(2025) 12 J&K CK 1724

In the Jammu And Kashmir High Court

Case No : LPA No. 60 Of 2022

Jai Ganesh Disposals APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 30-12-2025

Acts Referred:

Citation : (2025) 12 J&K CK 1724

Hon'ble Judges : Arun Palli, CJ;Rajnesh Oswal, J

Bench : Division Bench

Advocate : Surinder Kour, Manpreet Kour, Dheeraj Nanda, Harshwardhan Gupta

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. Two writ petitions filed by the appellant, i.e. OWP No. 1452/2010 and OWP No. 1552/2010, were dismissed by the learned Writ Court vide a common judgment dated 13.04.2022. Aggrieved thereof, the appellant has preferred two separate intra-court appeals, being LPA No. 60/2022 and LPA No. 61/2022, assailing the said common judgment dated 13.04.2022. Since both the appeals arise out of the same judgment and involve identical questions of fact and law, the same are being disposed of by this common judgment.

2. It is contended by the appellant that the learned Writ Court has not appreciated the controversy in its right perspective and dismissed the writ petitions preferred by the appellant on the ground that the appellant had not lifted the Coal Mill Reject (CMR) with stones within the stipulated period, whereas Coal Mill Reject constitutes a distinct and separate material. It is further contended that the learned Writ Court has not appreciated the fact that despite repeated requests made by the appellant to NTPC for extension of time for lifting the stock and for allotment of alternative land for shifting the material in terms of NTPC?s own rehabilitation policy, no due consideration was accorded to such requests. According to the appellant, the learned Writ Court, has wrongly

concluded that the rehabilitation policy was inapplicable to the appellant and was meant only for project-affected people.

3. Heard learned counsel for the parties and perused the record.

4. The facts necessary for disposal of the present appeals are extracted from OWP 1542/2010. It is stated that, in the month of November, 2008, a lot of Coal Mill Reject lying at Baderpur, New Delhi was purchased by the appellant and whole amount was paid by the appellant along with security to respondent No. 2. The said lot had been, in fact, advertised for sale by respondent No. 3 under the banner of "Coal Mill Reject". However, after the purchase, it was found that the material was mixed with pebbles and stones.

5. The appellant claimed to have sold the said Coal Mill Reject to a number of Brick Kilns and lime units and the appellant received numerous complaints from the purchasers of the product. Accordingly, the appellant approached respondent No. 2 requesting it to disclose the composition of the Coal Mill Reject, so that the appellant could be in a position to explain the same to its purchaser and when request of the appellant was not responded to by respondent No. 2, the appellant brought it to the notice of Ministry of Corporate Affairs, Government of India, New Delhi vide its communications dated 22.09.2009 and 16.11.2009.

6. It was further contended by the appellant that instead of informing the composition of the Coal Mill Reject, the respondent No. 2 wrote a letter dated 10.02.2010 to the appellant, thereby complaining appellant?s poor performance in lifting the material and appellant was further asked to mobilize all its sources to lift the balance material without any further delay, failing which action in terms of Clause 11.9 of Special Terms and Conditions of E-auction shall be resorted to. This communication was followed by another communication dated 28.09.2010, whereby the appellant was again cautioned in respect of slow progress in lifting the Coal Mill Reject as the work of lifting was to be completed by 26.06.2010. The appellant was also informed that the space where CMR was lying was required for new gas project and accordingly three months? time was granted to the appellant to do the needful and failure to do so would result in forfeiture of EMD and the amount deposited by the appellant and further appellant would be barred from further lifting of CMR. The said communication was responded to by the appellant vide communication dated 23.10.2010, wherein it was asserted that the delay had occurred due to non-disclosure of the composition of the purchased CMR. It was further stated that in the last week of September, 2010, an expert technical team, along with management, suggested the land of Khudh near Jaitpur for shifting and stocking the CMR material.

7. In OWP No. 1452/2010, the respondents Nos. 2 to 4 had filed an application for vacation of interim direction stating therein that no fundamental or statutory right of the appellant was involved in the matter and further that the learned writ court lacked the territorial jurisdiction to entertain the writ petition because the contract for lifting the Coal Mill Reject was completed at New Delhi. It was stated

that the Coal Mill Reject weighing at 15000 MT was put to e-auction by the respondent No.2 though respondent No. 3 and the same was open for physical inspection by the interested parties from 10.11.2008 to 20.11.2008. The appellant submitted his bid in two earlier e-auctions conducted for the sale of the same lots of Coal Mill Reject by respondent No. 3 on 20.08.2008 and on 06.10.2008. The Coal Mill Reject was sold to the appellant and the appellant was under an obligation to lift the entire lot of Coal Mill Reject weighing 15000 MT at his own cost latest by 08.03.2010 and further by 24.03.2010 (maximum period of two weeks thereafter, subject to payment of Ground Rent @ 2% of the value of un-lifted stock of Sale Release Order). No relaxation of schedule of payment or lifting of Coal Mill Reject was allowed and the Special Terms and Conditions were strictly followed in its letter and spirit. The appellant lifted 9091.820 MT of CMR against the total SRO quantity of 15000 MT within a period of almost nine years, which clearly shows that the appellant was a defaulter in terms of NTPC/MSTC, E-auction Special Terms and Condition Clause 11.3. The last date of lifting of 15th SRO was 08.03.2010 but despite several communications, the appellant failed to lift the total SRO quantity. It was also stated that on being declined the permission to operate the said unit by Delhi Pollution Control Committee, NTPC management took the decision for the permanent closure of Baderpur unit on 15.10.2018. It was further stated that their business activities had been closed and plant was under the process of disposal. NTPC, Badarpur unit had already intimated all its business partners and stakeholders in that regard, so that all the liabilities of the said unit were properly discharged. It is stated that even after the permanent closure of its Badarpur Unit, NTPC extended all support to the appellant to lift the entire CMR, however, the appellant had failed to avail the opportunity.

8. In the objections filed by respondents 2 to 4 in OWP No. 1552/2010 adopted as objections in OWP No. 1452/2010 as well, a similar stand has been taken by the respondents that the appellant participated in the e-auction process conducted by respondent No. 3 on 09.02.2009 for sale of one lakh MT of scrap "Coal Reject Mixed with stones" from Badarpur Plant of respondent No. 2, offered on "as is where is basis". It is stated that the said scrap was offered for sale through e-auction, the terms and conditions regarding the same were fully advertised on the web site of the respondent No. 3 and further the said scrap was open to physical inspection by the interested parties for 15 days from 24.01.2009 to 08.02.2009 and officer, namely, Mr. D. R. Sori, DGM (Stores) NTPC Badarpur, whose phone number was also advertised, was specially designated for the purpose of addressing to any query in that regard.

9. It was further stated that the appellant had failed to discharge its contractual obligation to lift the entire CMR material till 28.02.2011 i.e. the appellant had 24 months? time to lift the 60,000 MT CMR. As per the terms and condition of the sale, the appellant was under an obligation to remove the partial lot of 60,000 MT Coal Mill Reject mixed with stone on "as is where is basis" from the BTPS scrap yard in 24 lots of 25000 MT each latest by 28.02.2011. It was further

stated that as per Clause 11.9 of the Special Terms and Conditions of the said sale, a ground rent @ 2% per week or part thereof beyond 30 days has to be levied and up to two weeks maximum, in default of the appellant in lifting the same against the value of particular Sale Release Order, provided a request in that regard is received in the office of respondent No. 2 before the expiry of 30 days free lifting period. During the validity of various Sale Release Orders, the said clause was invoked by the respondents number of times, and the appellant never objected to the same. It is further stated that rehabilitation and resettlement policy of the respondents is meant for the project affected persons only and for none else and they were not under obligation to provide alternative land to the appellant for running its business.

10. Heard learned counsel for the parties and perused the record.

11. It is an admitted fact that the appellant had purchased Coal Mill Reject through the e-auction process and further that the appellant failed to lift the material within the stipulated time frame, despite the grant of several extensions. The appellant has admitted the communications issued by respondents Nos. 2 & 4 intimating the appellant to speed up the lifting of the material and these communications were also responded to by the appellant in terms of various communications, whereby the appellant sought to raise an issue regarding the composition of the material purchased. Even in the writ petition also, the appellant complained of having received numerous complaints from its own purchasers concerning the quality of the product. In essence, the appellant has tried to project his grievance with regard to the composition of the product purchased, particularly by asserting through communication dated 22.09.2009 that the constitution of the Coal Mill Reject was not disclosed by the NTPC at any stage.

12. The appellant admittedly participated in the e-auction process and emerged as the successful bidder. It is unbelievable that a prudent person would purchase a product without examining its quality, particularly in an open and transparent bidding process. Having voluntarily participated in the bidding process and purchased the product, the appellant is now precluded from raising claims regarding product quality to justify failure to lift the material within the prescribed time frame. Furthermore, the appellant lacks any standing to seek rehabilitation through the provision of alternative land for lifting the Coal Mill Reject. It is the stand of the respondents that the said rehabilitation policy is explicitly meant to apply to the ?project-affected persons and not to the appellant. The appellant has miserably failed to show as to how the rehabilitation policy is applicable in the case of appellant.

13. We have examined the judgment passed by the Writ Court and find no ground to warrant any interference. The appellant had purchased the product with full knowledge of its specifications and therefore, cannot be permitted to raise the issue of alleged quality of the product as a defence to justify the delay in lifting the same.

14. In view of the foregoing discussion, we find no merit in these appeals. The same are, accordingly, dismissed.

