

(2002) 04 JH CK 0057

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1453 of 2002

Akash Coke Industries Pvt.

APPELLANT

Vs

Bharat Coking Coal Limited and Others

RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:

Citation : (2002) 04 JH CK 0057

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Mahesh Tiwari, Rashmi Pradhan and Rita Kumari, for the Appellant; A.K. Mehta and S.P. Roy, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner seeks a direction upon the respondents particularly, Project Officer, Sudamdih coal washer for immediate release of the remaining quantity of slurry i.e. 1757.240 M.T. for which the petitioner had already deposited the price and against that delivery order was issued on 22.9.2001.

2. Short facts of the case are that in pursuance of sale order dated 22.9.2001 the petitioner-Company was allotted 4900 MT. slurry and the petitioner deposited the entire price of the slurry. It is contended by the petitioner that as per allotment order the petitioner had to lift the entire quantity of slurry within 60 days from Sudamdih coal washery. It is further contended that although lifting period was prescribed but the petitioner was not given delivery of slurry. Then a representation to that effect was made to the Chief General Manager (S&M). It is alleged that instead of giving delivery of slurry, to the petitioner, a fresh advertisement of another open sale scheme by railway was issued on 2.11.2001 wherein the rate of slurry has been increased. The petitioner, therefore, claims that the remaining quantity of slurry should be delivered to it as per the rate prescribed in the allotment order and against the value of the slurry already deposited by it.

3. A counter affidavit has been filed by the respondent-BCCL. wherein it is stated that the sale order was issued in favour of the petitioner pursuant to the advertisement made by the respondents for sale of slurry under "Open Sale Scheme". In terms of the advertisement the respondent was entitled to make price revision and the management reserved its right of extension of validity of value paid unexecuted sale orders. It is further stated that whenever there is price revision by BCCL. certain amount of quantity is withheld which is almost in proportion to the price increased so that the party can deposit the difference of the increased price and the old price and then balance quantity is allowed to be lifted by it.

4. I have heard Mr. Mahesh Tiwari learned counsel for the petitioner and Mr. A.K. Mehta, learned counsel appearing on behalf of the respondents-BCCL.

5. Admittedly the sale order was issued by the respondents on 22.9.2001 in which validity period was prescribed as 60 days from the date of issuance of sale order. It is, therefore, clear that the petitioner had to lift the entire quantity of slurry within a period of 60 days from the date of sale order i.e. on or before 22.11.2001. In para 8 of the writ application it has been categorically stated by the petitioner that although the lifting period was fixed as 60 days from 22.9.2001 but till 4.10.2001 the petitioner was not given delivery of slurry and, as such, a representation was filed before the Chief General Manager (S&M). A copy of the representation dated 4.10.2001 has been annexed as annexure 2 to the writ application. In para 9 of the writ application has been stated by the petitioner that instead of giving direction to the competent authority of Sudamdih Coal Washery for delivery of slurry the Area Sales Officer- wrote to the petitioner to take up the matter with the Project Officer because the Project Officer is not taking any step for delivery of slurry. A copy of the letter written by the Area Sales Officer dated 23.10.2001 has been annexed as Annexure 3 to the writ application.

6. These aforesaid facts have not been denied by the respondents. In reply to these paragraphs it is stated that the lifting of materials could not be started and delay has been caused due to many operational causes and problems faced by the different washeries and such delay was beyond the control of the respondents. In the letter dated 23.10.2001, Annexure 3. written by the Area Sales Officer, the petitioner was informed, that after receipt of the sale order he personally met with the Project Officer. Sudamdih coal washery for his consent regarding release of sale order but he had not consented to the same and advised not to release the slurry until he gives consent in this regard. The Sales Officer. therefore, stated that he was not in a position to release slurry without the consent of the Project Officer from where the slurry will be lifted. The petitioner was therefore, advised to immediately take up the matter with the Project Officer personally and his favourable order may be communicated to him for further needful action.

7. From the contents of the letter it is dear that the Project Officer, Sudamdih

coal washery was not releasing the slurry despite the sale order and despite the request of the Area Sales Officer for the reasons best known to him. Although the validity period of the sale order was 60 days from 22.9.2001, but admittedly, till 23.10.2001 it is because of some extraneous reasons, the slurry was not released in favour of the petitioner. In the meantime, a new advertisement was issued on 2.11.2001, whereby, on the basis of increase in price by the subsequent open sale scheme, the respondents decided to withhold 30% of the slurry from the balance quantity which is proportionate to the price increased in order to compel the petitioner to deposit the difference of the increased price and the old price.

8. In the facts of the case I have no doubt in my mind that the action of the respondents particularly the, action of the Project Officer in not allowing the petitioner to lift slurry, was absolutely illegal, arbitrary, mala fide and on extraneous considerations. From the letter of the Area Sales Officer it is clear that it was only because the petitioner did not meet the Project Officer for whatever reason may be. the sale order was not executed for one month. This case also shows how the officers of the respondents-BCCL are functioning particularly in the matter of sale of coal including slurry.

9. This writ application is. therefore, allowed and the respondents are directed to immediately and forthwith release the entire remaining quantity of slurry to the petitioner as per the price fixed in the allotment order. The delivery of slurry must be completed by the respondents within a period of 30 days from the date of receipt of a copy of this order.