15.06.2026
SL No.3
Court No.12
(gc/cp)

MAT 826 of 2019

Eastern Coalfields Ltd.
Vs.
Suparna Chemicals & Ors.

Ms. Akanksha Mukherjee,
Mr. N. Banerjee,
Mr. Pradipta Basu
…for the Appellant.
Mr. Snehatosh Majumder,
Mr. Amar Nath Ghosh,
Mr. Sattwik Majumder,
Ms. Urmi Sengupta
…for the Respondents.

1. The appeal arises out of a judgment and order dated May 17, 2019 passed by a learned Single Judge in WP No.23517(W) of 2017. The dispute between the parties was the insistence by the Eastern Coalfields Limited (ECL), a subsidiary of Coal India Limited (CIL), requiring the respondents herein to keep the Performance Bank Guarantee (PBG) renewed beyond its last renewable period. The respondents preferred the writ petition with the following prayers:-

   a) Issue a Writ of and/or in the nature of Mandamus commanding the respondents and their men, agents and assigns to cancel, rescind, withdraw, and/or forebear from giving any effect or further effect to the impugned letters being Annexure P-12, P-13, P-14, and P-17 to this Writ Petition;

b) Issue a Writ of and/or in the nature of Mandamus commanding the respondents and their men, agents, and assigns to forthwith and immediately return the Performance Bank Guarantee Bearing No.0607016BG0000109 dated 27.01.2016 for a sum of Rs.32,90,460.00/- (Annexure P-11 hereto) in original to the Writ Petitioners.

2. The bone of contention was that, once the warranty period for the supply of goods and the period for the PBG as per the clauses of the contract had expired, ECL did not have any right under the contract or under any law for that matter, to require a PBG in perpetuity, on the reasoning that as the shelf-life of the materials supplied was 10 years, consequently, the PBG should also be kept renewed for a period of 10 years, until the goods/equipment were utilized to their optimum capacity and had outlived their utility.

3. The respondents resisted the insistence of ECL to keep those PBGs renewed beyond September 17, 2017. As per the Purchase Order dated December 18, 2006, the PBG was to be kept

valid for 21 months, that is, up to September 17, 2008. The Purchase Order arose out of a tender floated by ECL for supply of Self Generating Oxygen Apparatus also called Self Contained Self Rescuer (SCSR), popularly named and styled as Raksha Kavach (RK).

4. The respondent no.1 was one of the few indigenous manufacturers of SCSR/RKs.

5. The specific case of the respondents before the writ court was that, upon being selected as the supplier in terms of the tender that was floated on January 13, 2006 by ECL, the entire lot of 4000 units of RKs had been supplied between September 30, 2006 and March 27, 2007.

6. Issues cropped up when ECL raised objections with regard to the quality of the equipments and the entire lot of 4000 units had been replaced between January 25, 2008 and April 17, 2008.

7. Full payment was released by ECL in favour of the respondent no.1 between February 27, 2007 and June 29, 2007.

8. It was urged by the writ petitioner that, since the defective batches were replaced by substituting the materials, the PBG could not be asked to be kept renewed beyond 21 months from the date of acceptance of the replaced materials.

Reliance was placed on the Test Report dated June 6, 2008, with regard to the equipments that were supplied. The Department of Mining Engineering, Indian School of Mines, Dhanbad, concluded that the samples conformed to EN 401, as per the tests carried out in Mine Ventilation and Environment Laboratory, Department of Mining Engineering, Indian School of Mines University, Dhanbad.

9. Therefore, His Lordship was of the view that even assuming that the first batch of goods were defective, with the supply of the replaced equipment within April 17, 2008, and upon perusal of the subsequent Test Report dated June 6, 2008, further objections with regard to the quality of the materials could not be raised belatedly.

10. The respondents contended before the writ court that although the Purchase Order limited the warranty to 18 months and the validity of the PBG to 21 months, ECL had used an arm twisting method, by exerting pressure on the respondent no.1 to keep the PBG renewed up to 2019, that is, for the entire period, when the materials were being used by ECL.

11. Admittedly, the respondent no.1 had kept the PBG renewed up to September 17, 2017, on

continuous pressure from ECL. His Lordship found that there was no legal requirement to keep the PBG renewed, after the period mentioned in the contract was over.

12. His Lordship accepted the contention of the respondent no.1 that, upon the replacement of the materials, which were tested and certified to be defect free as on June 6, 2008, at the highest, the period of 21 months should be computed from the date of the report.

13. His Lordship was of the view that, under such circumstances, ECL as a public authority, and the tender issuing authority acted in an arbitrary and high-handed manner, thereby blatantly violating the clauses of the contract. Thus, according to His Lordship, a writ court could exercise jurisdiction and strike down such executive fiat. Reliance was placed on the celebrated decision of the Hon'ble Apex Court in ***ABL International vs. Export Credit Guarantee Corpn. of India Ltd.*** reported at ***(2004) 3 SCC 553*** and ***Noble Resources Ltd. v. State of Orissa*** reported at ***(2006) 10 SCC 236***.

14. The arguments advanced by ECL before His Lordship were that, in view of the original defect in the materials supplied, the PBG ought

to be kept renewed for the entire shelf-life of the material, that is, 10 years, irrespective of the clause in the contract. Reliance was placed on a communication of 2012 to establish that, supply of defective materials had been pointed out by ECL and the company was cautioned that an enquiry either through the Central Vigilance Commission or CBI could be initiated. For the first time in 2012, after the tests had been conducted in 2008, an objection was raised by ECL. Thereafter, ECL remained silent. Communications between the parties continued from 2017. ECL, submits before us that, the order impugned suffers from illegality, for the following reasons:-

a) Clause 18 of the terms and conditions of contract contained a dispute resolution clause. The writ court lacked jurisdiction to entertain the prayers.

b) The letter of 2012 would clearly indicate that some of the replaced equipments were also defective.

c) ECL retained the authority to initiate investigation on account of supply of poor quality materials.

d) The materials were used in the mines and safety and security of the miners were of utmost importance.

e) The fact that a letter was issued in 2012, would indicate that the replaced goods were not accepted in their totality by ECL. In the absence of acceptance of the materials, the period of 21 months to keep the PBG valid, did not commence.

f) The writ court could not have interpreted the clauses in the contract/ Purchase Order. Interpretation of the covenants of a contract was outside the domain of the writ court. The remedy of the respondents would be before the Civil Court.

g) That the respondents had accepted the direction for renewal of PBG and had kept the same renewed up to 2017. Thus, the respondents could not have challenged a further direction to keep the PBG renewed up to 2019, and were estopped from doing so.

h) The issue of alternative remedy had not been dealt with by His Lordship.

15. In support of such contentions, reliance was placed on the following decisions:-

1) ***IB Valley Transport, Vijay Laxmi Private Limited, Coal Carriers, Joint Venture Vs. Chairman-cum-Managing Director, Mahanadi Coalfields Limited & Ors.*** reported at ***(2014) 10 SCC 630;***

2) ***Kerala State Electricity Board & Anr. Vs. Kurien E. Kalathil & Ors.*** reported at ***(2000) 6 SCC 293.***

16. The learned Advocate for the respondents submits that the writ petition was maintainable, as the same was filed challenging the high-handedness and arbitrary action of a public authority. It is further submitted that His Lordship took into account the facts which were available on record. Power of judicial review was exercised by His Lordship, upon perusal of the facts which were apparent on the face of the record. The covenant in the contract was explicit and no interpretation was required at all.

17. We have perused the decision of His Lordship. Admittedly, the respondent no.1 satisfied the

Provenness Criteria. At the stage of participation in the tender, the respondent no.1 possessed the valid approval from the Director General of Mines and Safety. The said respondent had also satisfactorily reported on the trial/demonstration as was required by Enclosure-4 to the tender document. As per the terms of the tender which crystallized with issuance of the Purchase Order, 'Delivery' was the "Essence of the Contract". The delivery dates were clearly indicated by the respondent no.1 while participating in the tender. In the event of failure to comply with the delivery date/period, the terms provided for consequential penalty and damages.

18. His Lordship rightly held that, as delivery was the essence of the contract, the clauses incidental to or associated with the delivery schedule, which included the warranty period and the period during which the PBG should be kept renewed, were inter-connected. The surrounding rights and obligations of the parties to the contract were required to be considered together with the delivery schedule.

19. Reliance was placed on ***ABL International (supra)*** to justify the circumstances under which the power of judicial review could be

exercised by a writ court, in matters relating to contracts between a private contractor and a public authority. Relevant paragraphs of ***ABL International (supra)*** are quoted below:-

> *"23. It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the above said requirement of Article 14 then we have no hesitation that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent. In this context, we may note that though the first respondent is a company registered under the Companies Act, it is wholly owned by the Government of India. The total subscribed share capital of this company is 2,50,000 shares out of which 2,49,998 shares are held by the President of India while one each share is held by the Joint Secretary, Ministry of Commerce and Industry and Officer on Special Duty, Ministry of Commerce and Industry respectively. The objects enumerated in the Memorandum of Association of the first respondent at Para 10 states :*
>
> > *"To undertake such functions as may be entrusted to it by Government from*

time to time, including grant of credits and guarantees in foreign currency for the purpose of facilitating the import of raw materials and semi-finished goods for manufacture or processing goods for export."

Para 11 of the said object reads thus:

"To act as agent of the Government, or with the sanction of the Government on its own account, to give the guarantees, undertake such responsibilities and discharge such functions as are considered by the Government as necessary in national interest."

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See: Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. [1998 (8) SCC 1]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate *the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.*

51. *From the terms of the contract, we have noticed in Clause (6) as amended by the addendum, consideration by way of barter of goods is not the sole consideration. The said clause contemplates alternate modes of payment of consideration one of them being by barter of goods and the other by cash payment in US $. The terms of the insurance contract which was agreed between the parties were after the terms of the contract between the exporter and the importer were executed which included the addendum, therefore, without hesitation we must proceed on the basis that the first respondent issued the insurance policy knowing very well that there was more than one mode of payment of consideration and it had insured failure of all the modes of payment of consideration. From the correspondence as well as from the terms of the policy, it is noticed that existence of only two conditions have been made as a condition precedent for making the first respondent Corporation liable to pay for the insured risk, that is, (i) there should be a default on the part of the Kazak Corporation to pay for the goods received; and (ii) there should be a failure on the part of the Kazakhstan Government to fulfil their guarantee. This is clear from the terms of the insurance contract read with the letter of the first respondent dated 8th*

September, 1993 wherein at Clause 3A, it is stated : "Our liability will arise only after default has been established on the guarantee of the Ministry." From the above, it is clear both the grounds as put forth by the learned counsel for the respondent before us as well as in the two letters of repudiation issued by the first respondent are unsustainable. In our opinion, the first respondent insured the export risk of the appellants in regard to the non payment of the consideration for the tea exported whether it arose from the non fulfillment of the barter clause or for the non fulfillment of the cash payment clause. The argument advanced on behalf of the respondent that the appellants refused to accept the barter by goods offered by the first respondent which amounted to a default under the contract on the part of the appellants has no legs to stand in view of the clear language of the amended Clause 6 of the agreement which as noted above states that the obligation of the buyer, namely, Kazak Corporation to pay for the goods received by it in US $ arises when payment by barter fails for "any reason whatever". The use of the words "any reason whatever" in the said amended clause includes the reasons of refusal by the appellants to accept the goods offered in barter. On the face of the said language of amended clause, there could be no room for two opinions at all in regard to the liability of the first respondent to pay for the loss suffered by the appellants even in cases *where payment by barter fails at the instance of the appellant. The learned counsel for the respondent contended for a correct interpretation of this amended clause and the other clauses of the contracts i.e. the contract of export and the contract of insurance between the parties there is need for oral evidence being led without which a proper interpretation of this clause is not possible, therefore, it is fit case in which the appellants should be directed to approach the Civil Court to establish its claim. We find no force in this argument. We have come to the conclusion that the amended Clause 6 of the agreement between the exporter and the importer on the face of it does not give room for a second or another construction than the one already accepted by us. We have also noted that reliance placed on sub-clause (d) of the proviso to the insurance contract by the Appellate Bench is also misplaced which is clear from the language of the said clause itself. Therefore, in our opinion, it does not require any external aid much less any oral evidence to interpret the above clause. Merely because the first respondent wants to dispute this fact, in our opinion, it does not become a disputed fact. If such objection as to disputed questions or interpretations are raised in a writ petition, in our opinion, the courts can very well go into the same and decide that objection if facts permit the same as in this case. We have already noted the decisions of this court which in clear terms have laid down* *that mere existence of disputed questions of fact ipso facto does not prevent a writ court from determining the disputed questions of fact."*

20. Thereafter, His Lordship has considered the terms and conditions of the Purchase Order relating to PBG and the delivery schedule. Paragraphs (I) and (J) of the order impugned are quoted below:-

"*I) Now, this Court must notice the term in the PO relating to the PBG which, reads as follows:-*

"Performance Guarantee: you shall have to furnish a Performance Bank Guarantee for 10% of the total order value on landed cost basis valid for 21 months from the date of submission. The Bank Guarantee must be concluded on a Nationalized Bank/Schedule Bank on a non judicial stamp paper of Rs. 55/-(Rupees fifty five) only or more strictly as per our format. The stamp paper for the purpose of Bank Guarantee must be in the name of the bank."

J) The above term in the PO on PBG must be now read in the light of the delivery schedule at Clause 6 of the PO:-

"Delivery: Full quantity to completed within 6 months from the date of receipt of order. Month wise quantity to be supplies as under:-

25 Minute	***30 Minute***

First Month	*-100 Nos.*	*100 Nos.*
Second Month	*– 200 Nos.*	*200 Nos.*
Third Month	*350 Nos.*	*350 Nos.*
Fourth Month	*- 350 Nos.*	*650 Nos.*
Fifth Month-	*Nil*	*800 Nos.*
Sixth Month -	*Nil*	*900 Nos.*
	1000 Nos.	*3000 Nos."*

21. Therefore, His Lordship was of the view that the validity period of the PBG should be considered in the context of the delivery schedule under Clause 6 of the Purchase Order. Factually, it was found that the goods were replaced. A test certificate was issued and the PBG was kept renewed up to 2017. When further renewal was directed up to 2019 by ECL, the respondent no.1 resisted and raised an objection by filing the writ petition.

22. In our view, there is no dispute resolution clause per se, which required the respondent no.1 mandatorily to approach the CMD at the initial stage. The clause provides that dispute shall be decided by the CMD. We find from the correspondence of 2012 and 2017 that, ECL had indicated that enquiry by the Vigilance Commission and the CBI could

be made with regard to the quality of the goods, if PBG was not kept renewed and the defective lot of goods were not replaced. The tenor of the letters and the approach of the ECL, leaves no manner of doubt that, even if the respondent no.1 approached the CMD, it would have been a futile exercise. ECL had categorically demonstrated by their letter of 2012 and subsequent letters of 2017 that, it was exerting pressure on the respondent no.1 to keep the PBG renewed for all times to come. Most importantly, the goods were replaced in 2008 and the test certificate was issued. For the first time in June, 2012, a question was raised with regard to 38 numbers of RKs. The PBG was kept renewed, but no steps were taken to invoke the same, when those 38 RKs were not replaced. ECL did not take steps to terminate the contract. No show-cause notice had been issued. The goods were being used, as per the finding of His Lordship. Moreover, between 2014 and 2017, no complaint was made with regard to the quality of the goods, seeking replacement of those 38 RKs.

23. The contractual obligations of the parties were restricted to the terms and conditions of the contract. ECL attempted to add an additional clause by extending the period for which the PBG should be kept renewed upto 10 years.

24. Surprisingly, the period for which the PBG was sought to be extended, was made co-terminus with the shelf-life of the materials. His Lordship found that, major portion of the life of the equipments was over, when the writ petition was being considered. Almost 9 years had gone by, from the date of replacement of the materials.

25. It is strange that, no steps had been taken by ECL, with regard to their alleged complaint of inferior quality of 38 RKs. We also do not find from the records and it has also not been brought to our notice that, any enquiry was made by Vigilance Commission or by CBI with regard to the alleged breach committed by the respondent No. 1.

26. Thus, we are of the view that ECL had acted in an arbitrary and irrational manner, in requiring extension of the PBG

in perpetuity. It is also not the case of ECL that, those 38 RKs, which were allegedly defective as per the letter of 2012, were sought to be procured from any other supplier. It can be presumed that those were put to use.

27. ECL has also failed to demonstrate anything contrary to such findings.

28. From 2008 to 2012, ECL was silent. Again from 2012 to 2017, ECL was also silent. If the replacement of the goods were essentially a part of the contract, and an obligation of the respondent no.1, ECL would have taken steps to ensure replacement thereof and on failure to replace, the ECL could have either invoked the PBG or terminated the contract by issuing a proper show-cause notice or both. No such steps were taken. ECL just wanted to retain a proprietary right or a lien over the money of the respondent no.1, although, the contractual obligations had been completed prior to issuance of those letters.

29. Under such circumstances, His Lordship rightly struck down the letter issued by ECL.

30. With regard to the dispute resolution clause, we have already expressed our opinion that, the clause does not specify how the dispute should be raised. Secondly, when the respondent no.1 refused to keep the PBG renewed beyond 2017, the General Manager did not refer the dispute to the CMD. Thus, from the conduct of ECL, it is categorically clear that the said clause was not a mandatory requirement. The clause cannot be treated an alternative remedy as envisaged in the decision of ***IB Valley Transport (supra)***. With regard to the interference by a writ court under Article 226 of the Constitution of India, in matters relating to contractual obligations between the parties, we are of the view that the writ petition did not involve disputed questions of fact. Interpretation of the relevant clauses, did not require any external aid or leading of oral and documentary evidence. The only question before the writ court was, whether in terms of the explicit clauses in the Purchase Order, a PBG could be kept renewed forever or at least for a period of 10 years till the shelf-life of the materials

supplied was over. The clauses were interpreted as they stood.

31. The writ court can strike down any action of a public authority if arbitrariness is detected. The principle of estoppel will not apply in this case. Only because the contractor kept the PBG renewed up to 2017, the contractor cannot be penalized and debarred from challenging a continuous direction to keep the PBG renewed for years together, when the contractual obligations ceased and full payment had been received by the contractor. The contractor was in a lesser bargaining position. In view of other pending contracts with other subsidiaries of Coal India Limited, it is possible that, out of fear or insecurity, the PBG was kept renewed. For above reason, the decision in ***Kerala State Electricity Board (supra)*** will not be applicable.

32. Under such circumstances, we are not inclined to interfere with the order impugned. The order impugned is justified and well-reasoned.

33. We find that at the time of admission of the appeal, by an interim order a

coordinate bench had directed that in view of the pendency of the appeal, payment of cost as directed by the learned Single Judge need not be made, but in case of failure of the appeal, the cost should be paid and the same should carry interest of 6%.

34. We are of the view that, instead of going into an elaborate calculation with regard to the cost and interest thereon a lumpsum amount may be paid as cost.

35. ECL is a public authority and the calculation as per the order of the learned Single Judge and the Hon'ble Division Bench at the time of admission of the appeal would be in crores. The public exchequer should not be burdened. Thus, the quantum of cost to be paid to the respondents will be a sum equivalent to the amount in respect of which the PBG was furnished. Such cost shall be paid within a period of six weeks from the date of communication of this order failing which, the same shall carry simple interest @ Rs.6% p.a. from the date when the payment became due as per our order, till the date of actual payment.

36. The appeal is accordingly, disposed of.

37. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)

Later:

38. Learned advocate for the appellant prays for stay of operation of our order.

39. We have considered such prayer of stay and the same is refused.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)