(2014) 3 JLJR 496

Jharkhand High Court

Case No: Writ Petition (Civil) No. 5611 of 2009

Bikash Shaw		APPELLANT
	Vs	
Eastern Coalfields Limited		RESPONDENT

Date of Decision: April 1, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 379

Citation: (2014) 3 JLJR 496

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: Indrajit Sinha and Suchitra Pandey, Advocate for the Appellant; Rajesh Lala, Advocate and Ashok Kr. Sinha, J.C. to G.P. I, Advocate for the Respondent

Judgement

Narendra Nath Tiwari, J.
Though the writ petition was earlier filed with two substantive prayers, the petitioner does not press the prayer No. 1. In prayer No. 2 the petitioner has prayed for direction on the respondents to refund the amount deposited by the petitioner towards lifting of 339 M.T. of iron scrap.

2. It has been stated that the petitioner"s bid in e-auction for lifting 339 M.T. of iron scrap was accepted by the respondent-Eastern Coalfields Ltd. Entire consideration amount of Rs. 80,95,605/- was deposited in advance. Delivery advice was issued dated 17.7.2008 addressing respondent No. 5 and asking to arrange 179 M.T. of iron scrap under Lot Nos. 7 to 11, 16 to 18, 26, 31 and 32 and 160 M.T. of scrap under Lot Nos. 27 and 28. The petitioner, at the first instance, lifted 68 M.T. of iron scrap. The respondents even in that lifting alleged that the petitioner had stealthily lifted 21 M.T., in excess, a case under Section 379 of the Indian Penal Code was also lodged against the petitioner. He was taken in custody. Subsequently, the petitioner was released on bail.

3. It has been submitted that the respondent, thereafter, is neither allowing the petitioner to lift the remaining quantity of the iron scrap nor has returned the balance amount deposited by the petitioner in advance.

4. Learned counsel submitted that the petitioner had lifted only 68 M.T. But, it was maliciously alleged by the respondents that the petitioner, in fact, lifted 89 M.T. of iron scrap and 21 M.T. was lifted in excess, without giving any account thereof.

5. In view of the said allegation, the respondent utmost could have deducted the price at 89 M.T. The respondents, instead, have arbitrarily withheld the price amount of total 339 M.T.

6. Learned counsel further submitted that the respondent - ECL had taken time long back in the year 2011 for seeking instruction and filing counter affidavit to that effect, but till date no affidavit has been filed regarding the development in the matter.

7. Learned counsel appearing on behalf of the ECL, on the other hand, submitted that though the petitioner had deposited Rs. 80,95,605/- as the price for lifting 339 M.T. of iron scrap in the year 2008, the petitioner''s conduct, even at the first instance of lifting, was not fair. The petitioner was allowed to lift 68 M.T. of iron scrap at first instance, but in stead he had lifted 89 M.T. of iron scrap i.e. 21 M.T. in excess without any authority. On getting said information trucks were seized and weighed. 21 M.T. iron scrap was found loaded in excess in two trucks. A criminal case was lodged and the case was registered under Section 379 of the Indian Penal Code. The petitioner was arrested, but was subsequently released on bail. The criminal case is still pending. In view thereof, the petitioner is not entitled to get refund of any amount till the conclusion of the criminal proceeding and the writ petition is liable to be dismissed on the said ground.

8. Learned counsel further submitted that in this writ petition, the petitioner has made a money claim which cannot be entertained in writ jurisdiction of this Court. Learned counsel referred to and relied on a decision of the Supreme Court in Tata Cellular Vs. Union of India, .

9. I have heard learned counsel for the parties and considered their submission and facts and material on record.

10. It is an admitted fact that the petitioner has deposited Rs. 80,95,605/- as the full price for lifting 339 M.T. of iron scrap of ECL in 2008. It is also admitted that the petitioner lifted the scrap only once. According to the petitioner, the quantity was 68 M.T. but the respondent alleged that though the petitioner was allowed to lift only 68 M.T., the quantity loaded in trucks was found 89 M.T. on weighing i.e. 21 M.T. in excess.

11. In course of hearing, learned counsel for the respondents admitted that the petitioner was not present at the time of lifting or in the trucks. However, an F.I.R. was lodged for lifting 21 M.T. in excess and a case was registered under Section 379 I.P.C. The

petitioner was taken into custody. He was, subsequently, released on bail.

12. Though the petitioner has denied the allegation of loading of 21 M.T. in excess, even if the allegation of the respondents of excess loading of iron scrap is taken as it is, it was not beyond the quantity purchased by the petitioner by paying the full price of 339 M.T. in advance.

13. In view of the said admitted fact situation. I find substance in the submission of learned counsel for the petitioner that there is no justification of withholding the price amount of 339 M.T. as against the alleged lifting of 89 M.T. of iron scrap.

14. Since the petitioner was not further allowed to lift the remaining 250 M.T. of iron scrap, even if 89 M.T. is accepted as lifted, the petitioner is entitled for refund of the balance amount.

15. In view of the said admitted position, no claim is to be adjudicated upon or decided and prayer for refund of the balance amount cannot be equated with the money claim as submitted by learned counsel for the respondents. The decision in Tata Cellular (supra) has, thus, no relevance in the context of the case.

16. It is now well settled that matter involving disputed questions of fact can be entertained in writ jurisdiction of this Court under Article 226 of the Constitution of India. Reference may be made to decision of the Apex Court in M/s. Real Estate Agencies Vs. Govt. of Goa and Others, .

17. In the instant case, the petitioner is aggrieved by the arbitrary withholding of his entire price amount of 339 M.T. as against alleged admitted lifting of 89 M.T. of iron scrap. Prayer has been made in respect of the cause arising out of a contractual transaction with the respondents who are instrumentality of a welfare State. Writ petition under Article 226 is held to be effective remedy for such aggrieved persons by the Hon''ble Supreme Court in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and Karnataka State Forest Industries Corporation Vs. Indian Rocks, .

18. In the instant case though, the controversy arises out of a contractual transaction, the nature of prayer does not require adjudication of any disputed fact.

19. Even if it is accepted that in stead of lifting of 68 M.T. of iron scrap, the petitioner lifted 89 M.T., the respondent could have adjusted the price of 68 M.T. + 21 M.T. i.e. total 89 M.T. out of the total price amount of 339 M.T. deposited by the petitioner in advance. There is no justification for withholding the balance amount. Pendency of criminal case only cannot be said to be a valid ground for withholding the excess amount for such a long period i.e. more than five years.

20. In view of the above discussion, this writ petition is disposed of directing the respondent-ECL to release the balance amount to the petitioner after adjusting the price

of 68 M.T. and withholding the price amount of disputed lifting of 21 M.T. within four weeks from the date of receipt/production of a copy of this order.

21. However, fate of the withheld amount equal to the price of disputed lifting of 21 M.T. shall be dependent on the final outcome of the related criminal proceeding.

22. If the balance amount is not released within the aforesaid period, the petitioner shall be entitled to get interest @ 10% per annum till the date of realisation. There is no order as to cost.