
(2011) 09 JH CK 0102

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2376 of 2011

Balaji Fuels Private Ltd.

APPELLANT

Vs

Central Coalfields Ltd. and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19(1), 300, 300A

Citation : (2011) 09 JH CK 0102

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Judgement

Poonam Srivastav, J.—Sri A.K. Sinha, Sr. Advocate assisted by Mr. Amit Sinha and Ms Neeta Sinha, Advocates appears on behalf of the Petitioner and Sri Anoop Mehta, Advocate, appears on behalf of the Respondents M/s C.C.L..

2. The instant writ petition is preferred for a direction in the nature of mandamus to the Respondents to release the coal for the month of March, 2011 onwards, in the light of the decision of this Court in W.P. (C) No. 6044 of 2006 dated 1st April, 2006 and also order passed in Contempt Case - No. 550 of 2009. Prayer is also for issuance of restrained order against the Respondent authorities from taking any coercive step against the Petitioner.

3. The questions raised in the instant writ petition are detailed in paragraph 2 of the petition, which is being quoted herein below.

(a) Whether the action of the Respondent authorities in not issuing the D.O. Letter and releasing coal for the month of March, 2011 as illegal, arbitrary and without jurisdiction?

(b) Whether the action of the Respondents in stopping the coal supply merely on the basis of a newspaper report about institution of a case against the Petitioner by the CBI can be said to be violative of the new Coal Distribution Policy and the terms and conditions of Fuel Supply Agreement executed between the Petitioner and Respondent CCL?

(c) Whether the seller and the consumer are legally bound by the terms & conditions of the Fuel Supply Agreement?

(d) Whether on mere institution of a case by CBI and in absence of any direction by CBI to CCL for suspending Coal supply, a monthly coal supply in favour of the Petitioner can be stopped?

(e) Whether the Petitioner is legally entitled to have monthly quota of coal for the month of March, 2011 and onwards in the light of clear speaking direction of this Honble Court and also in the light of 3 inspections of the unit having carried out by the Respondent CCL which has certified about the working status of the unit?

(f) Whether the action of the Respondents is violative of Articles 14, 16, 19(1)(g) and 300(a) of the Constitution of India?

4. The facts of the case are that the Petitioner was granted coal linkage in the year 1991 to an extent of 5000 MT. After the appropriate capacity assessment given by the CMPDIL after making a thorough inspection recommendation was made to coal India Limited fixing quota month wise as 5000 MT. Copy of the said letter dated 13/16.05.1991 is Annexure-2 to the writ petition. Supply of coal to the Petitioner was stopped in the year 2005. This action was challenged by preferring W.P.(C) No. 6044 of 2006 for resumption of supply of coal and the same was disposed of vide order dated 1st April, 2009. Copy of the order is Annexure-4 to the writ petition. The direction in the said writ petition in substance was that since the Respondents had sought certain factual information against 15 points, but since no information was received coal supply was stopped. This Court directed that the Petitioner shall be given a reasonable opportunity to bring on record all relevant documents and after submission of the same if any doubt persists regarding the existence of the Petitioner's unit, the Respondent may make spot verification by fixing a date with prior notice to the Petitioner and even on spot inspection/ verification final decision on each point shall be taken by the Respondent by means of speaking order. The entire exercise was further directed to be completed 3. Within three months. Since the Petitioner's unit is completely based on linkage of coal, contempt proceedings were initiated for non-compliance of the order in the writ petition. Coal supply was resumed on initiation of contempt proceedings, but subsequently once again the Petitioner is facing the same situation.

5. The submission on behalf of the Petitioner is that the Petitioner's linkage the Petitioner's linkage was accepted as valid and the Petitioner was required to enter into conditional Fuel Supply Agreement with CCL for one month for release of monthly quota vide letter dated 15.3.2010. A conditional agreement was executed on 16.3.2010, which according to the Petitioner, was executed contrary to the new Coal Distribution Policy, 2007. The emphatic submission is that the new Policy does not provide any conditional agreement. Subsequently vide letter dated 20.3.2010 the Petitioner was informed that supply of coal would be made

for a period of one month. Thereafter, after inspection by competent authority's further supply of coal may or may not continue. After execution of the conditional agreement the Respondent accepted a draft for the month of March 2010 and released the coal for the said month. Thereafter inspection was made on 22.4.2010. Consequent thereon the competent authority decided to continue supply of coal. Another inspection was carried out by a team consisting of C.C.L. Authorities and retired CBI officials on 22.9.2010. The report submitted was:

(i) The factory was in running order;

(ii) 21 labourers were working;

(iii) Existing stock was approximately 300 tonnes (Raw material) as seen and 300 tonnes SSF. Copy of the said report is Annexure-8 to the writ petition.

6. Subsequently yet another inspection was carried out on 5.12.2010 i.e. approximately after 2 ? months by a batch consisting of CCL authorities and the CBI officials vide Annexure-9 to the writ petition certifying that the Petitioner's unit was in working status.

7. Learned Counsel appearing on behalf of the Petitioner submits that another contempt petition being Contempt Case (C) No. 352 of 2010 was preferred highlighting the manner of functioning of the Respondents, whereby supply of coal was not continuous and was hampered time and again which caused great inconvenience and financial loss to the unit, evidently it prevented smooth functioning.

8. Suddenly coal supply for the month of March 2011 was stopped, though amount towards the said supply was already in deposit with the Respondents. On inquiry it was revealed that a First Information Report has been instituted against the Petitioner by the C.B.I. News item appeared in the daily newspaper and thus, the supply for the month of March 2011 and onwards was stopped. The Petitioner preferred the instant writ petition on sudden stoppage of coal supply without notice. After the news paper reporting and acquiring knowledge about the aforesaid F.I.R. an amendment application vide I.A. No. 1547 of 2011 was made challenging the letter/ order dated 9.5.2011. This letter was a communication issued to the Petitioner suspending supply/ dispatch of coal which is Annexure-9 to the Amendment Application. The said I.A. was allowed vide order dated 13.6.2011. The Petitioner was permitted to challenge the order dated 9.5.2011 by adding the prayer.

9. The submission on behalf of the Petitioner is that the Respondents could not adopt highhanded attitude as it has been done in the case of the Petitioner. The only option before the Respondents was to cancel the agreement after issuing a notice and giving an opportunity of hearing specially since merely lodging of a F.I.R. amounts to levelling allegation alone but cannot be treated to be a unit liable for a criminal offence. In absence of any written order or notice the act of the Respondents is nothing short of contempt, whereas in the instant case

second cont. Case (C) No. 352 of 2010 is still pending for disposal. Sri Sinha has castigated the action of the Respondents as a blatant abuse of the orders of this Court, besides being illegal, arbitrary and unfair. The news paper report about the incident chastising the Petitioner can hardly be a good cause for stopping the supply of coal which was continued only after direction of this Court in the previous writ petition specially when the proceedings under Contempt petition and after executing a fresh agreement. It is contended that the action of the Respondents is violative of Articles 14, 16, 19(1)(g) and 300(A) of the Constitution of India.

10. The Respondents filed their counter affidavit. On the basis of a revised Coal Supply Agreement dated 31.7.2010, whereby certain new conditions were incorporated in the original Agreement dated 16.3.2010 and also stating therein that a complaint has been received by the S.P., CBI, Ranchi, at the behest of Gopalka Credit Corporation, Church Complex, Ranchi. The said complaint was sent to the C.B.I. by the Dy. S.P., Vigilance Department. Complaint was in respect of black-marketing of coal by the Petitioner's unit, which is also part of the counter affidavit. A joint surprise check memorandum dated 26.3.2011 was made. The said surprise inspection report reveals that on physical inspection of the plant, the unit runs on generator sets, however, no bills/ invoices pertaining to procurement of diesel was found or produced. The plant was found in-operative and also the order suspending the coal dispatch as well as a decision of the Apex Court between Coal India Limited and Others, Vs. Alok Fuels (P) Ltd., th. Director, etc. etc., . The Respondents lay emphasis on the said decision of the Honble Supreme Court.

11. Learned Counsel appearing on behalf of the Petitioner submits that the order of suspension though passed at a subsequent stage in the month of May 2011 whereas supply of coal was suspended in the month of March 2011. No grounds have been enumerated for suspending the supply of coal. It is for the first time the Respondents have revealed that the supply was stopped on account of a F.I.R. It is settled principle of law that ground for passing an order against the Petitioner cannot be supplemented for the first time by means of counter affidavit. The impugned order suspending the supply of coal is dated 9.5.2011, which can only be given effect prospectively, but supply has been stopped for the month of March 2011, for which admittedly money was in deposit with the Respondents. An advance amount was deposited in the month of April 2011 itself pertaining to two months. There is no order in existence till date. This it self amounts unfair practice. The next argument is that the impugned order is without any reason and non-speaking. Learned Counsel has placed reliance on the decision by this Court in Mrs. Lakshmi Singh and Another Vs. The State of Jharkhand and Others, . It was held that in the event of absence of reason and the Petitioners not made aware of the penal action against them non-existence of grounds is a clear violation of principle of natural justice. Similar view was expressed by the apex Court in the case of M/S Dwarkadas Marfalia and Sons v. Board of Trustees of the Port of Bombay, that every action of the executive

authority must be subjected to Rule of Law and must be informed by Reasons. In the decision of Apex Court in State of Punjab Vs. Bhag Singh, and Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . It is contended on behalf of the Petitioner that affording no opportunity of hearing or giving explanation renders the impugned action completely vitiated. In support of this contention reliance has been placed on another decision of the Apex Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, . It was held in para 10 as enumerated below:

"Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectively by objectively. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court.

Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out. The "inscrutable face of sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

12. Exercise of power must be governed by Rule of Law and must be informed by reason. Firm carrying on business of sale and distribution of lubricants for 18 years, abrupt stoppage of supply of lubricants to the firm by Indian Oil Corporation without any notice of intimation is glaring example of arbitrariness and unfair play.

13. I am not in agreement with the contention on behalf of the Respondents on the basis of the decision of the Apex Court annexed with the counter affidavit. It is not applicable to the facts of the present case since while the Apex Court had directed for stoppage of supply of coal to the unit in the case of Coal India Limited and Ors. v. Alok Fuels Private Limited on account of the reason that the allegation of black-marketing and mis-utilization of the coal was substantiated by filing of the charge sheet after completion of investigation. In the instant case since investigation is still continuing and only F.I.R. has been lodged and that too on account of certain complaint by a private person who had definite grudge against the Petitioner, this could not be said to be a sufficient for stoppage of supply of coal.

14. Sri Anoop Kumar Mehta, counsel appearing on behalf of the Respondent- CCL has controverted the argument of Sri A.K. Sinha and has tried to justify the action of the Respondent that only after a complaint was made by Gopalka Credit Corporation to the Vigilance Department and on the basis of a letter written by

the Department to the C.B.I., a joint surprise check was conducted on 26.3.2011; an F.I.R. was lodged on 19.4.2011.

15. I have thoroughly examined and scrutinized the document and have also given careful consideration to the argument advanced by the respective counsels. Series of events commencing from the initial stoppage of supply of linkage of coal to the Petitioner and institution of first writ petition (W.P.(C) No. 6044 of 2006) and the subsequent contempt cases are quite eloquent on its face. Evidentially the Petitioner and the Respondents were not working in a congenial atmosphere. The Petitioner had to approach this Court on several occasions for the supply of coal; inspections were made on a number of occasions and in all previous inspections conducted on 22.4.2010, 22.9.2010 and 5.12.2010, the unit was found to be functioning. The last inspection in the month of December was carried out in presence of C.B.I. authorities and only in the final inspection at a subsequent stage i.e. on 26.3.2011 the Inspecting Team reported that on inspection of the campus, raw coal as well as processed coal was found which were measured by the Survey Manager CCL Head quarter, Ranchi. Shri Munna Singh who was present at the time of inspection on behalf of the Petitioner, was unable to produce certain books of account and stock register and the Team found that the plant was being run on generator set, though no bills/ invoices pertaining to procurement of diesel could be found. A small quantity of coal was being burnt at the exist point of the Oven, despite the fact I am not making any comment on the allegations and counter-allegations. It is apparent that the Respondents act is far from being commendable.

16. I am in agreement with the submission of the learned Counsel that since the unit was not able to function on account of intermittent supply of coal, the industry could not be made operative continuously for all 30 days and 24 hours of the month. Besides, the supply of coal was admittedly reduced from 5000 MT to 3000 MT which was not sufficient to run the industry continuously on all days of the month. It is also correct that the F.I.R. was lodged by one Gopalka Credit Corporation alleging that the Petitioner indulged in black-marketing and despite the fact that Inspecting Team along with the vigilance officer of the C.C.L. and C.B.I., submitted a report in favour of proper utilization of coal on previous three occasions, but only at a subsequent stage i.e. on 26.3.2011 the functioning of unit was reported to be subsequently by aid of a generator set. The explanation given by the Petitioner that since supply of coal was insufficient, the unit could not function and existence of generator in the premises of the unit is not sufficient to conclude that the Petitioner indulged in black-marketing.

17. I have also noticed from the documents on record and in the second supplementary affidavit that apart from the instant F.I.R. at the instance of Chandrakant Gopalka there are 10 more cases against the Petitioner all the reported allegations are by the same persons details of which are given in paragraph 9 of the supplementary affidavit.

18. Besides this, I have also examined the agreement entered into between the

Petitioner and the Respondents. Clause 13, deals with "suspension of coal supplies". Clause 15 deals with "termination of agreement" Admittedly none of the conditions of the Agreement exists in the instant case. Therefore, neither the suspension can be resorted to nor the agreement could be terminated. It is evidently an action on behalf of the Respondent, which has far reaching effect, besides I cannot overlook that the action taken is by an authority who is admittedly a State Executive authority and, therefore, this act must be in accordance with Rule of Law and informed by "reason". Specially where the State enters the contractual fields, it should necessarily be governed by incidence of the contract and in my opinion fairness must be cardinal rule that has to be followed with reason non-arbitrariness. Since the order passed in the month of May 2011, whereas the supply was stopped from the month of March 2011 itself. It is absolutely clear that the action of the Respondent is pre-determined. No reason has been attributed for stopping the supply and for the first time it is detailed in the counter affidavit. This cannot be done because assigning reason at a subsequent stage by affidavit is deprecated by the Apex Court as far back as in the year 1978 in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

19. I am of the considered view that the stoppage of supply of coal in the instant case is not justified and giving of reasons is one of the fundamentals of good administration. Reliance has been placed in the decision of Ran Singh and Anr. v. State of Haryana and Anr. 2008 (1) Supreme 473. Paragraph 10 is being quoted herein below:

Even in respect of administrative orders, Lord Denning M.R. In Breen v. Amalgamated Engineering Union 1971 (1) All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 LCR 120 it was observed:

"Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi judicial performance.

20. For the reasons detailed herein above, there is no justification in the manner, in which the supply was stopped and the order has been passed subsequently.

21. Mr. A.K. Mehta has apprised me of the fact that now under the Coal Agreement supply cannot be resumed as a new policy has been implemented. I am of the view that this Court cannot enter into the matter of policy decision, therefore, this writ petition is disposed of with a direction that the Respondents shall take step to execute an agreement with the Petitioner under the New Policy for supply of coal in accordance with law within a period of two months from the date a certified copy of this order is produced before him. The continuance of investigation on the basis of F.I.R. lodged by a private person shall have no adverse effect on the supply of coal pursuant to the new agreement.

22. The writ petition is, accordingly, disposed of in terms provided here-in-above.