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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 251/2001.

PETITIONERS

- : 1. M/s. Coal Movers, A partnership Firm having its office at 126, Transport Nagar, Korba, C.G.
2. Rajesh Kumar Murarka s/o Shri N.M.Murarka r/o Main road, Korba, C.G.
3. Rajendra Kumar Agrawal, s/o Shri Satyanarayan Agrawal, aged about 42 years, r/o Sarvamangala Road, Korba, C.G.

W.P. No. 251/01
Petitioner: Shri. A.K. Murarka
Respondent: S.E.C.L.
Dated: 02.12.01

V E R S U S

RESPONDENT

- : South Eastern Coalfields Limited, (S.E.C.L.) A Subsidiary of Coal India Limited, through the General Manager, (CMC) S.E.C.L. Seepat Road, Bilaspur, C.G.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

HIGH COURT OF CHHATTISGARH: BILASPUR

(SB: HON'BLE THE CHIEF JUSTICE Mr. W.A. SHISHAK)

WRIT PETITION NO.251/2001

M/s. Coal Movers and others

Vs

South Eastern Coalfields Ltd.

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Shri Sunil Sinha, learned counsel for the petitioners.

Shri Dharendra Mishra, with Shri P.S. Koshy, learned counsel for the respondent.

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ORAL ORDER

(Passed on 29/6/2001)

The petitioners are seeking a direction from this Court to be issued to the respondent to open the bid sheet of the petitioner no.1 in relation to notice inviting tender no.1761 and also another notice inviting tender no.1763 both dated 3/1/2001. Another relief ~~that~~ ^{that} sought is to declare ~~that~~ the experience of the petitioners nos. 2 and 3 as the experience of the petitioner no.1.

2) The petitioner no.1 submitted tender in response to tender notice dated 3/1/2001 for the purpose of hiring of payloader for loading coal into wagons at Gevra Road Railway siding with minimum 13,670 tonnes per day including levelling the coal loaded to avoid over/under loading. The experience criteria stated in the NIT ^{may} be quoted

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"Tender must have experience in similar nature of work in a single contract of Rs.30.00 lakhs ^{executed} during any of the preceeding three years and have executed total work of Rs.60.00 lakhs during the past three years".

3) Another tender notice vide NIT no.1763 dated 3/1/2001 is as regards transportation of coal from Gevra CHP/FBs (S1/C1 bunkers) to Junadih siding with minimum 3600 tonnes per day including opening of bunker chute and cleaning spillage coal below the bunker, lead 1 Km. approximate. Para three of said bid is as regards experience criteria which may be extracted;

"Tender must have experience in similar nature of work in a single contract of Rs.30.00 lakhs executed during any of the preceeding three years and have executed total work of Rs.60.00 lakhs during the past three years".

4) The petitioner no.1 submitted tenders in respect of the tender notice referred to above. The first part of the NIT is as regards the experience document and the second part is as regards bid sheet. It may be stated that unless one fulfills the first condition i.e., experience condition, the second containing the bid sheet will not be opened. By letter dated 14/2/2001 the petitioner was advised to attend the price bid opening and all the tenderers were directed to submit documents as required by this letter. The petitioner no.1 was asked to submit the following documents namely;

- 1) document in support of past experience criteria as per NIT in the name of the firm;
- 2) Income Tax clearance certificate in the name of the firm;
- 3) Partnership firm registration certificate; and
- 4) Road Tax payment certificates of payloaders

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with Insurance.

In response to the above letter, the petitioner no.1 replied to respondent on 17/2/2001. Para no.1 of the said reply states that documents in support of the past experience of the partners of the firm have already been enclosed with the tender bid. It is, further, contended in the said letter that the experience of the partners of the firm is lawfully regarded as the experience of the firm in accordance with the provisions of law. It is also further stated in the said reply that since the firm is newly formed at free will of the partners as specified in the deed of partnership, furnished with the tender bid. In para no.3, it is stated "Deed of partnership have been executed and submitted". The registration is in process and shall be submitted at appropriate time and when any legality arises"

5) On receipt of the reply from the petitioner no.1, the respondent on examination of the documents submitted before it, was of the view that the petitioner no.1 had not fulfilled the conditions required by the respondent. Accordingly, the bid sheet of the petitioner no.1 was not opened.

6) Mr. Sunil Sinha, learned counsel for the petitioner contends that since the partners of the firm namely petitioners nos. 2 and 3 have required certificates/experience required by the respondent, there was no reasonable ground to refuse to open the bid sheet of the petitioner. Learned counsel

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for the petitioner refers^{ml} to 1999 Arb.W.L.J. 606 of Andhra Pradesh High Court and submits that^{ml} tender by a partnership firm, the experience of managing partner or any partner will be taken to be the experience of the firm, and therefore, the tender of the firm cannot be rejected on that ground. At this stage it may be stated that tender was submitted by the petitioner no.1. The partners namely petitioners nos. 2 and 3 have been brought only before this Court..

7) Return has been filed on behalf of the respondent. Shri Dhirendra Mishra, learned counsel appearing with Shri P.S. Koshy on behalf of the respondent submits that the present tenderer did not comply with the requirements of the NIT as explained to them in the letter No.SECL/BSP/CMC/1873 dated 14/2/2001. It is contended in para 5.8 of the return that the petitioners failed to produce the requisite document before opening of Part-II. It is contended on behalf of the respondent that the experience required by NIT is the experience of the tenderer i.e., M/s. Coal Movers and not in the name of individual partners of the firm.

8) Mr. Dhirendra Mishra submits that the partners have submitted tenders as a firm. It is further submitted by Mr. Mishra that the tender in the bid sheet^{is} clearly on behalf of the firm and not on behalf of the individuals. The submission of learned counsel for the respondent is that when NIT was issued on 3/1/2001, the

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present firm was not even born ^{yet}. In fact the firm came to be constituted only on 4/2/1001. It is contended by Mr. Mishra, learned counsel for the respondent that the firm ought to have been a registered firm while submitting the tender papers. However, admittedly at the relevant time, the firm has not come into existence apart-from the fact that it is ^{an} ~~only~~ unregistered firm till date.

9) Shri Sunil Sinha, learned counsel for the petitioners, on the other hand, submits that there is no law which would require that a firm should be a registered firm in order to submit tender as in the present case. As against his submission, Shri Mishra, learned counsel for the respondent submits that in public interest and in order to safe-guard the business of the respondent, it is absolutely necessary that the respondent deals with an entity i.e., a firm which can sue and can be sued on the firm name. It wouldnot have been possible to do so inasmuch as the firm is not a registered firm. Mr. Mishra submits that once the work is allotted, a valid contract has to be entered into with the firm and if necessary the respondent would see to it that the contract is entered into between the respondent and another registered firm in order to ensure the business of the respondent. Another submission of Mr. Mishra is that it is a matter of policy on the part of the respondent as regards the conditions ~~of presenting~~ and such policy is to be issued by the respondent alone. It is not a case of the writ petitioners that the

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respondent has in any manner acted malafide or arbitrarily or that there is unreasonableness and illegality in the action taken by the respondent. In this view of the matter it is submitted that the petitioner has no locus-standi to call for interference with the decision of the Competent Authority.

10) Mr. Sunil Sinha, learned counsel for the petitioners submits that the petitioners may be allowed to submit their registration documents and upon such submission, the bid sheet of the petitioner no.1 may also be opened. In my view in the facts and circumstances that I have stated above, it would not be proper for this Court to accept this submission.

11) Looking to the entire facts and circumstances of the present case, I am of the view that the petitioner has not been able to comply with the requirements of the NIT. Even otherwise, it will be unsafe on the part of the respondent to have any contract with an unregistered firm in larger public interest.

12) In the premises aforesaid, I am not inclined to interfere with the action of the respondent in the present case. Accordingly this petition is dismissed. However, I make no order as to costs. Interim order passed on 28/2/2001 is vacated.

Sd/-
Chief Justice