
(2016) 03 DEL CK 0131

In the Delhi High Court

Case No : W.P. (C) 1741/2016 & C.M. Nos. 7472-7473/2016

Strategic Energy Technology Systems Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : (2016) 228 DLT 12

Hon'ble Judges : Manmohan, J.

Bench : Single Bench

Advocate : Gopal Jain, Sr. Advocate, Sidharth Sharma, Abhishek Roy, Trishala Kulkarni and Arjun Sharma, Advocates, for the Appellant; Akshay Makhija, CGSC, Pallavi Shali and Mahima Bahl, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—1. The present writ petition has been filed challenging the order dated 24th June, 2015 issued by respondent no. 1 and for refund of Rs. 55,34,79,500/- received upon encashment of petitioner's bank guarantee. The relevant portion of the impugned order dated 24th June, 2015 is reproduced hereinbelow:-

"The submissions of SETSPL that it is entitled to full restitution and refund of the monies that the Government has realized by invoking the BG in view of the letter of allotment being rendered void ab initio by the judgment/order passed by Hon'ble Supreme Court in W.P. (Crl.) No. 120/2012 [M.L. Sharma Vs. Principal Secretary & Ors] is not sustainable because subsequent annulment of coal blocks cannot exempt the allocates of cancelled coal blocks from invocation/deduction of BG, even if subsequently de-allocated. The BG has been invoked for not achieving the stipulated milestone which was chronologically before the judgment of the Supreme Court in the matter. Subsequent development or consequence cannot override the condition precedent or bounden stipulations of allocation of coal blocks. As per the conditions of allocation letter, allocates were bound to develop the coal blocks within the time period stipulated in the

allocation letter and for default, if any, allocates were liable to paying consequences including damages. It is noticed that neither new facts or new points of law have been brought by the company in its above representation."

(emphasis supplied)

2. Mr. Jain, learned senior counsel for the petitioner states that the respondents have arbitrarily rejected the petitioner's representation seeking refund of Rs. 55,34,79,500/- without appreciating that allotment of coal blocks was subsequently declared arbitrary and illegal by the Supreme Court in Manohar Lal Sharma Vs. The Principal Secretary & Ors., W.P.(Crl.) No. 120/2012.

3. In short, the submission made by Mr. Jain is that the petitioner's claim for refund of bank guarantee which the respondents are seeking to retain, is a benefit which it had received pursuant to an executive decision, which has been declared void and illegal.

4. It is pertinent to mention that the petitioner had initially filed a writ petition being W.P.(C) No. 1173/2014 for setting aside the decision of respondent no. 1 dated 17th February, 2014 and for execution of the prospecting license deed qua the allotment of coal block - North of Arkhapal Srirampur in Talcher Coalfield of Odisha for captive mining of the coal for coal to liquid project in favour of the petitioner. The prayers in the initial writ petition filed by the petitioner are reproduced hereinbelow:-

"(a) Issue a writ, order or direction quashing and setting aside the order/decision dated 17.02.2014 of de-allocation being F. No. 13016/54/2009-CA-I issued by the Respondent No. 1.

(b) Issue a writ in the nature of mandamus or any other writ, order or direction to the Respondents to execute a prospecting license deed in favour of the Petitioner;

(c) Stay of the order/decision dated 17.02.2014 of de- allocation being F. No. 13016/54/2009-CA-I issued by the Respondent No. 1.

(d) Restrain the respondents from taking coercive steps or acting pursuant to the order/decision dated 17.02.2014 of the Respondent no. 1;

(e) Restrain the respondents from taking coercive steps qua the coal block allocated to the Petitioner and not to create third party interests pursuant to the order/decision dated 17.02.2014 of the Respondent no. 1;

(f) Restrain the respondents from encashing the bank guarantee to the extent of Rs. 55.34 crores pursuant to the order/decision 17.02.2014 of the Respondent No. 1;

(g) Pass any other order(s) as may be deemed fit and proper in the facts and circumstances of the case."

(emphasis supplied)

5. The relevant portion of the impugned order dated 17th February, 2014 passed in earlier W.P.(C) No. 1173/2014 is reproduced hereinbelow:-

"5.....The progress of development of the block with reference to the milestones and their achievement is as under:-

6. After detailed deliberations, the IMG made its recommendation to de-allocate North Akrapal Srirampur coal block (CTL) which was allocated to M/s. Strategic Energy Technology Systems Limited in its meeting held on 24 & 25th October, 2013. The recommendations made by the IMG are as follows:-

"Taking into account the facts brought before it including the fact that only BG was submitted and that the allocatee have not taken any clearance. IMG noted that in spite of lapse of four and a half years, the allocatee has not been able to procure even the PL which is the first step. Consequently, preparation of GR, mining lease application, submission of MP approval of MP, application of Previous approval, application of Forest Clearance, Application of EMP clearance, completion of Land acquisition are all pending, IMG recommends de-allocation of coal block and deduction of proportionate BG linked to the milestones set for development of the block as per the allocation letter. IMG also noted that the allocatee has given a representation subsequently to Ministry of Coal vide their letter dated 28.10.2013, reiterating the contents of the presentation without having mentioned any new facts. The IMG felt that a reasonable notice was given to the party to make its presentation pursuant where to the party actually made a presentation and his letter only reiterates what was presented before IMG, the letter dated 28.10.2013 does not warrant any further consideration."

7. When the cases of CTL blocks were considered by the 23rd IMG, the representative of Govt. of Odisha could not participate and sought deferment of the meeting at the eleventh hour. Since the date of meeting was decided much in advance and other States/allocatees were also invited, it was not possible to defer the meeting. Subsequently, Govt. of Odisha sent their written comments in respect of these two blocks among others. The competent authority decided to refer the replies of Govt. of Odisha to the IMG. The 25th IMG held on 8th February, 2014 considered the replies of Government of Odisha. The representative of the Govt. of Odisha was not invited since their inputs were already available. The concerned parties had already made their presentation and submitted their contention in the 23rd IMG meeting. The copies of the letter of Government of Odisha dated 11.11.2013 and 19.11.2013 were circulated to IMG Members along with the meeting notice dated 06.02.2014.

8. The IMG in the 25th Meeting held on 8th February, 2014 noted as follows:

".....IMG thereafter went through the letters of Government of Odisha. It was noted from the letter dated 11.11.2013 of Government of Odisha that the previous approval for the grant of Prospecting License (PL) in respect of "North of Arkhapal Srirampur" was granted by the Ministry of Coal vide letter dated 13.08.2009; however, the same is still under process with the Government of

Odisha (GoO). GoO has inter alia informed that the checklist, complete in all respect, required for executive of PL deed was sought from the allocatee company (M/s. SETSL) which was filed by the allocate company vide their letter dated 08.11.2013 before the Director of Mines and the same is under examination for onward transmission to the State Government for deciding on executing of the deed.

After perusal of these two letters, IMG felt that no new facts had been brought to light warranting re-consideration of IMG's earlier recommendation given in respect of these two CTL blocks. Therefore, IMG reiterates its earlier recommendation in respect of these two CTL blocks....."

9. The recommendation of the 25th IMG has since been considered and accepted by the Government. As the allocatee company has been given a number of opportunities to develop the coal block and the CTL project and the company has failed to develop the same as per the milestones prescribed without any valid reasons for the delay, it has been decided to de- allocate the North of Arkhapal Srirampur CTL block in the State of Odisha allocated to M/s. Strategic Energy Technology Systems Limited (SETSL). The company shall not be eligible for allocation of coal block in lieu of the de-allocated coal block. Accordingly, the Bank Guarantee to the extent of Rs. 55.34795 Crore (Rupees fifty five crore thirty four lakhs seventy nine thousand and five hundred only) be invoked and deposited with the Government in the relevant Head of Account. (The Calculation of Deduction of BG is as per Annexure -IV)."

(emphasis supplied)

6. On the first date of hearing in the said writ petition being W.P.(C) No. 1173/2014, this Court on the principle of parity had directed the petitioner's bankers not to transfer any amount to the respondents qua the bank guarantee in question. However, petitioner was directed to keep the bank guarantee in question alive till further orders.

7. On 24th February, 2014, learned senior counsel for the petitioner withdrew the stay application being C.M. No. 2457/2014 in W.P.(C) No. 1173/2014 insofar as encashment of bank guarantee was concerned. Learned senior counsel for the petitioner had stated that it had no objection to the respondents encashing the bank guarantee in question in view of the demand dated 17th February, 2014. The relevant portion of the order dated 24th February, 2014 is reproduced hereinbelow:-

"CM No. 2457/2014

Mr. Rohtagi, learned senior counsel for the petitioner states that he has instructions to withdraw the stay application being CM No. 2457/2014 insofar as the encashment of bank guarantee is concerned.

In view of the aforesaid, CM No. 2457/2014 is dismissed as withdrawn and the respondent is permitted to encash the bank guarantee in question in view of the

demand dated 17th February, 2014. The previous order dated 19th February, 2014 with regard to the CM No. 2457/2014 stands vacated. It is, however, clarified that in the event, respondents initiate process of re-allocation of the coal mines in question, the petitioner shall be at liberty to approach this Court.

Order Dasti."

(emphasis supplied)

8. In the opinion of this Court, once the respondents were permitted to encash the bank guarantee in question in view of the demand dated 17th February, 2014 at the instance of the petitioner and the application for stay of encashment was withdrawn, how can the petitioner seek its refund today?

9. At this stage, Mr. Jain submits that even in cases where injunctions/stay applications with regard to stay of encashment of bank guarantee have been refused, the aggrieved party has the liberty to seek refund of the amount received by the other party under the bank guarantee. He also submits that as the writ petition challenging the order dated 17th February, 2014 was still pending adjudication after the encashment of the bank guarantee, the petitioner is today entitled to seek refund of the amount received by the respondents after encashment of the bank guarantee.

10. Undoubtedly, where injunctions/stay applications with regard to stay of encashment of bank guarantee have been refused, the aggrieved party can file proceeding for recovery of the amount paid under the bank guarantee. But in the present case, encashment of the bank guarantee was permitted upon withdrawal of the stay application and in view of the demand dated 17th February, 2014. Since challenge to the demand dated 17th February, 2014 qua encashment of bank guarantee was withdrawn, in the opinion of this Court, the petitioner cannot seek refund of the bank guarantee. Moreover, once the bank guarantee had been encashed and the petitioner's mine had been deallocated vide order dated 17th February, 2014 and the W.P.(C) 1173/2014 had been confined to reallocation, it is not understood as to how the subsequent judgment of the Supreme Court of cancellation of allocation of coal blocks would apply to the petitioner. Consequently, the reliefs sought in the present writ petition are not maintainable. Accordingly, the writ petition along with the applications is dismissed, but with no order as to costs.