

(2004) 07 PAT CK 0085
In the Patna High Court
Case No : C.W.J.C. No. 15820 of 2001

Aman Coke Plant Private Limited and Another	APPELLANT
Vs	
The Bharat Coking Coal Limited and Another	RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Citation : (2004) 2 BLJR 1406 : (2004) 3 PLJR 544

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioners are aggrieved by non-supply of monthly quota of linkage coal for December quarter i.e., for the months of October, November and December, 2001.

2. In short, the relevant facts are that the petitioners claim to be S.S.F. Industrial Linked Consumers, who established their Plant for manufacturing of soft coke known as "Special Smokeless Fuels" for domestic use. According to the petitioners, the officers of the Coal India Limited, Coal Company and the C.M.P.D.I. had assessed their production capacity and recommended 5000 Metric Tonnes as their monthly requirement of coal to be supplied to them by the respondent-Coal Company on regular basis for which the Coal India Limited had granted linkage in their favour. The respondent-Coal Company used to give monthly/quarterly offer after publishing a notice for booking the coal to the, Industrial Linked Consumers by Rail and accordingly the petitioners used to book their monthly/quarterly quota of coal and were getting it. It is stated that as per the instructions issued by the Coal Controller, Ministry of Coal, Government of India, vide Annexures 1, 1/A and 2, the respondent-Coal Company is required to give an offer/notice for booking of coal on monthly or quarterly basis so that the consumers may book their coal and get its supply on regular basis. It is alleged that the respondent-Coal Company had not given any offer for the month of October, 2001 and thus they and other Rail linked S.S.F. Industrial consumers did

not get their monthly quota of coal for the period in question which has resulted in causing them harm and also damage to the nation.

3. A counter affidavit has been filed on behalf of respondent Nos. 1 and 2, in which the aforementioned facts are not much in dispute. It is rather admitted that the offer for booking against the linkage for the months of October, 2001 could not be made by the B.C.C.L. for non-core sector consumers but, according to the respondents, it was due to less availability of coal and pendency of heavy value paid orders against the non-core sector consumers. In so far as the offer for the months of November and December, 2001 is concerned, it is stated that the offers were made for non-core sector consumers. The respondents have further contended that as per the condition of linkage, linkage is a clearance of supply of coal from the Coal Company (here B.C.C.L. only) and it does not establish any right to the petitioners for getting coal from B.C.C.L. According to the respondents, supply of coal is always made by Coal Company as per the availability and on pro rata basis. It is further stated that if offer is made to the petitioners for the months of October, 2001, then the action of the B.C.C.L. will deprive other similarly linked industrial consumers which will be against the natural justice. The respondents have also mentioned that there are more than 800 industrial consumers having linkage with B.C.C.L. and total linked quantity is very high in comparison to the availability of coal. As such, according to them, such coal is always supplied on pro rata basis and subject to availability.

4. Learned counsel for the petitioners has submitted that under similar circumstances, this Court in the case of Shree Ram Smokeless Industries and Ors. v. The C.C.L and Anr., CWJC No. 16133 of 2001, disposed of on 8.1.2004, which has also been affirmed in L.P.A. No. 169 of 2004, disposed of on 16.2.2004, issued direction to the respondents for supply of coal and as such, according to the learned counsel for the petitioners, the plea taken in the counter affidavit is not tenable.

5. Mr. Vishwa Mohan Kumar Sinha, learned counsel appearing for the respondent-Coal Company as submitted that the order passed by this Court in the case of M/s. Shree Ram Smokeless Industries and others (supra) shows that the case was decided on the facts of that case where the plea was taken on behalf of the respondent-Coal Company that although the offer was made for the month of October, 2001, but the petitioners did not book the quantity allotted to them and in support thereof certain papers were brought on record, on perusal of which the Court found that the said papers did not show that it is a notice which is notified allocating the coal for the period in question. Further, this Court found substance in the claim of the petitioners of that case that the Coal Company did not give any offer/notice for booking of coal as required and thus directed the respondents-Coal Company for supply of coal. It is contended by Mr. Sinha that the present case is covered by the decision of the Division Bench of this Court in the case of the Deputy Chief Sales Manager and Ors. v. Shiv Domestic Coke Private Ltd. and Ors., LPA No. 86 of 2001, disposed of vide order contained in

Annexure R/2, which has upheld the contention of the Coal Company that the coal can be supplied in full quantity to the Unit and only in case of non-availability, the supply of coal will be made on pro rata basis and in this way the quantity has to be reduced and allowed the appeal of the Company. As such, it has been contended by Mr. Sinha that there is no substance in the claim of the petitioners in the absence of any dispute with respect to less availability of coal and pendency of heavy value orders for non-core sector consumers, as stated in the counter affidavit.

6. I find substance in the submission of the learned counsel for the respondents. The present case cannot be said to be covered by the order passed by M/s Shree Ram Smokeless Industries and others (supra) in which the facts were completely different. The Coal Company admitted that they offered for supply of coal to the petitioners of the said case, but they did not lift, which this Court did not find to be correct and under such circumstances, issued direction to the respondent-Coal Company for supply of coal.

7. In the present case, the petitioners have not filed any reply to the counter affidavit in which the respondent-Coal Company has specifically stated that the supply could not be made due to less availability of coal and due to pendency of heavy value paid orders against the non-core sector consumers. Thus in view of the Division Bench decision in the case of the Deputy Chief Sales Manager and others (supra), contained in Annexure R/2, this Court does not find any merit in the claim of the petitioners. The writ petition is, thus, dismissed, but without costs.