business of manufacturing various types of explosives used for coal excavation. The petitioner participated in the said tender and, upon being declared a successful bidder, was issued a Running Contract (RC) for the supply of LD Explosives (CAP sensitive/Booster) and LD Explosives (Non-CAP sensitive/Column), in accordance with the technical specifications outlined in the RC.

5. The Running Contract (RC) dated 30th March 2015 was valid for a period of two years, commencing from 1st April 2015 and ending on 31st March 2017. The RC contained a 'price fall clause' (Clause 7.2). As previously noted, the dispute in the present writ petition arises from the application of this clause in the course of revising the prices of explosives supplied by the petitioner.

6. Therefore, to shed light on the issue, it would be appropriate to reproduce the price fall clause, which reads as follows:-

*"07. Price Fall Clause*

*7.1. Price fall clause: As per enclosed Pre Contract Integrity Pact clause no. 7.*

*7.2 In case the price of a produce is reduced for any supplier due to invocation of 'price fall clause' pr any other reason, the same lower price shall also be application for the other suppliers who are having parallel RCs for that item. If any supplier does not accept the lower price, CIL shall have the right to delete the item from the scope of RC of such firm and procure explosives/accessories from other existing supplier/Reserve RC holders..*"

7. By a communication dated 30th November 2016, the General Manager (MM)-HOD informed the petitioner that it had come to their notice that M/s. IDL Industrial Explosives Limited, M/s. IDL Explosives Limited, and M/s. Regenesis Industries Pvt. Ltd., all operating their businesses from Hyderabad, had accepted three orders from Singareni Collieries Company Ltd. (SCCL, for short) for the supply of LD Explosives (CAP sensitive/Booster) and LD Explosives (Non-CAP sensitive/Column) for the period from 2nd May 2016 to 1st May 2018 at rates lower than those at which they were supplying the same to Coal India Limited (CIL) under CIL's RC. The letter included a table illustrating the difference in destination prices. In this communication, the petitioner was addressed as a parallel RC holder for the said goods and was directed to supply LD Explosives (CAP sensitive/Booster) and LD Explosives (Non-CAP sensitive/Column) at SCCL's prices of

₹30,000/MT and ₹27,500/MT respectively, for the period from 2nd May 2016 to 30th June 2016. The petitioner was further informed that the applicable reduced prices for the period from 1st July 2016 onward would be communicated shortly.

8. In response to the letter, the petitioner, through its communication dated 19th December 2016, informed the General Manager (MM)-HOD that they were not supplying any explosives to SCCL and, furthermore, would not agree to SCCL's pricing for the supply of explosives in the future. The petitioner further clarified that the explosives were being supplied at the rates fixed by CIL, and not at the rates fixed by SCCL.

9. As submitted by the petitioner, the petitioner subsequently ceased supplying any explosives to CIL. However, by a letter dated 27th March 2017 (which was erroneously recorded as 27· 03.2015), the petitioner was informed that the respondents intended to extend the validity of the Running Contract for a provisional period of one month, in order to maintain the continuity of supplies of explosives and accessories at the existing rates and terms and conditions. It was further stated that the final rate would be determined based on either the existing rate or the rates finalized under Tender No. 293 dated 14th February 2017, whichever was lower.

10. In the letter dated 27th March 2017, the petitioner was requested to confirm acceptance of the proposal by return email on the same day. It was also specified that if no acceptance was received by the scheduled date, it would be

presumed that the petitioner did not accept the proposal, and the respondents would proceed with the next course of action without further reference to the petitioner. As claimed by the petitioner, it did not respond to the letter dated 27th March 2017.

11. Subsequently, by a communication dated 31st March 2017, the petitioner was informed that, although it had stated in its letter dated 19th December 2016 that it was not supplying LD Explosives to SCCL and had disagreed to supply LD Explosives to CIL at SCCL's prices in the future, a reminder was issued to the petitioner. The reminder emphasized that the petitioner had accepted the Price Fall Clause in the NIT when submitting its offer in response to the tender dated 30th December 2014. As a result, the Price Fall Clause would apply to the Running Contract entered into by the petitioner. The communication also included a table revising the prices of explosives for specific periods, namely, from 2nd May 2016 to 29th June 2016, from 20th June 2016 to 29th June 2016, from 30th September 2016 to 29th December 2016, and from 30th December 2016 to 29th March 2017. Additionally, it was indicated that the applicable price for the period from 30th March 2017 to 31st March 2017 would be communicated in due course.

12. Mr. Sanyal, learned advocate appearing for the petitioner, draws my attention to various clauses of the NIT as well as the terms and conditions of the RC, including the Price Fall Clause. He submits that, by the letter dated 19th December 2016, the petitioner had categorically stated that it did not agree to supply LD Explosives or other goods at

the lower prices fixed by SCCL or at any price other than that specified in the RC. He further submits that the petitioner subsequently stopped supplying any materials to CIL.

13. He invites my attention to a letter dated 13th February 2017 (Annexure-R-I to the affidavit-in-reply filed by the petitioners) and submits that, even after the petitioner's communication dated 19th December 2016, several orders were placed upon the petitioner under the said letter, requesting the supply of the indented explosives. The letter also contained a warning that failure to supply the goods would be treated as poor delivery performance, which would be taken into account in future dealings between the parties.

14. Mr. Sanyal submits that, having been confronted with such threats, the petitioner proceeded to supply the goods, although it was never informed that the two items in question had been removed from the list of selected items under the RC. He further submits that, at present, the petitioner is not supplying any goods to CIL. He states that a sum of ₹70 lakh, representing the cost of goods already supplied to CIL, remains unpaid, and that a bank guarantee amounting to ₹2 crore is currently held by the respondent. He therefore prays for an appropriate direction to be issued for the release of payment in favour of the petitioner at the rates specified in the RC. In aid to his contention, Mr. Sanyal cites a decision reported in AIR 2008 SC 357 (Bharat Petroleum Corporation Limited vs. Great Eastern Shipping Co. Limited).

15. Mr. Dutta, learned senior advocate appearing for the respondents/CIL, submits that the explosives in question are classified as restricted items, and no individual or firm is permitted to manufacture them at will. Specific quotas are allocated to enlisted manufacturers, and prior to the execution of a Running Contract (RC) with any such manufacturer, pre-contract discussions are held among the eligible manufacturers to apprise them of the nature of the Running Contract and the 'Price Fall Clause'.

16. He further submits that the Government/CIL took a policy decision to maintain an uniformity and parity in respect of pricing of the goods which are supplied to CIL and its subsidiaries. He submits that SCCL shall be treated as subsidiary of CIL and who are supplying that goods would be treated as parallel RC holders. He submits that the respondents in invocation of the price fall clause have made an estimation of the price of the goods up to 2nd May, 2016 to 29th June, 2016 onwards.

17. He contends that the prayer portion of the writ petition merely seeks the quashing of a single communication dated 31st March 2017. He argues that a Court exercising the power of judicial review cannot entertain such a writ petition, as it does not warrant intervention under Article 226 of the Constitution. He further asserts that there is no scope for this Court to interfere in the matter.

18. Quite apart from that, Mr. Dutta argues that the petitioner did not explicitly state that it had refused to accept the lower price. He contends that the language used in the letter dated 19th December 2016 did not clearly

convey that the petitioner was unwilling to accept the reduced price. As a result, the subsequent work order was issued on the assumption that the petitioner had agreed to the lower price. Therefore, Mr. Dutta argues, the petitioner cannot now retract and claim the price originally agreed upon in the RC.

19. Mr. Sanyal, in his reply, refuted the contention advanced by Mr. Dutta.

20. Undeniably, it is a well-settled principle of law that the scope of judicial review in contractual matters is limited. The writ remedy is essentially a public law remedy, and for such remedy to be invoked, the action of the authority must fall within the domain of public law. However, it is equally recognized that the legal rights of an individual may arise from a contract or an instrument that has the force of law.

21. The State, or any of its corporations, instrumentalities, or agencies, possesses the freedom to contract and is entitled to enter into agreements with individuals of its choice. It may determine the terms and conditions of such contracts and, at its discretion, decide the method and criteria for inviting bids, including granting relaxation of certain conditions. However, once the State or its agency lays down specific norms, procedures, and terms and conditions, it is bound to adhere to them. Any deviation from those terms must not be arbitrary or unreasonable.

22. It is well-established that even in contractual matters, a writ court is entitled to interfere where it is found that the State or its agency, in entering into a contract with an

individual, has acted illegally, irrationally, or in a manner that fails to withstand the test of reasonableness.

23. In the present case, it is undisputed that the petitioner emerged as the successful bidder, and a Running Contract (RC) was entered into between the petitioner and the concerned respondent. Consequently, the terms and conditions of the RC are binding on both the petitioner and the respondents.

24. As previously noted, the dispute arises from Clause 7.2 of the Running Contract (RC), commonly referred to as the ‘Price Fall Clause.’ This clause stipulates that if the price of a product is reduced for any supplier due to the invocation of the Price Fall Clause or any other reason, the same lower price shall apply to other suppliers holding parallel RCs for that item. However, the second part of Clause 7.2 further specifies that if any supplier refuses to accept the lower price, CIL reserves the right to remove the item from the scope of the RC with that supplier and procure explosives/accessories from other existing suppliers or reserve RC holders.

25. Even if the argument advanced by Mr. Dutta is accepted that M/s Ideal Industrial Explosives Limited and other suppliers mentioned in the letter dated 30th November 2016, along with the petitioner, are to be treated as parallel RC holders and thus categorized under the term "any supplier" in Clause 7.2, the core dispute lies in whether, after the petitioner categorically refused to accept the lower price, the authority, despite being aware of the petitioner’s disagreement, issued work orders and accepted

goods from the petitioner. The question then arises whether the authority can subsequently compel the petitioner to accept the lower price.

26. Now, in order to examine whether the language used in the letter was sufficient to convey a clear message on behalf of the petitioner, it would be appropriate for the Court to quote the contents of the letter dated 19th December 2016, which read as follows:

> "With reference to your above letter, we would like to bring to your kind notice that, we are not supplying any explosives to M/s. Singareni Collieries Company Ltd. and at the same time we are not agreeing for the Singareni Collieries Company price for supply of explosives in future.
>
> We are going to supply the explosives as per Coal India Ltd., rate and not with the M/s. Singareni Collieries Company Ltd., rate."

27. Although the letter was happily drafted; however, a bare perusal of the letter clearly indicates that the author expressed his disagreement with the price fixed by SCCL. The letter unequivocally conveys that he would not supply goods at the rate fixed by SCCL, and that the supplies would be made only at the rate fixed by CIL.

28. As previously noted, following the issuance of the said letter, the petitioner ceased supplying goods to CIL and did not provide any explosives to the authority prior to receiving the letter dated 13th February 2017, under which orders were placed requiring the petitioner to supply certain goods. Faced with the threat that failure to comply with the order would result in adverse action, the petitioner proceeded to supply the goods. Therefore, if the language

used in the letter and the subsequent conduct of the petitioner are considered together, it becomes evident that the petitioner, both explicitly and implicitly, refused to accept the rate fixed by SCCL and clearly expressed its intention to supply goods only at the price determined by CIL in the RC.

29. Therefore, I am unable to persuade my judicial conscience to accept the contention of Mr. Dutta that the language used in the letter dated 19th December 2016 failed to clearly convey that the author did not agree to accept the reduced rate.

30. However, despite receiving the letter dated 19th December 2016 from the petitioner, the respondents remained silent and did not remove the items from the petitioner's RC. Instead, by a letter dated 27th March 2017, the petitioner was informed that the respondents intended to extend the validity of the RC at the existing rates and on the same terms and conditions. Although the term "provisionally" was used, a plain reading of the letter suggests that the word "provisionally" qualified the term "extend." The letter also categorically stated that the final rate would be either the existing rate or the rate finalized under Tender No. 293 dated 14th February 2017, whichever was lower. Notably, Tender No. 293 was not referred to in the original RC, and as such, reliance on it would amount to a modification of the existing terms of the RC.

31. n the decision of *Bharat Petroleum Corporation Ltd.* (supra), it was held that an offer is not accepted merely by silence on the part of the offeree; however, this does not

imply that acceptance must always be expressed in explicit terms. Under certain circumstances, the offeree's silence, when accompanied by conduct amounting to a positive act, may constitute acceptance—an *agreement sub silentio*. Therefore, the terms of a contract between the parties may be established not only through their express words but also through their conduct.

32. In the present case, after expressing its disagreement with the price fixed by SCCL, the petitioner ceased supplying goods to CIL. Conversely, despite receiving the letter dated 19th December 2016, the respondents remained silent and did not remove the items from the petitioner's RC. On the contrary, by a subsequent letter dated 17th February 2017, the validity of the RC was extended on the existing terms. Such conduct on the part of the respondents indicates that the principle of *sub silentio* is clearly applicable in the present case.

33. By remaining silent and failing to provide a clear response to the petitioner's letter dated 19th December 2016, and through their subsequent conduct, the concerned authority effectively accepted the petitioner's stance that it would supply goods only at the rate agreed upon in the Running Contract dated 30th March 2015.

34. herefore, I find no justification to compel the petitioner to accept the reduced rate as outlined in the communication dated 31st March 2017. For the reasons stated above, the impugned communication dated 31st March 2017 is hereby set aside.

35. Therefore, the actions of the respondents fail to meet the test of reasonableness, and as such, I find sufficient justification and scope for interference in this matter.

36. Accordingly, the writ petition is disposed of with a direction to respondent no. 2 to release the payment for the goods supplied by the petitioner at the rate agreed upon in the Running Contract (RC) dated 30th March 2015, and to also release any other amounts, including the Bank Guarantee held by the respondents, in accordance with the law, within a period of 12 weeks from the date of receipt of a copy of this order.

37. The respondent shall act on the basis of a server copy of this order, without insisting on the production of a certified copy by the petitioner.

38. There shall be no order as to costs.

**(Partha Sarathi Chatterjee, J.)**