

(2014) 08 OHC CK 0006

In the Orissa High Court

Case No : W.P. (C). Nos. 15174, 15175, 15176, 15178 and 15181 of 2014

Sri Lakshmi Constructions Pvt. Ltd.

APPELLANT

Vs

Paradip Port Trust
 Yazdani International Pvt. Ltd. Vs
State of Odisha

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) 08 OHC CK 0006

Hon'ble Judges : Amitava Roy, C.J;B.R. Sarangi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Roy, C.J.—This batch of writ petitions pose a common challenge against anticipated adverse initiatives by the opposite party No. 2-Paradip Port Trust, pursuant to Clause No. 21 of the "Terms and Conditions of the Tender for allotment of Manual Iron Ore Plots" for convergence and export thereof.

2. We have heard Mr. J. Patnaik, learned Sr. Counsel for the petitioners. In view of the order proposed, no formal notice to the opposite party is called for.

3. The facts in bare minimum, substantially identical in the writ petitions, are that the Paradip Port Trust had issued a tender call notice on 24.01.2014 inviting participation from the interested and eligible Iron Ore Exporters with valid import/export license to partake in the process of allotment of 27 manual iron ore plots (paved area without siding) for convergence and export thereof. Clause 21 of the terms and conditions of the said tender reads as hereunder:

"21. On allotment of plot, if any party does not make minimum shipment of 19,000 MT within four months from the date of issue of allotment order, the plot of the concerned party will be treated as cancelled and dues i.e. MGT and bid price paid for the year will be forfeited."

At the conclusion of the entire exercise, the Paradip Port Trust allotted different

plots to the petitioners.

4. According to them (petitioners) in the intervening period, the State Government had imposed various restrictions on procurement and movement of iron ore within the State due to ongoing elections from 05.04.2014 to 20.04.2014. Further issuance of licences and fresh application for road transport were suspended. A temporary stalemate pending the verdict of the Hon"ble apex Court on the issues of closure of mines in Odisha did intervene as well. Suspension of mining lease of many major iron ore mines in Odisha for a period of six months vide order date 16.05.2014 by the Hon"ble apex Court too retarded the process of convergence and export of iron ore. According to the petitioners, in spite of all such odds they have procured sufficient volume of iron ore and have stacked the same at their respective allotted plots. However, those could not be exported within the time frame of four months as envisaged in Clause-21. Situated thus, they wrote/submitted letters/applications to the concerned authority(ies) of the Paradip Port Trust to extend time for compliance of the stipulation and making a minimum shipment of 19,000 MT of ore within the time scheduled enjoined. As their letters/applications of request have not yet met with any positive response, they, anticipating punitive action, are before this Court seeking the following reliefs as paraphrased hereunder:

"(I) appropriate writs/directions to opposite parties to allow the petitioners to continue export of iron ore fines from their manual iron ore plots till expiry of the license period.

(II) writ of mandamus or any other writ/writs, order/orders, direction/directions directing the opposite party Nos. 2 & 3 not to forfeit the license fee and MGT amount paid by them.

(III) appropriate writs/directions setting aside Clause No. 3 of the Allotment Letters.

(IV) Alternatively writs/directions to opposite party Nos. 2 and 3 for extension of period of four months" time to them for compliance of the minimum export requirement under Clause-3 of the Allotment Letter."

5. Mr. Patnaik has emphatically argued that as due to intervening unforeseen development beyond the control of the petitioners, they were not in a position to lift the stipulated volume of minimum shipment of 19000 MT of iron ore for no fault of their, they are entitled to the extension of time frame contemplated in Clause-21 of the terms and conditions of the tender. Contending that meanwhile the custom clearance for the export of their stocks of iron ore fines has been granted by the concerned authority and they await transshipment shortly. Learned counsel for the petitioners has urged that any punitive action, in terms of that clause, would be wholly arbitrary, unfair and unjust in the attendant facts and circumstances. Mr. Patnaik has also argued that any punitive decision as contemplated by clause-21 of the terms and conditions of the tender would be wholly unconstitutional as well.

6. We have applied ourselves to the pleaded facts and documents on records. The arguments advanced have also been duly noted. It cannot be gainsaid that the terms and conditions of the tender including clause 21 have been accepted by the petitioners and are thus otherwise binding on them. On being queried by us, Mr. Patnaik submitted that the consequence of cancellation of the plot and forfeiture of MGT as enjoined by Clause-21, on the failure of the tenderer to make the minimum shipment of 19000 MT of iron ore fines within four months from the date of allotment, is not automatic and a decision to that effect is essentially to be taken by the Paradip Port Trust.

7. He has been candid enough to admit that no such decision till date is forthcoming. It is thus an admitted position that the letters/applications submitted by the petitioners, seeking extension of time to make minimum shipment of 19000 MT of the iron ore fines, have not yet been answered and/or disposed of by the Port Trust. The petitioners are, however, apprehensive about the rejection thereof.

8. In the above view of the matter, we are constrained to hold that the present petitions have been instituted being driven wholly by an apprehension of anticipated action under Clause-21 of the terms and conditions of the tender. The situation as obtains at this moment essentially emerges from a public contract. No decision has yet, in terms of the Clause-21 of the terms and conditions of the tender, been taken by the Paradip Port Trust. In exercise of this Court's power of judicial review, we are thus not inclined to intervene at this stage. These writ petitions, in our comprehension, are prematured and speculative at this moment and are thus rejected.

9. We, however, make it clear that we have not expressed our opinion on the merit of the assailment and the rejection of these petitions would not in any way come in the way of the disposal of the petitioners' letters/applications referred to hereinabove.