

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 7073 of 2013

Aeros Sales a Proprietorship Firm having its works at Plot No.HF-14 Sector-4 City Centre, Bokaro through its Proprietor Kusum Kumari wife of Shri Diwakar Dubey Resident of Plot No.HF-14, Sector-4, City Centre, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

..... Petitioner

Versus

1.Management of Bokaro Steel Plant through its Chief Executive Officer having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

2.Executive Director, Purchase having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

3.General Manager, Purchase having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

4.D.G.M., Purchase having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

5.Manager, Purchase having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

..... Respondents

With

W.P. (C) No. 7726 of 2013

M/s Techno- Weld Services, having its office at 234, Co-operative Colony, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro through its authorized signatory-Tapati Mukherjee Daughter of Late Vijoy Banerjee, resident of 234, Co-operative Colony, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

..... Petitioner

Versus

1.M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

2. Chief Executive Officer, M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

3. Executive Director, Material Management Division, M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

4.General Manager, Material Management Division, M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O -Bokaro Steel City, District –Bokaro.

5. Dy. General Manager, Material Management Division, M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

6. Assistant General Manager (PUR-A/C), M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

7. Manager (Purchase Group-37), M/s Steel Authority of India Limited, Bokaro Steel Plant, Bokaro Steel City, P.O and P.S-Bokaro Steel City, District –Bokaro.

..... Respondents

with

W.P. (C) No. 1705 of 2015

Aeros Sales a Proprietorship Firm having its works at Plot No.HF-14 Sector-4, City Centre, Bokaro through its Proprietor Kusum Kumari wife of Shri Diwakar Dubey Resident of Plot No.HF-14, Sector-4, City Centre, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

..... Petitioner

Versus

1. The Management of Bokaro Steel Plant through its Chief Executive Officer having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

2. The General Manager, (MM) having its office at Administrative Building, Bokaro Steel City, P.O + P.S-Bokaro Steel City, District –Bokaro.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner	: Mr. Jay Shanker Tiwary, Advocate : Mr. Krishna Kumar, Advocate : Mr. Shubham Mayank, Advocate : Mr. Soumitra Borai, Advocate
For the Resp.-SAIL	: Mr. Indrajit Sinha, Advocate : Mr. Vipul Poddar, Advocate (W.P.(C) no.7073/13 and 7726/13) : Mr. Deepankar, A.C to Mr. Rajiv Ranjan, Sr. Advocate (W.P.(C) no.1705/2015)

06/Dated: 14th November, 2022

All the three writ petitions since having the similar relief sought for, therefore, all have been tagged together for analogous hearing and accordingly the matter has been heard together.

2. These writ petitions have been filed under Article 226 of the Constitution of India seeking therein for passing an order, the decision as contained in letter no.Ref.P37/RCV/AS/-04 (W.P.(C) No.7073/2013) and letter no.Ref.P37/RCV/TWS/-08 (W.P.(C) No.7726/2013) dated 26.10.2013 whereby and whereunder the writ petitioners have been directed to deposit an amount of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013), failing which, the same will be deducted from the pending bills. Further the petitioner (W.P.(C) No.1705 of 2015) has prayed for quashing of the order dated 11th/13th April, 2015 by which the petitioner's firm has been suspended and blocked in the SAP system without serving any notice.

3. The ground taken by the writ petitioners in questioning the said recovery order is that before taking such decision no notice has been issued to the writ petitioners and as such the writ petitioners are not in a position to substantiate with respect to their defence that such an amount which has been sought to be recovered is not actually fit to be recovered.

4. Mr. Jay Shanker Tiwary, learned counsel appearing for the petitioner has submitted by referring to Annexure-3 dated 26.10.2013 whereby and whereunder stipulation has been made to the effect by a request to deposit the differential amount of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) through Demand Draft in favour of SAIL/Bokaro Steel Plant within 15 days of the date of issue of this letter under intimation to the signatory of the letter, failing which, the said amount shall be recovered from the pending bills. System generated recovery advices are also to be enclosed therewith.

Learned counsel by referring to the content to the said letter has submitted that save and except that communication, no notice has been issued prior to issuance of the aforesaid communication. It has further been contended on behalf of the writ petitioners that such an amount is not fit to be recovered since there is no laches on the part of the petitioners and if a notice would have been issued before issuance of Annexure-3 then the writ petitioners would have been in a position to defend himself showing their case which is not of the recovery of the aforesaid amount.

Learned counsel for the petitioners has further submitted by referring the writ petition wherein specific plea has been taken at paragraph 13 of the writ petition (W.P.(C) No.7073/2013), wherein, it has specifically been stated that before issuance of recovery notice of the said amount no notice or proceeding has ever been initiated.

5. Learned counsel for the petitioners in the backdrop of the aforesaid fact has submitted that it is a fit case where the decision of authority requires reconsideration after providing an opportunity of hearing to the writ petitioner so as to pass a fresh order.

6. The respondent-Bokaro Steel Limited has filed counter affidavit taking the stand *inter alia* therein that the amount of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) are fit to be recovered and that is the reason the recovery orders have been passed with stipulation made therein that if such amount will not be deposited the same will be deducted from the pending bills of the writ petitioner.

Learned counsel for the respondent by referring to Annexure-3 (W.P.(C) No.7073 of 2013) and Annexure-2 (W.P.(C) No.7726 of 2013) dated 26.10.2013 has submitted that if the content of the said communication will be seen it construed to be a notice since there is specific stipulation made therein to the effect that notice of recovery to the tune of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) and as such it is incorrect on the part of the petitioners to take the ground of non- issuance of notice prior to issuance of the order of recovery dated 26.10.2013.

7. Learned counsel for the respondent has submitted that since no counter affidavit has been filed in W.P.(C) No.1705 of 2015 and as such the counter affidavit filed in W.P.(C) No.7073 of 2013 and W.P.(C) No.7726 of 2013 may be considered in this case also.

8. This Court has heard learned counsel for the parties and has gone across the pleading made in the affidavits filed on behalf of the respective parties.

The writ petitioners being aggrieved with the decision of the authority taken as in the communication dated 26.10.2013 with a stipulation made therein with a direction upon the writ petitioner for recovery of aforesaid amount within the period of 15 days, failing which, the same amount will be deducted from the pending bills.

9. The writ petitioners being aggrieved with the said decision have filed the instant writ petitions by invoking the extraordinary jurisdiction conferred to this Court under Article 226 of the Constitution of India by taking the ground that before issuance of the communication dated 26.10.2013 no notice have ever been issued upon the writ petitioners as to why Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) are fit to be recovered.

10. While on the other hand, learned counsel for the respondents has taken the ground that the communication dated 26.10.2013 is a notice of recovery and as such it is incorrect on the part of the writ petitioners to take such ground for direction of the impugned order.

11. This Court, after appreciating the rival submissions/grounds advanced on behalf of the parties, has considered the communication dated 26.10.2013 wherefrom it is evident that the request has been made to the writ petitioners to deposit the differential amount of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) in favour of Bokaro Steel Plant within 15 days of the issue of this letter and an intimation to the signatory, failing which, the said amount shall be recovered from the pending bills.

The content of the aforesaid communication does not reflect that the same is construed to be a notice in the eye of law, rather, the same is a decision taken by the authority asking the writ petitioner to deposit Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C)

No.7726/2013), failing which, the same will be recovered from the pending bills of the writ petitioner.

Since there is a decision taken by the authority already as contained in the communication dated 26.10.2013, therefore, this Court is not hesitant in holding that before making a pre-mind by the respondent authority casting liability upon the petitioners to deposit an amount of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) a notice was required to be issued to the writ petitioners in order to provide an opportunity to defend themselves as to whether aforesaid amount are fit to be recovered from the petitioners or not. Since the said exercise has not been conducted by the respondent authority, therefore, this Court is of the considered view that there is in violation of principles of natural justice.

12. The position of law is well settled that if any decision is being taken by any authority which has got civil consequence or adverse to the interest of the party concerned, the bare requirement of observance of principles of natural justice is to be followed.

13. Herein, in the instant case, the same having not been followed, therefore, the decision of the authority is required to be quashed by this Court.

14. It has been informed to this Court by making reference of order dated 29.04.2015 passed in W.P.(C) no.7073 of 2013 whereby and whereunder a Co-ordinate Bench, learned Single Judge has restrained the respondent in making recovery of the said amount in pursuance to the communication dated 26.10.2013 and hence submission has been made that the amount has not yet been recovered.

15. This Court after taking into consideration the fact in entirety as also discussion made hereinabove, is of the view that the decision taken by the

authority as contained in communication dated 26.10.2013 regarding recovery of an amount of Rs.52,21,000/- (W.P.(C) No.7073/2013) and Rs.50,97,423/- (W.P.(C) No.7726/2013) requires fresh consideration after providing an opportunity of hearing to the writ petitioner.

16. Accordingly, the matter is remitted before the respondent no.3- General Manager, Purchase to take appropriate decision.

17. The concerned authority will issue notice to the writ petitioner within 15 days from the date of receipt of copy of the order.

The individual writ petitioner will submit its reply within a period of three weeks from the date of receipt of such notice.

The concerned competent authority shall take decision within a further period of four weeks from the date of receipt of such reply by observing such reply in accordance with law.

18. It is made clear that if the response to the notice will not be furnished by the individual writ petitioner, the concerned authority will be at liberty to take decision, in accordance with law.

19. Accordingly, these writ petitions are disposed of.

20. Consequently, pending interlocutory applications, if any, also stand disposed of.

(Sujit Narayan Prasad, J.)

Saket/-

N.A.F.R.