
(2010) 12 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (C) No. 10043 of 2010

M/s. POCO Coal Transport Pvt. Ltd. and Another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Citation : (2011) 2 OLR 36

Hon'ble Judges : S. Panda, J;B.P. Das, J

Bench : Division Bench

Judgement

1. Heard Mr. Ashok Mohanty, learned Senior Advocate for the petitioners, Mr. Jagannath Patnaik, learned Senior Advocate for opposite parties 4 to 6, learned Asst. Solicitor General for opposite parties 1 and 2, Mr. Budhadev Routray, learned counsel for the intervenor and Mr. B. Mohanty, learned counsel for opposite party no. 3.

2. In this writ petition, petitioner no. 1, which is a Private Limited company formed by an Ex-Serviceman and duly registered under the Companies Act, 1956 being represented through its authorized representative (petitioner no. 2), is engaged in the business of operating coal transportation work under the. Mahanandi Coal Fields Limited (in short, "MCL") since last six years.

3." According to the petitioners, in order to provide opportunity to the ex-servicemen as a measure of resettlement way back in the year 1979, a scheme to raise ex-servicemen coal transportation company (in short, "ESM") Was formulated between the Ministry of Coal and Ministry of Defence, in order to give effect to the Scheme from time to time, a Memorandum of Understanding (MoU) was recorded and revised between the Director General, Re-settlement (DGR), opposite party no. 2 in consultation with the Coal Indian Limited (CIL). The MoU recorded between DGR and CIL that the same is binding on all the subsidiary coal companies in the matter of award of contract of loading and transportation of coal. Admittedly the MCL is a subsidiary of CIL. In the past, on 16th April, 1999 a scheme of new MoU was arrived at between DGR and CIL which is annexed as

Annexure-2 and it discloses that the work relating to loading and transportation has to be necessarily confined only to ESM companies. The manner in which the work is to be awarded has been clearly laid down in the MoU. The petitioners rely upon, more specifically, paragraphs-4, 13 and 14 of the said MoU (Annexure-2). Now it is also admitted that petitioner no. 1-company along with other companies have entered into a contract and the work order has been accordingly issued on 19.4.2010 i.e. Annexure-7 to the present writ petition. Petitioner no. 1 has to work for a period of five years from the date of commencement of the work.

4. Further according to the petitioners, during the tenure of their work for the self-same area, a tender was issued vide Annexure-8 dated 21.5.2010 inviting tenders from experienced contractors along with certain other qualifications for the work of extraction of coal/coal measure strata by deploying Surface Miner, Mechanical Transfer into tippers and Transportation of the same from Surface Miner Face to different destinations at Bharatpur OCP of Bharatpur Area.

5. The case of the petitioners is that the said tender is for the area over which the petitioner along with others are working as per their respective work orders and it has been done with an intention of phasing out the ESM companies thereby frustrating the intention for which the ESM companies, like the petitioners, were formed with a view to giving re-employment to the ex-servicemen and to the families of the ex-servicemen who have lost their lives during the operation.

6. While issuing notice, this court, as an interim measure, directed that till the next date, the tender process shall continue but no final decision shall be taken on the same without leave of the Court. The said order is continuing till date.

7. A counter affidavit has been filed by the opposite parties taking a stand that there are two methods applied for production of coal, one being conventional production of coal by drilling and blasting method in which drilling and blasting operation is done by MCL and transfer and transportation work is carried out by existing ESM companies and the other being production and transfer of coal by deploying surface miner of civilian contractors. The further stand taken in the counter affidavit is that the company in order to enhance the production of coal of various projects to cater to the need of the nation, has taken a decision to engage civilian contractors without disturbing the work site as well as work load for the petitioners till completion of the agreement period. Since the proposed tender is an addition of existing production and will be executed at a separate work site, it will no way affect the covered in Clauses 13 and 14 of the MoU.

8. During the course of argument, it was further indicated by the learned counsel for the opposite parties that certain documents were produced indicating that the petitioners are not able to engage required number of transport vehicles for which they could not give the targeted result. On the other hand, affidavits were also filed by the petitioners alleging that petitioner no. 1-company and other

similar companies have failed to transport the coal and the quantity of transportation has reduced, as there is less production in some areas where the ESM companies and other companies are operating.

9. We had called for the balance-sheet of the opposite parties. The same was also disputed. Amongst all disputed facts which were brought before this Court, Mr. Patnaik, learned Senior Advocate for the opposite parties 4 to 6, drawing our attention to paragraph-3 of the counter affidavit as well as an affidavit filed on 17th August, 2010 submitted that the Director (SE) of Director General Resettlement in his letter dated 15th Feb., 2010, a copy of which was forwarded to the Chief General Manager (TC) of MCL, has indicated that ESM companies engaged with the Coal Subsidiary is deploying less than 65% of the total sanctioned strength of tippers for coal transportation and resultantly targeted productivity of MCL is not being met and he directed the ESM companies to ensure that maximum number of sanctioned fleet strength (i.e. minimum upto 80%) is deployed. He further submitted that there is no question of deviating from the work order and the allegation of phasing out ESM contractors is absolutely not correct. He also submitted that the opposite parties shall scrupulously follow the terms of MoU and give sufficient work to ESM companies and there is no reason for apprehension on the part of the ESM companies.

10. The submission of Mr. Budhadev Routray, learned counsel for the intervenor, that in a similar matter being WP(C) No. 19006 of 2008 wherein a similar stand was taken, this Court while disposing of the said writ application on 17.2.2009 passed the following order;

(C) That it is submitted that the M.C.L. is duty bound to allot other patch sizes to the petitioner for completion of its award of quantity to be extracted in terms and conditions of the NIT-474.

(D) That the NIT-517 as per Annexure-5 does not overlap and no way connected so far as allotment of patches concerning to award of contract as per NIT-474, to the petitioner.

It may be again mentioned here that the petitioner will be adequately allotted different patch sizes to complete its allotted quantity of coal for extract an transfer of coal in terms of NIT-474.

11. At this stage learned counsel for the petitioners submitted that there shall be over-lapping of area and there will be no reduction of work of the ESM companies, if they go on with adequate number of transportation vehicles.

12. In view of the assurance of the MCL, which is a public sector undertaking and the fact that whether there is short-fall of production or failure on the part of the ECM companies to supply required number of transportation vehicles on a particular date or month or year, which are factual aspects and cannot be decided by this Court in this proceeding and in view of the affidavit filed by the opposite parties, we dispose of this writ petition with the following directions:

- (I) The opposite parties shall act in accordance with the MoU so also scrupulously follow the conditions of the MoU including the renewal clause;
- (II) The ESM companies shall, as per the letter dated 15th February, 2010 of the Director (SE), Director General Resettlement, supply at least minimum 80% of the required number of transportation vehicles;
- (III) If there is any dispute pertaining to supply of transportation vehicles or non-availability of materials in question to be transported, the same shall be referred to and taken care of by the two-man committee consisting of the Chief General Manager (TC), Mahanandi Coalfields Limited and the Director (SE), Director General, Re-settlement for arbitration.