(2020) 01 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (C) No.843 of 2014

M/s. Laxmi Enterprises APPELLANT

Vs

Central Coalfields Limited And Ors RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 JH CK 0035

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : H.K. Mehta, Amit Kumar Das, P.A.S. Pati

Final Decision : Dismissed

Judgement

M/s. Laxmi Enterprises, a proprietorship firm through its proprietor Sri Lalit Kumar Poddar, son of Sri RadheyShamji Poddar, resident of Opposite Jaiswal Petrol Pump, P.O. Ranchi, P.S. Sukhdeonagar, Ratu Road, District Ranchi.

Heard Mr. H.K. Mehta, learned counsel appearing on behalf of the petitioner, Mr. A.K. Das, learned counsel appearing on behalf of the respondent-CCL and Mr. P.A.S. Pati, learned counsel appearing on behalf of the respondent-Central Bank of India.

The petitioner has preferred this writ petition for a direction upon the respondents to allow the petitioner to lift the coal as applied/approved under Annexure-1 series on receipt of the payment amounting to Rs.34,01,300/-which has been sent by the petitioner to the respondents under RTGS on 06.01.2014 through Central Bank of India, Piska More Branch, Ranchi. Further prayer is made to give a direction upon the respondent-CCL to refund the EMD of Rs.5 lakh to the petitioner with interest @12% per annum from the date of deposit till the data of refund as mentioned in Annexure-1 series of the writ petition.

Mr. H.K. Mehta, learned counsel appearing on behalf of the petitioner submits that the petitioner has deposited a sum of Rs.34,01,300/- on 06.01.2014 vide cheque no.006313 from Current A/c No.3262686907 through Central Bank of India, Piska More Branch, Ranchi in the name of beneficiaries A/c CCLR 0001605983, Punjab National Bank, Ranchi. He further submits that just after four days the aforesaid amount has been credited in the account of respondent-CCL as contained in Annexure-4 to the writ petition. Thereafter, the petitioner got information from the bank that due to the technical problem the amount was re-credited in the account of petitioner and after that the petitioner made request to the respondent-CCL for extension of time for payment of e-auction allotment due to the return of RTGS as contained in Annexure-5 series to the writ petition. He further submits that the petitioner is bonafide successful bidder has deposited EMD to the respondent-CCL.

On the other hand, Mr. Amit Kumar Das, learned counsel appearing on behalf of the respondent-CCL submits that the petitioner has violated Clause 5.3 of the terms and conditions of E-auction Scheme, 2007 which provides that the equivalent amount of EMD of successful bidder corresponding to successful bid quantity shall be blocked and will be transferred to the Coal Company. He further submits that in view of clause 11.12 of the said scheme, the writ petition is fit to be dismissed, which is quoted herein below:-

"11.12. In the event of any dispute, Bidder/Buyer is necessarily required to represent in writing to the General Manger (Sales) of the concerned coal company, who would deal with the same in a period of one month from such representation. Thereafter, if required the matter be determined by the Director-In-Charge of Marketing of the concerned coal company. Any interpretation of any clause of this will be subject to clarification by CIL, which will be deemed as firm and final. All disputes arising out this scheme, or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996. The arbitration shall be conducted at Calcutta at a place to be notified by CIL. The arbitrator shall be appointed by the Chairman and Managing Director, CIL upon written request in this behalf. The award rendered by the Arbitrator shall be final and binding on the parties. (The place of arbitration & nomination of arbitrator be varied appropriately in view of the Coal Company involved)".

Learned counsel appearing on behalf of the respondent-CCL refers the judgment rendered by the Hon'ble Supreme Court in the case of Giriraj Garj vs. Coal India Limited & Ors. reported in (2019) 5 SCC 192 where the dispute has been referred to an Arbitrator. Relevant Paragraph Nos.6 to 7.4 of the said judgment is quoted herein below:-

427 In the instant case, the learned Single Judge in the impugned order has erroneously taken the view that an arbitration clause would not stand incorporated in the individual sale orders entered into by Respondent 2 Coal Company and the appellant. The individual sale orders emanate out of the 2007 Scheme. The sale orders specifically state that they would be governed by the guidelines, circulars, office orders, notices, instructions, relevant law, etc. issued

from time to time by Coal India Limited or Bharat Coking Coal Ltd., etc. As a consequence, the arbitration clause (i.e. Clause 11.12) in the 2007 Scheme would stand incorporated in the sale orders issued thereunder.

428 Clause 7 in the sale orders falls under the "single contract case" where the arbitration clause is contained in a standard form document i.e. the 2007 Scheme, to which there is a reference in the individual sale orders issued by Respondent 2 Coal Company.

7.1. The arbitration clause in the 2007 Scheme clearly states that :

"All disputes arising out of this scheme or in relation thereto in any form whatsoever shall be dealt exclusively by way of arbitration in terms of the Arbitration and Conciliation Act, 1996."

(emphasis supplied)

Russell in his commentary on arbitration has interpreted these words as follows:

"Disputes "in connection with", "in relation to", or "regarding" a contract. These words, which are frequently encountered and are to be given the same meaning, were at one time given a restricted interpretation, but are now well established as having a broad meaning ... They may also be sufficient to catch disputes arising under another contract related to the contract containing the arbitration clause."

(emphasis supplied)

7.2. In Renusagar Power Co. Ltd. v. General Electric Co. this Court observed that expressions such as "arising out of", or "in respect of", or "in connection with", or "in relation to", the contract are of the widest amplitude, and content. In Doypack Systems (P) Ltd. v. Union of India this Court observed that expressions such as - "pertaining to", "in relation to" and "arising out of", are used in the expansive sense, and must be construed accordingly.

7.3. The words "in relation thereto" used in Clause 11.12 of the 2007 Scheme indicate that the clause would apply to all transactions which took place under the 2007 Scheme. This would include the sale transactions in the present case.

7.4. In view of the above discussion, the view taken by the learned Single Judge is erroneous, and is hereby set aside. The appeal is allowed.

In view of the above clause 11.12 of the said scheme and the judgment of Hon'ble Supreme Court in the case of Giriraj Garj vs. Coal India Limited Ors. (supra), this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India. Accordingly, the writ petition stands dismissed with liberty to the petitioner, if so advised, may invoke the arbitration clause for redressal of his grievances.

In consequence thereof, I.A. No.28 of 2020 also dismissed.

