

(2013) 01 AHC CK 0432
In the Allahabad High Court
Case No : C.M.W.P. No. 62964 of 2012

Sanjay Coal Company

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 98 ALR 136 : (2013) 4 AWC 3709

Hon'ble Judges : Zaki Ullah Khan, J; Satya Poot Mehrotra, J

Bench : Division Bench

Advocate : Yashwant Verma and Udai Chandani, for the Appellant; Govind Saran, Navneet Chandra Tripathi, S.D. Dubey and Vivek Singh, for the Respondent

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Zaki Ullah Khan, JJ.—The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India, inter alia, making the following prayers: (I) Issue a writ, order or direction in the nature of mandamus commanding the respondent Nos. 3 and 4 to refund the substantial amount of Rs. 17,69,747.00 approximately alongwith the interest corresponding to 610.36 M.T. of coal within stipulated period.

(II) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 6 to refund the substantial amount of Rs. 16,47,988 + excess freight/penal freight which has been imposed upon the petitioner for the basic payment made by the petitioner for the carrying of the goods.

(III) Issue a writ, order or direction in the nature of mandamus commanding the respondent No. 6 to issue a revised railway receipt to the petitioner with regard to the exact quantity of coal delivered to the petitioner,

(IV) Issue any other writ, order or direction as this Hon''ble court may deem fit and proper in the circumstances of the case.

(V) Award the cost of present writ petition in favour of the petitioner.

It may be mentioned that the respondent Nos. 3 and 4 in the writ petition is Bharat Coking Coal Limited while the respondent No. 6 is East Central Railway, Dhanbad.

2. It appears that the bid of the petitioner pursuant to the E-Auction under the E-Auction Scheme, 2007 was accepted whereupon the petitioner deposited an amount of Rs. 1,19,91,606.09 for purchase of coal from the respondent Nos. 3 and 4.

3. Supply of coal was to be made through the respondent No. 6 in regard to which the petitioner claims to have deposited an amount of Rs. 48,90,946.70 with the respondent No. 6.

4. It is averred in the writ petition that the quantity of coal supplied to the petitioner was less than the quantity for which the petitioner made the deposit, and therefore, the petitioner is entitled to refund of the amounts from the respondent Nos. 3, 4 and 6, as mentioned in the Prayer Clause of the writ petition.

5. We have heard Shri Udai Chandani, learned counsel for the petitioner, Shri S.D. Dubey, learned counsel for the respondent Nos. 3 and 4 and Shri Sanjeev Singh, holding brief for Shri Vivek Singh, learned counsel for the respondent Nos. 2 and 5 to 9.

6. Shri S.D. Dubey, learned counsel for the respondent Nos. 3 and 4 submits that the petitioner was supplied coal under E-Auction Scheme, 2007. Clause 11.12 of the said Scheme, inter alia, contains provisions for arbitration. Therefore, the submission proceeds, the petitioner has got an alternative remedy under the said Clause of E-Auction Scheme, 2007, and no Interference is called for in Writ Jurisdiction under Article 226 of the Constitution of India.

7. In reply, Shri Udai Chandani learned counsel for the petitioner submits that the existence of alternative remedy is not an absolute bar to the entertainment of the writ petition under Article 226 of the Constitution of India, and therefore, the writ petition may be entertained despite the existence of alternative remedy under Clause 11.12 of E-Auction Scheme 2007.

8. We have considered the submissions made by the learned counsel for the parties.

9. A perusal of E-Auction Scheme, 2007 (Annexure-2 to the writ petition) shows that Clauses 4.1 to 4.9 of the said Scheme deal with the Bidding Process. Clauses 5.1 to 5.3 pertain to Post e-Auction Process. Clauses 6.1 to 6.9 deal with the Terms of Payment. Clauses 7.3 to 7.9 deal with the Procedure of Coal Delivery by Rail.

10. Clause 11.12 of E-Auction Scheme 2007 (Annexure-2 to the writ petition) provides as under:

11.12. In the event of any dispute, Bidder/Buyer is necessarily required to represent in writing to the General Manager (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 C.I.L., which will be deemed as firm and final. 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. The arbitration shall be conducted at Calcutta or at a place to be notified by C.I.L. The arbitrator shall be appointed by the Chairman and Managing Director, C.I.L. upon written request in this behalf. The award rendered by the Arbitrator shall be final and binding on the parties. (The place of arbitration and nomination of arbitrator be varied appropriately in view of the Coal Company involved)".

11. A perusal of the above-quoted Clause 11.12 shows that the petitioner has got various remedies available under the said Clause including remedy by way of arbitration in terms of the Arbitration and Conciliation Act, 1996.

12. Having regard to the facts and circumstances of the case and keeping in view the controversy involved in the present writ petition and having considered the submissions made by the learned counsel for the parties, we are of the view that it will be appropriate that the petitioner be relegated to the alternative remedy available to the petitioner under the aforesaid Clause 11.12 of E-Auction Scheme 2007. The writ petition is liable to be dismissed on the ground of availability of alternative remedy to the petitioner, and the same is dismissed on the said ground.