SUPREME COURT OF INDIA

IVT (IB Valley Transport),VLT (Vijay Laxmi Pvt. Ltd.), CC (Coal Carriers) (JV)

Vs.

Chairman-Cum-Managing Director Mahanadi Coalfields Ltd.

C.A.No.9394 of 2014

(J.Chelameswar and A.K.Sikri JJ.)

10.10.2014

ORDER

A.K. SIKRI, J.

1. Leave granted.

2. In this appeal, the appellant is challenging the validity of orders dated November 21, 2013 passed by the High Court of Orissa in Writ Petition (Civil) No. 22022 of 2013 whereby the High Court has dismissed the writ petition on the ground that the dispute between the parties arises out of a commercial contract and, therefore, remedy for adjudication thereof by way of writ petition under Article 226 of the Constitution is not available. The High Court has, thus, observed that such a dispute has to be settled either in a suit or in other proceedings in accordance with the contract.

3. The brief facts which are discernible from the record are that the respondents floated a tender, i.e. NIT No. MCL/SBP/GM(TC)/ NIT-514 (hereinafter referred to as 'NIT-514') dated November 18-19, 2008 for transportation of surface miner coal fact to Kanika Railway Siding and transportation of surface miner reject to face to surface miner reject dump of Kulda OCP, Basundhara Garjanbahal Area. The period of contract for the said NIT was for three years and the estimated value of the work was ?63,68,45,000/- (rupees sixty three crores sixty eight lacs and forty five thousand only). The appellant also submitted its bid and, on evaluation thereof, emerged as the

Lowest Tenderer (L-1). This resulted in the issuance of the letter of acceptance dated March 20, 2009 which was served upon the appellant and the first work order was issued on May 18, 2009. As per the appellant, it is only after 22 months from the date of letter of acceptance i.e. on June 7, 2011, the site was handed over to the appellant. As such the appellant started execution of the contract with effect from June 07, 2011. The contract was performed upto June 06, 2014.

4. A dispute arose between the parties which is about the rate at which payment of revised wages is to be made by the appellant to all contract workers engaged in the mining activities. It originated under the circumstances mentioned hereinafter.

5. It so happened in the Work Order dated May 18, 2009, working details were described pursuant to NIT-514. Clause 37.06 of NIT-514 contained Wage Compensation Formula, which will be referred to by us later at the appropriate stage. What is relevant to point out at this stage is that on September 28, 2012, the Central Government issued another notification for the revision of the Minimum Wages in Mines and Establishment falling under the Government of India. It prescribed the minimum wages for workers working above the ground for the categories of unskilled as ?186/-, semi- skilled as ?231/-, skilled/clerical as ?279/- and highly skilled as ?324/-. According to the appellant, it has been paying the workers wages at the aforesaid revised rates with effect from January 01, 2013.

6. While the appellant was executing the said work, the first communication in regard to the payment of revised wages was made by the respondents through a letter dated June 21-22, 2013 directing therein that the appellant shall pay to all contract workers engaged in the mining activities, pursuant to NIT-514, the revised wages as per the recommendation of the High Power Committee of Coal India Limited contained in its Circular No. CIL/C-5B/ JBCCI/HPC/566 dated February 18, 2013. In this letter, the respondents had categorically stated that there is no provision of Wage Escalation/Compensation Formula in the contract awarded to the appellant. However, if the appellant had any reservation/ grievance in paying the revised wages to the workers, the appellant ought to submit a written representation.

7. In reply to the aforesaid letter, the appellant, vide letter dated June 29, 2013, intimated the respondents that it is ready and willing to accept the rate derived considering the Wage Compensation Formula as per the clause inserted in the contract

of other NITs, the work of which is in progress in the same project (Kulda OCP), even though there is no provision of Wages Escalation/Compensation Formula in the contract awarded to the appellant. The appellant started paying the revised wages to the contract workers as per the directions of the respondents vide letter dated June 21-22, 2013.

8. While the things stood at that stage, the respondents issued orders dated August 06, 2013 and called upon the appellant to pay wages at the rate of ?279/- (basic wage ?180/- plus ?99/- as variable dearness allowance) as base rate of minimum wages. In this communication, the aforesaid basic wage is arrived at by taking aid of the Government Notification dated November 28, 2012 which became effective from October 01, 2012. According to the appellant, the aforesaid mode of calculating the base rate of minimum wage by taking into consideration rates prescribed in Government Notification dated November 28, 2012 is per se erroneous inasmuch as the said Notification became effective only from October 01, 2012, whereas, as per Clause 37.06 of NIT-514, the rate of minimum wages which has to be taken into consideration is as per Central Government's Notification corresponding to the last date of submission of tender. It is the submission of the appellant that since the last date of submission of tender was December 23, 2008, the Government Notification which was applicable as on that date had to be taken into consideration to arrive at base minimum wage and as per this, ?111/- per day was the minimum wage for skilled category of workers in terms of Central Government Notification dated October 27, 2008. The appellant, accordingly, made the representation dated August 29, 2013 objecting to the basic wage as calculated by the respondents in its letter dated August 06, 2013 and intimating its willingness to accept the rate derived considering the Wage Compensation Formula as per the aforesaid clause in NIT-514. Since no reply was received, the appellant filed the aforesaid writ petition, fate whereof has already been mentioned above.

9. When the special leave petition came up for hearing on January 10, 2014, following order was passed:

10. Issue notice returnable in two weeks as we want to remit the case to a particular forum after hearing the other side. Dasti, in addition, is permitted. The respondents have filed the counter affidavit wherein it is, inter alia, pleaded that the appellant had not followed the general terms and conditions of Clause 12, which provides for a

dispute resolution mechanism. This clause states that if any dispute takes place between the contractor and the department, effort shall be made to settle the disputes at company level. Further, this clause states that the contractor should make request in writing to the Engineer Incharge for settlement of such disputes/ claim within 30 days of arising of cause of the dispute/claim, failing which no dispute/claim of the contractor shall be entertained by the respondents. The respondents have also sought to justify the rates of minimum wage for skilled workers, as derived in their communication from August 06, 2013, in respect of which decision has been taken by the Coal India Limited, which is the parent company of Mahanadi Coal Fields Limited (respondents herein). However, we are not concerned with the merits of the dispute and we are only to decide the appropriate forum where the dispute is to be decided and hence, we are not taking note of those submissions made on the basis of which the respondents justify the contents of their communication dated August 06, 2013.

11. From the aforesaid narration of facts, it becomes clear that Clause 12 of the General Terms and Conditions provides for a mechanism of dispute resolution before resorting to the legal remedies. This clause specifically states that it is incumbent upon the contractor to avoid litigation and disputes during the course of execution. If any dispute takes place between the contractor and the department, effort shall be made first to settle the disputes at the company level. Further, this clause states that the contractors should make request in writing to the Engineer Incharge for settlement of such dispute/claim within 30 days of arising of cause of dispute/claim. Further, as per Section 8 of NIT-514, the contractor can avail second resolve mechanism technique, i.e. Independent External Monitor (IEM) to resolve the dispute. It was to be resorted to in the first instance before approaching the Court. There is no quarrel between the parties in respect thereof. However, issues are joined on the utilization of the said mechanism. As per the appellant, after receiving the offending Office Order dated August 06, 2013, it had sent communication dated August 29, 2013 requesting therein to revise the aforesaid Office Order to the extent that the rate of minimum wages should be taken as ?101/- per day in respect of ?279/- per day, but no response thereto was received within the period of 30 days. The appellant argues that in this manner it had exhausted the said channel and only thereafter approached the High Court. The respondents maintained that writing of letter dated August 29, 2013 was not in terms of Clause 12.

12. We find some justification in the stand taken by the respondents. No doubt, in its

representation dated August 29, 2013 the appellant stated that the value of Po of Wage Compensation Formula (Clause No. 37.06) has not been incorporated in the above Office Order correctly and the rate of minimum wages as on the last date of submission of tender was December 23, 2008. On this basis, request is made to revise the calculations and communicate the same to the appellant. However, it is not stated that dispute has arisen on that account and it should be resolved in terms of Clause 12. Clause 12 of NIT-514 reads as under:

13. It is incumbent upon the contractor to avoid litigation and disputes during the course of execution. However, if a dispute takes place between the contractor and the department, efforts shall be made first to settle the disputes at the company level.

14. The contractor should make request in writing to the Engineer I/C for settlement of such disputes/ claims within 30 days arising of the cause of dispute/claim failing which no dispute/claim of the contractor shall be entertained by the company.

15. If differences still persists, the settlement of the disputes with Govt. agencies shall be dealt with as per guidelines issued by Ministry of Finance, Govt. of India in this regard. In case of parties other than Govt. agencies, the redressal of the dispute may be sought in the Court of Law within the jurisdiction of District Court/High Court where the work will be executed. It is manifest that representation dated August 29, 2013 in no way attempts to invoke the mechanism provided in Clause 12 for the settlement of dispute. The respondents in the counter affidavit have categorically stated that vide letter dated June 28, 2013, the Staff Officer (Mining) BG had given the details of methodolgy for calculation of wage compensation and, therefore, clarification was given.

16. It is clear from the above that a dispute has arisen about the methodology for calculation of wage compensation. In such circumstance, as per Clause 12, the appellant was supposed to write to the Engineer Incharge for resolving the dispute. Pertinently, communication dated August 29, 2013 is addressed to the Staff Officer (Mining). Therefore, by no stretch of imagination, it can be said that the appellant availed the departmental remedy provided under Clause 12, before filing the writ petition.

17. Having regard to the aforesaid facts, we dispose of this appeal by directing the

appellant to exhaust the remedy under Clause 12 by requesting the Engineer Incharge to resolve the dispute before taking recourse to any suitable legal remedy.

No costs.