

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No.1452 of 2021
With
I.A. No.6036 of 2021

M/s. S.G. Projects Ltd.,
through its Director, Mr. Ajay Singh, Kolkata Petitioner.

-Versus-

1. Bharat Coking Coal Limited, through its Chairman-cum-Managing Director, Koyla Bhawan, Koyla Nagar, Dhanbad.
2. General Manager, Contract Management Cell, Bharat Coking Coal Limited, Koyla Bhawan, Koyla Nagar, Dhanbad.

..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner :	Ms. Aprajita Bhardwaj, Advocate
For the Respondents:	Mr. Indrajit Sinha, Advocate
	Mr. Vipul Poddar, Advocate

Order No.04

Date: 01.12.2021

This case is taken up through video conferencing.

Earlier the joint venture being SGPL TCPL BP (JV) filed a writ petition being W.P.(C) No.4218 of 2019 as well as separate writ petitions [W.P.(C) no.4771 of 2019 by M/s. TCPL, W.P.(C) No.4217 of 2019 by M/s. SGPL and W.P.(C) No.4270 by M/s. Balaji Projects] were also filed as individual entities for quashing the order dated 31st July, 2019 passed by the General Manager, Contract Management Cell, BCCL, debarring SGPL TCPL BP (JV) and its constituent members, namely, S.G. Projects Ltd., Tribhuwan Carriers Pvt. Ltd. & Balaji Projects from participating in future bids in all tenders of BCCL in individual capacity or as joint venture for a period of five years from the date of issue of the said order and also forfeiting the EMD of Rs.50.00 lacs submitted as bid security by SGPL TCPL BP (JV). The aforesaid writ petitions were disposed of by learned Single Bench of this Court vide order dated 19th February, 2020. The operative part of the said order reads as under:-

36. In view of the aforesaid facts and circumstances of the case, the present batch of writ petitions are decided as follows:-

- (i) ***The writ petitions being W.P.(C) No.4771 of 2019 filed by M/s. Tribhuvan Carrier Pvt. Ltd. and W.P.(C) No.4218 of 2019 filed by M/s. SGPL TCPL BP (JV) are hereby dismissed being devoid of any merit. I.A. No.7671 of 2019 in W.P.(C) No.4218 of 2019 is also dismissed.***
- (ii) ***W.P.(C) No.4217 of 2019 filed by S.G. Projects Limited and W.P.(C) No.4270 of 2019 filed by M/s. Balaji Projects are allowed. The impugned orders dated 31st July, 2019 having been passed by the respondent no.2 in violation of the principle of natural justice are hereby quashed. I.A. No.7774***

of 2019 in W.P.(C) No.4217 of 2019 and I.A. No.7793 of 2019 in W.P.(C) No.4270 of 2019 are disposed of.

- (iii) *It, however, goes without saying that the respondent-BCCL is at liberty to issue show cause notice(s) to the petitioners-SGPL and BP for taking appropriate action against them and to pass reasoned order(s) in accordance with law."*

In compliance of the aforesaid order dated 19th February, 2020, a show cause notice was issued to the petitioner vide letter under ref. no.208 dated 18th June, 2020 calling upon it as to why action as per clause 6 of the Integrity Pact of the tender document for referred NIT should not be taken to debar it [the constituent member of SGPL TCPL BP (JV)] from participating in future bids for a minimum period of five years. By way of reminder, second show cause notice was issued to the petitioner on 22nd July, 2020 directing it to submit its reply within 21 days. Third show cause notice dated 8th September, 2020 was also issued to the petitioner, directing to file reply by 13th September, 2020 failing which penal action would be taken. Pursuant to the said show cause notice, the petitioner submitted its reply vide letter dated 13th October, 2020 before the respondent no.2. Thereafter, vide order as contained in letter under ref. no.58 dated 3rd February, 2021 issued by the respondent no.2, the petitioner has been debarred from participating in future bids in all tenders of BCCL in individual capacity or as a joint venture for a period of five years from the date of issuance of the said order.

In the meantime, aggrieved with the order dated 19th February, 2020 passed by learned Single Bench of this Court, Tribhuwan Carrier Private Ltd. and M/s. SGPL TCPL BP (JV) had preferred letters patent appeals being L.P.A. No.150 of 2020 and L.P.A. No.197 of 2020, respectively, which were allowed by the learned Division Bench of this Court vide judgment 26th July, 2021.

Ms. Aprajita Bhardwaj, learned counsel for the petitioner, submits that the issue raised in the present writ petition is covered by the judgment dated 26th July, 2021 rendered by the learned Division Bench of this Court in L.P.A. No.150 of 2020 with L.P.A. No.197 of 2020 and hence it may be disposed of in terms with the aforesaid judgment.

Mr. Indrajit Sinha, learned counsel for the respondents, submits that the respondent- Bharat Coking Coal Limited has preferred two S.L.Ps. before the Hon'ble Supreme Court against the aforesaid judgment dated 26th July, 2021 bearing Diary nos.23901- 2021 and 23865- 2021.

On this, Ms. Aprajita Bhardwaj, learned counsel for the petitioner, submits that as per online information available in the website of the Hon'ble Supreme Court, both the aforesaid S.L.Ps. are still lying in defect.

Under the said circumstances, learned counsel for the respondents agrees that the present writ petition may be disposed of in terms with the judgment dated 26th July, 2021 passed by the learned Division Bench in the aforesaid L.P.As. The relevant part of the said judgment reads as under:-

"50. For the aforesaid reasons, we hold that the action of BCCL in forfeiting EMD and imposing penalty of debarment for five years in all future contracts is arbitrary, irrational and illegal.

55. The stand of BCCL is very clear in the show cause notice dated 30.10.2018 that the appellant no. 1 violated Clause-4 of "Instructions To Bidders" and the appellants colluded with each other in submitting two separate bids for identical price. In the show cause reply, TCPL has pointed out that Clause-4 of "Instructions to Bidders" which is a complete Code provides that disqualification is the only consequence if a bidder has submitted more than one bid. It is further stated that submission of bid by TCPL was a bonafide mistake necessitated by the fact that Joint Venture could not be crystallized. But before that, TCPL participated in the deliberations of Joint Venture for finalising a fair and reasonable bid price for executing the work and the same price was quoted by it in its individual capacity. It was also pointed out that the bid price is only an indicative value which is subject to changes in reverse e-Auction and, therefore, an inference about collusion to affect transparency, fairness and progress of the bid process cannot be inferred merely because two bids of the same value were submitted. TCPL has also raised a question of jurisdiction of BCCL to issue show cause notice beyond the bid validity date.

56. We find that BCCL did not advert to the stand taken by the appellants in their reply to show cause notice and there is no reason indicated in the order dated 31.07.2019 why action under two clauses of the Integrity Pact – forfeiting EMD and blacklisting – has been taken. It was more so necessary because except disqualification of the bids the tender document does not stipulate any action for violating one bidder one bid condition under Clause-4 of "Instructions To Bidders", and assuming that non participation of TCPL, SGPL(JV) and other bidders in reverse bidding is a circumstance pointing at bid rigging no action, as in case of others, could have been taken against the appellants at this stage because the issue is pending before the Competition Commission. The employer has powers under Clause-6 of the Integrity Pact to resort to any one or more than one or all punitive measures simultaneously, but existence of such power would not justify composite action of forfeiture of EMD and blacklisting without giving specific reasons for such action. The rules of natural justice require that the employer should have indicated proposal to impose both actions and the final order must give specific reasons for resorting

to more than one punitive action under Clause-6 of the Integrity Pact; and it would not satisfy the requirement in law that by merely saying "in view of seriousness of the matter" punitive action is taken by the employer. The order dated 31.07.2019 has been criticized on the ground that it refers to additional grounds for forfeiture of EMD and debarment. We are of the opinion that the decision maker can rely upon subsequent materials to support its decision when larger public interest is involved. It is in the public interest that auction of natural resources or any national wealth should be conducted in a transparent manner and every possibility of collusion, bid rigging, unfair practices etc. must be plugged in. But there was no subsequent material rather the Tender Committee did not find concrete evidence of bid rigging. It seems that an anxious employer with a view to support its own decision has indicated few more grounds which were not indicated in the show cause notice dated 30.10.2018, without any subsequent material.

57. For the reasons discussed herein above, the order dated 19.02.2020 passed by the learned writ Court cannot be supported in law and, accordingly, is set aside.

58. Accordingly, LPA No. 150 of 2020 and LPA No. 197 of 2020 are allowed and consequently, WP(C) No. 4771 of 2019 and WP(C) No. 4218 of 2019 stand allowed."

Keeping in view the submissions of learned counsel for the parties that the issue raised in the present writ petition is covered by the aforesaid judgment dated 26th July, 2021, the present writ petition is also disposed of in terms thereof. Accordingly, the impugned order dated 3rd February, 2021 (Annexure- 22 of the writ petition) passed by the respondent no.2 debarring the petitioner from participating in future bids in all tenders of BCCL in individual capacity or as a joint venture for a period of five years from the date of issuance of the said order is hereby quashed and set aside.

I.A. No.6036 of 2021 is also disposed of.

Sanjay/

(Rajesh Shankar, J.)