
(2011) 03 AHC CK 0160
In the Allahabad High Court
Case No : Writ Petition No. 72707 of 2010

Ashutosh Industries and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Citation : (2011) 03 AHC CK 0160

Hon'ble Judges : F.I. Rebello, C.J.;Vineet Saran, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Petitioner No. 1 is an industry engaged in the manufacture of coal briquettes, the main raw material of which is coal. The Petitioners are under an agreement with M/s Bharat Cooking Coal Limited, which is a subsidiary of Coal India Limited, for supply of coal.

2. Although this case has a chequered history but we are giving hereunder only such facts which are relevant for the decision of this case.

3. On 1.7.2010 the Chief General Manager of M/s Bharat Cooking Coal Limited suspended the supply of coal to the Petitioners and by the same order gave notice to submit their reply within 30 days. The operative portion of the order dated 1.7.2010 is quoted below:

From the records available in this office, it transpires that you have submitted certain documents in support of end use of coal which does not establish the working status of your unit. In spite of sufficient opportunities being given to you to prove the end use of coal, which was lifted by you from BCCL under Fuel Supply Agreement you failed to prove the same. As you have failed in providing/submitting the relevant documents as asked for by the seller as per Clause 4-4 of FSA, the supply of coal is hereby kept in abeyance till further orders.

This may be treated as Notice also as per Clause 4.4 of FSA. If within 30 days

from the date of issue of this letter, no satisfactory reply is received from your end, BCCL may proceed for termination of FSA as per Clause 15 of FSA.

4. Challenging the said order the Petitioner filed Civil Misc. Writ Petition No. 42229 of 2010 in which an interim order was passed on 26.7.2010 to the following effect:

Till then the operation of the order dated 1.7.2010 contained in Annexures 1 and 1A to the writ petition shall remain stayed.

5. The Respondent-company filed SLP No. 21973 of 2010 which was dismissed by the Supreme Court along with other similar writ petitions by judgment and order dated 15.9.2010. The Supreme Court observed that the materials placed before the High Court prima facie show that the order dated 1.7.2010 suspending the supply of coal to 45 industrial-consumers was arbitrary and unfair and the High Court was justified in staying the order dated 1.7.2010 as an interim measure. The supply of coal to the Petitioner industry was thereafter restored only after the Petitioner filed contempt petition before this Court.

6. Since the order dated 1.7.2010 had been stayed by this Court, the Petitioners did not submit their reply and the matter was being contested by the Petitioners in Civil Misc. Writ Petition No. 42229 of 2010. However, in the meantime, by orders dated 9/10.11.2010 passed by the Chief General Manager of M/s Bharat Cooking Coal Limited the agreement for supply of coal to the Petitioner industry (as well as some other industries) was terminated. Challenging the same, this writ petition has been filed. Further prayer has been made for a direction to the Respondents not to force the Petitioner to furnish information in new format.

7. It may be noted that after the said order was passed, an amendment application was filed in Civil Misc. Writ Petition No. 42229 of 2010 challenging the said order but a Division Bench of this Court disposed of that writ petition on 3.12.2010 with the following order:

The writ petition came up before this Bench for order on the amendment application. This Court vide order dated 26.7.2010 has stayed the suspension order dated 1.7.2010 contained as Annexure-1A to the writ petition. Annexure 1-A contains the suspension as well as the notice to terminate the content agency.

Heard learned Counsel on behalf of the parties and gone through the records. Since the suspension order has merged in the termination order, therefore, main challenge of the suspension in the writ petition has been rendered infructuous. However, termination is the fresh cause of action, which is always open to be challenged by the Petitioner by filing a fresh writ petition on the ground available to the writ Petitioner including the grounds that the termination order has been passed while the impugned order dated 1.7.2010 which include the notice was stayed by this Court.

In view of fact has been stated above, the amendment application is rejected. The writ petition therefore, fails and is accordingly dismissed.

8. It is thereafter that this writ petition has been filed.

9. We have heard Sri Shashi Nandan, learned senior counsel appearing along with Sri A.K. Pandey on behalf of the Petitioners as well as learned Standing Counsel for the State-Respondents and Sri Anupam Lal Das along with Sri Madhur Prakash, learned Counsel appearing on behalf of contesting Respondents No. 2, 3 and 4 and have perused the records. Pleadings between the contesting parties have been exchanged and with consent of the learned Counsel for the parties, this writ petition is being disposed of at the admission stage itself.

10. The main thrust of the argument of the learned Counsel for the Petitioners is that once the order dated 1.7.2010 itself had been stayed, which comprised of the suspension of supply of coal as well as the show cause notice, the Petitioner was not required to submit its reply and the impugned order cancelling the agreement of the Petitioner with the Respondent-company is wholly arbitrary and illegal inasmuch as the same has been passed without the Petitioner having an opportunity to submit its reply and present its case before the Respondent authorities.

11. On the other hand, Sri Das learned Counsel appearing on behalf of the contesting Respondents, submitted that the High Court had only stayed the order of suspension dated 1.7.2010 and there was no stay of that portion of the same order by which the Petitioner was required to submit its reply and as such, since there was no reply to the show cause notice submitted by the Petitioner, the passing of the impugned order is fully justified and does not call for interference by this Court.

12. Much has been argued by the Respondents with regard to end use of coal being made by the Petitioner as according to the contesting Respondents the Petitioner is not running an industry where coal is consumed and the coal supplied to the Petitioner is being diverted in the black market. In reply Sri Shashi Nandan has vehemently argued that the Petitioner-industry is actual consumer of coal, for which reliance has been placed on certificates and documents issued by the District Industries Centre as well as concerned authorities.

13. Be that as it may, we are not inclined to enter into the merits of the case with regard to end use of coal being made by the Petitioner-industry. From the facts of the present case, what we see is that the order dated 1.7.2010, which included suspension of supply of coal as well as the show cause notice, had been stayed by this Court in Civil Misc. Writ Petition No. 42229 of 2010. The said order had been affirmed by the Apex Court by judgment and order dated 15.9.2010. It is admitted to the parties that no reply to the show cause notice had been given, however still the impugned order dated 9/10.11.2010 has been passed.

14. It is well established principle of law that before passing an order of termination of a statutory contract/agreement involving civil consequences, the party affected ought to be given an opportunity of submitting his reply and to

show cause. In the present case, since the order dated 1.7.2010., which included the provision of notice, had been stayed by this Court, as such, the submission of the learned Counsel for the Respondents that it was only the suspension order which was stayed and not the portion of the order requiring the Petitioner to show cause, does not have much force.

15. From the facts of this case it is clear that the impugned orders terminating the agreement for supply of coal to the Petitioner have been passed without the Petitioner having any opportunity to show cause and as such, we are of the firm view that the said orders have been passed in violation of the principles of natural justice and on this ground alone, the same deserves to be quashed.

16. Accordingly, this writ petition stands allowed. The orders dated 9/10.11.2010 are quashed. However, the Respondents may pass fresh orders in accordance with law, for which it is directed that the Petitioner shall submit its reply before the Chief General Manager (Sales and Marketing), M/s Bharat Cooking Coal Ltd., Koyala Bhawan, Koyala Nagar, Dhanbad, Respondent No. 4, on or before 16.3.2011. In case if the said Respondent requires the Petitioner to supply any additional papers/reply, he shall intimate the Petitioner of the same, in writing, on or before 23.3.2011. The Petitioner, if it so desires, may submit such additional documents/reply on or before 31.3.2011. The Respondent No. 4 shall thereafter pass reasoned and speaking order, in accordance with law, after considering the replies of the Petitioner, on or before 15.4.2011.