
(2012) 09 GAU CK 0004
In the Gauhati High Court
Case No : WP (C) No. 3737 of 2008

Guru Kirpa Associates Pvt. Ltd. (M/s.) and Another	APPELLANT
Vs	
Coal India Ltd. and Others	RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Citation : (2013) 3 GLT 299

Hon'ble Judges : Anima Hazarika, J; Amitava Roy, J

Bench : Division Bench

Advocate : B. Goyal, for the Appellant; M.Z. Ahmed and Mrs. B. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The petitioners, dealers of coal seek to challenge the action of the respondent Coal India Limited in denying registration of their indents and dispatch of coal in order of their seniority determined in the e-Auction held on 16.5.2008 therefor. We have heard Mrs. B. Goyal, learned counsel for the petitioners and Mr. M.Z. Ahmed, learned senior counsel for the respondent Coal India Limited and its functionaries.

2. The pleaded version of the petitioners is that in response to the Notification No. SC/47/319 dated 5.5.2008 issued by the North-Eastern Coal Fields, Coal India Limited, Black Diamond Towers, Guwahati, the respondent No. 2 herein inviting offers for booking of coal by rail through online spot e-Auction, the petitioners along with others responded thereto and on the conclusion of the process were empanelled at serial No. 9 of the eleven successful bidders. According to the petitioners, sale confirmation letter was also issued in their favour and they accordingly deposited the value of the coal and complied as well with all other necessary formalities. They have averred that while they were waiting for their turn for placement of their indents and dispatch of coal in order of seniority as per the Terms & Conditions of Sot e-Auction Scheme, 2007, they came across a notice dated 25.6.2008 issued by the respondent No. 2 to the

effect that the buyers who had booked their orders through e-Auction had been objecting to the placement of indents for despatch and that those who were hesitant to lift coal would be treated defaulters and as a consequence Clause-9.2 and 9.3 of the Terms & Conditions of Spot e-Auction Scheme, 2007 would be invoked. The petitioners have asserted that they immediately thereafter vide their letter dated 27.6.2008 addressed to the Sales Manager, Coal India Limited, North-Eastern Coal Fields, Guwahati intimated the said authority that they have no objection if their rake is loaded strictly as per the priority number allotted to them at the time of E-auction. Request was also made to inform them about the time frame for the above purpose after the dispatch of the 7th rake from the concerned mine. As even thereafter they on 30.6.2008 came to learn that indents had been registered in favour of the buyers who were below them in order of placement in the panel, they represented before the authorities of the North-Eastern Coal Fields, Coal India Limited, Margherita who did not divulge any reason therefor. Instead, the respondent Coal India Limited refunded the value of the coal to the petitioners. Situated thus, they are before this Court for judicial intervention.

3. The respondents in their affidavit-in-opposition in substance have pleaded that in terms of Clause-7.5 of the Terms & Conditions of Spot E-Auction (for short, hereafter referred to as "the Terms & Conditions") the validity period for seeking allotment of rakes in case of railway supplies was 45 days from the date of issue of consent by the North-Eastern Coal Fields which, in the present case, expired on 1.7.2008. As the petitioners including other successful bidders had objected to the placement of indents in their favour when their turn had arrived according to their seniority in the panel, the notice dated 25.6.2008 had to be issued indicating to them (successful bidders) the consequence of invocation of Clause-9.1 and 9.2 of the Terms & Conditions in the face of their vacillation. While admitting about the receipt of the letter dated 27.6.2008 of the petitioners, the respondents maintained that on 30.6.2008 the petitioner No. 2 telephonically informed the respondent Company about their (petitioners) objection to the placement of indents in their favour due to heavy rainfall and, thus, on the application of Clause-9.2 of the Terms & Conditions the agreement ceased to subsist and the value of the coal was refunded to them.

4. The petitioners in their affidavit-in-reply while reaffirming and reiterating their statements in the writ petition, denied to have intimated the respondents of their objection or hesitation to lift their quota of coal.

5. The learned counsel for the parties have abided by their pleaded stands as summarized hereinabove. Mr. Ahmed has also produced the relevant records in original in endorsement of the stand of the respondents.

6. The texts of the notice dated 25.6.2008 and the letter dated 27.6.2008 referred to hereinabove are quoted hereinbelow for ready reference:

It is noted that the buyers who have booked their orders through e Auction vide

our notice No. SC/47/319 dated 05.05.2008 which was held on 16.05.2008, are objecting to placing of indents for dispatch. It is hereby informed that buyers who hesitate to lift coal shall be treated as defaulters, which will attract the evokement of Clause No. 9.2 & 9.3 of the Terms & Conditions of Spot e Auction Scheme 2007.

In such cases the orders will be treated as cancelled and the EMD/Security deposit shall be forfeited in addition to any other action deemed fit by the company as per the General Terms & Conditions of Spot e Auction.

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Dear Sir,

Please be informed that we have no objection if our rake is loaded strictly as per the priority number allotted to us at the time of E-Auction.

Please note the same and inform us as per the time frame fixed after the dispatch of 7th rake from your mine so that we will arrange for the same. Thanking you.

7. Clauses-9.2 and 9.3 of the Terms & Conditions being also of definitive significance are extracted hereinbelow:

9.2 If the successful bidders does not lift the booked quantity within the stipulated validity period, the proportionate Security Deposit @ Rs. 200/- per Tonne (as converted from the EMD amount) for the unlifted quantity would be forfeited. Such forfeiture shall be made only if the balance Unlifted Quantity is equal or more than a Truck Load i.e. 10 tonnes.

Such forfeiture, however, would not take place if North Eastern Coalfields has failed to offer full or part of the successful bid quantity within the validity period. In such cases again, no forfeiture would take place if the balance quantity is less than a truck load/rake load.

9.3 If the Buyer cancels the order/Rake after booking, the EMD @ Rs. 200/- per tonne shall be forfeited for the rake cancelled.

8. That the validity period for seeking allotment of rake in case of rail supplies was 45 days from the date of issue of consent by the North-Eastern Coal Fields and that in the case in hand the same was to expire on 1.7.2008 is undisputed. The petitioners have admitted the issuance of the notice dated 25.6.2008. A perusal of the original records produced on behalf of the respondents would, however, disclose that the following endorsement had been made at the foot of the letter dated 27.6.2008:

As informed by Shri Sharmah over Tel. on 30/6/08 at 11.30 Am, Shri Guru Kirpa Associates (P) Ltd. has objected to place Indent due to heavy rain fall.

Sd/- Illegible.

9. Whereas this endorsement corroborates the pleaded stand of the respondents, the petitioners have denied to have objected to the placement of their indent at any point of time. It is obvious that if the endorsement appearing on the body of the letter dated 27.6.2008 is authentic and acceptable, the impugned action is unassailable. The above disclosure from the official records of the respondents in conjunction with the rival pleadings gives rise to a disputed question of fact. Neither is the writ Court equipped with judicially evolved parameters to resolve these irreconcilable factual orientations, nor is it advisable to embark upon a roving enquiry therefor. This is more so after a lapse of more than four years and in absence of any material on record to either doubt or reject the authenticity of the official records of the respondent Company or the veracity of the endorsement appearing on the body of the letter dated 27.6.2008. As referred to hereinabove, the respondent Company has refunded the value of the coal to the petitioners as deposited by them on the acceptance of their bid.

10. On a cumulative consideration of all above, we are not inclined to interfere in the exercise of our power of judicial review. The petition lacks in merit and is dismissed. No costs.