

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1561 OF 2009

INDIAN EXPLOSIVES LTD.
& ANR. . . . APPELLANT(S)

VERSUS

COAL INDIA LTD. & ORS. . . . RESPONDENT(S)

WITH

CIVIL APPEAL NO.1563 OF 2009

CIVIL APPEAL NO.1562 OF 2009

ORDER

1. The appellants in the three appeals who had approached the High Court under Article 226 of the Constitution of India have been non-suited on the ground that the contract entered into by them with the Coal India Ltd. for supply of explosives was in the realm of a private contract involving no public law element and, hence, not amenable to scrutiny in the exercise of jurisdiction under Article 226 of the Constitution.

Aggrieved these appeals have been filed.

2. We have perused the order of the High Court under challenge and have heard the learned counsels for the parties.

3. The grievance raised by the appellants, as writ petitioners, which have been refused an adjudication on merits, is that a supplementary clause in the contract/agreement which has the effect of novation of the contract has been unilaterally inserted therein by the respondent - Coal India Ltd. It was urged that the said supplementary clause clearly nullifies the clear understanding and terms of the original contract contained in Clause XV. Clause XV of the Original Contract and the supplementary clause inserted are in the following terms:

"CLAUSE XV - PERFORMANCE

1(A). Review of your product performance will be made on the

basis of fragmentation/muck piling costs per Cu.M. and Capacity improvement achieved for the total system. In the event of your Product not providing satisfactory results mutually agreed upon, proportionate reduction in prices for the Products which failed will be made.

You are to provide optimum blast design for each mine benchwise and render all related including provisioning of vibration monitoring.

In the event of failure of Blast, the cost of Explosives used in the Blast, and all other incidental charges will be recovered from you.

B) If there is a complaint for low powder factor, you must be penalized/ supply restricted for continuous poor performance. The management of the respective subsidiary companies, would then divert the balance quantity (supposed to be allotted to you and there is a product complaint for low powder factor etc. against your past supplies) to the other manufacturers (on pro-rata basis) whose products are having better powder factor. This diversion of quantities due to poor product performance should be made with the approval of D(T) of concerned subsidiary

companies.

2. The limits of Velocity of Detonation, Density and Cap/Booster Sensitivity which will govern at the time of Random Testing of the products ordered on you are indicated below:-

Sl.	Particulars of Test to be conducted	Limit of Ranges	Emulsion	Slurry
1.	Velocity of Detonation (m/sec.)	Fresh Sample After sleepage in water (24 hrs.)	4000+/- 500 4000+/- 500	800+/- 500 800+/- 500
2.	Density (gm/cc)	Fresh Sample After sleepage in water (24 hrs.)	1.15+/- 0.05 1.15+/- 0.05	1.15+/- 0.10 1.15+/- 0.10

to above. For every 1% (one per cent) or part thereof, decrease in Powder Factor of Coal/OB compared to the minimum yield as above, commensurate deduction of the cost of explosives and accessories shall be made. Such computation for deduction shall be made on monthly basis."

4. The difference between Clause XV as per the original agreement and the supplementary clause inserted is that while under the original agreement the quality/effectiveness of the product supplied was to be tested by means of mutual negotiations and discussions in the event of a complaint, under the supplementary clause, the powder factor which was determinative of the quality of the product was specified.

5. Coal India Limited is a Government Company and the majority shareholding is still with the Government of India. It is the Government of India, who, therefore,

commands a majority in the Board of Directors. Being a Government Company it is amenable to Government directions and control and, therefore, has been held by this Court in *Coal India Ltd. vs. Saroj Kumar Mishra*¹ to be a State within the meaning of Article 12 of the Constitution of India.

6. This Court has consistently taken the view that a private contract entered by the State, so long as it disclose a public law element would have to meet the test of Article 14 of the Constitution of India so far as its terms and conditions and application thereof are concerned. In view of the Corporate structure (shareholdings) of Coal India Limited and the decision of this Court in *Coal India Ltd. (supra)*, we do not see how the fairness of the actions

1 (2007) 9 SCC 625

of Coal India Limited called into question in the writ petitions would not be liable to be tested on the anvil of Article 14 of the Constitution of India if we are to hold that the unilateral insertion of the supplementary clause in the contract between the parties amounted to a novation of the contract and the changed terms have been given effect to the prejudice of the appellant.

7. Having perused Clause XV of the Original agreement and the Supplementary Clause (extracted above) we are inclined to hold that the Supplementary Clause clearly travels beyond the intent of the parties as expressed in the original agreement. The said clause has been thrust upon the contractor(s) and has been worked, as subsequent events discloses, to his/its detriment. The State cannot be expected to

conduct its affairs even in commercial matters in a manner which expressly negates the mandate of Article 14 of the Constitution. In the present case, not only that, the supplementary clause has been given retrospective effect from the date of the original agreement.

8. It is, therefore, our considered view that the supplementary clause constitutes a novation of the contract which could not have been done unilaterally and such unilateral action on the part of the Coal India Limited violates Article 14 of the Constitution of India and, therefore, liable to correction in exercise of the writ jurisdiction. No question of appreciation of evidence can and does arise to answer the above question which to us is self-evident from a mere examination of the two clauses in question. If the action of

the State is *per se* arbitrary as we are inclined to hold in the present case we do not think it to be in consonance with the cause of justice to relegate the aggrieved party to an alternative remedy as has been done by the High Court. To secure justice is the ultimate aim of all principle of law and we must hold accordingly.

9. We therefore set aside the order of the High Court and direct that all consequential benefits flowing from the present order will now be conferred on the appellants without any delay. We, however, make it clear that in the event the consequential benefits under the present order results in grant of any refund, such refund will be made forthwith but without payment of any interest.

10. The appeals consequently are allowed in terms of the directions as aforesaid.

.....,J.
(RANJAN GOGOI)

.....,J.
(NAVIN SINHA)

NEW DELHI
NOVEMBER 02, 2017

ITEM NO.104

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 02-11-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For parties:

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Mrs. Sarla Chandra, AOR

Coal India Ltd.

Mr. Mathai M. Paikaday, Sr. Adv.
Mr. Sunil Roy, AOR

Ms. Aishwarya Bhati, AOR
Mr. T. Gopal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed
order.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]