
(2001) 01 JH CK 0004

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 771 of 2000

Basanti Mata Hard Coke Enterprises

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 414

Citation : (2001) 01 JH CK 0004

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the order dated 9.3.2000 passed by the Chief General Manager of the respondents-Bharat Coking coal Limited (Shortly BCCL) whereby he refused to supply coal to the petitioner-firm till the conclusion of the investigation/trial of the criminal case lodged against the petitioner being Govindpur PS case No. 264/90.

2. The brief facts of the case are as follows:

The petitioner is a firm registered as small scale industry and is involved in the business of production of hard coke from the raw materials purchased from different collieries of B.C.C.L. According to the petitioner monthly quota of the materials was fixed by the Sales Department of Coal India Limited and the supply was to be made from various collieries of B.C.C.L.. It appears that on 25.9.99 a team of Central Industrial Security Force (shortly C1SF) officials of B.C.C.L. conducted a raid in the premises of the petitioner and recovered certain quantity of stem coal and hard coke. They also apprehended the owner of the coal and also seized certain amount of coal. Since the material was related to the respondent-BCCL, the supply of coal was stopped. It appears that by notice dated 21.10.99 the Chief General Manager (M&QC) called upon the petitioner to show cause as to why the petitioner-Company be not debarred from doing any

trade. Pursuant to that notice a show cause reply was filed by the petitioner but the same was not finally disposed off by the BCCL. The petitioner then moved this court" by filing CWJC No. 3713/99R making a prayer to direct the respondents-BCCL to immediately and forthwith resume supply of raw materials for the purpose of resumption of functioning of the petitioner's unit. The said prayer of the petitioner was opposed by the respondent-BCCL on the ground, inter alia, that the matter is under investigation by the CISF and also the police on the basis of the FIR lodged against the petitioner and until the criminal matter is finally decided the supply of coal cannot be. This court disposed of the writ application by directing the Chief General Manager, BCCL to consider the show cause filed by the petitioner and take a final decision by passing a reasoned order after giving opportunity of hearing to the petitioner. The operative portion of the order passed in CWJC No. 3713/99R is quoted hereinbelow:--

"Be that as it may, admittedly the CISF personnels are deployed by the respondent-issued by the Chief General Manager and show cause to that effect was filed then I do not find any reason why the matter with regard to disposal of show cause shall await final decision in the criminal case. I am further of the view that the respondent-BCCL on the basis of show cause filed by the petitioner can enquire into the matter and take a final decision either to resume supply of coal or to debar the petitioner from carrying on the said business with the respondent-Company.

This writ application is, therefore, disposed of with a direction to the concerned respondent, namely. Chief General Manager (M & QC), BCCL to consider the show cause filed by the petitioner and take a final decision by passing a reasoned order after giving opportunity of hearing to the petitioner as expeditiously as possible and preferably within a period of one month from the date of receipt of a copy of this order."

3. In terms of the direction of this court the Chief General Manager, BCCL gave personal hearing to the petitioner and after considering the facts of the case, disposed of the show cause in terms of the impugned order dated 9th March, 2000 by refusing to supply coal to the petitioner-firm till the conclusion of the investigation/trial in the criminal case.

4. A counter affidavit has been filed by the respondent-BCCL stating, inter alia, that on the relevant date the CISF personnels found the employees of the petitioner-firm engaged in committing theft of coal from a coal mine of BCCL from one of its Area No. VI and, such coal was being carried to the premises of the firm on bicycles by their employees. The coal which were stolen and stored in the premises of the petitioner-firm along with the cycles were seized. It is stated that the petitioner-firm has not denied the fact of seizure of coal and bicycles used for carrying coal from the coal mines to the premises of the petitioner-firm. It is further stated in the counter affidavit that the respondent-BCCL rightly refused the resumption of supply of coal to the petitioner-firm till the conclusion of the trial in the criminal case.

5. Mr. Tapen Sen, learned counsel appearing on behalf of the petitioner as- sailed the impugned order passed by the Chief General Manager, BCCL as being illegal, arbitrary and mala fide. Learned counsel firstly submitted that the impugned order stopping supply of coal is wholly without jurisdiction inasmuch as the petitioner has been given linkage of coal by M/s Coal India Limited and the respondent-BCCL is merely a supply agent and it has to give effect to the terms and conditions of the licence granted to the petitioner. Learned counsel then submitted that the impugned order is illegal and mechanical inasmuch as the respondent no. 3, Chief General Manager has neither applied his mind nor has considered the orders that have been passed by the criminal court in the matter of grant of bail to the partner of the petitioner-firm and the released of the articles seized by the respondents. Learned counsel has drawn my attention to the supplementary counter affidavit and stated that the Chief Judicial Magistrate while granting bail to the partner of the firm accused and releasing the seized articles, recorded a finding that the Investigating officer, after necessary verification of the seized coal, reported that the seized coal have been found genuine. Mr. Sen also put heavy reliance on the judgment and order passed by a Bench of this court on 17.1.2001 in CWJC No- 2787X 2000 (see Maa Chhimnamastika Coke Industries Ph. Ltd. v. State of Bihar 2001 1 JCR 63 and other analogous cases and submitted that the impugned order passed by the Chief General Manager cannot be sustained in law.

6. As noticed above, the petitioner was holding a licence granted to it by Coal Indian Limited for the supply of monthly quota of coal from the respondent-BCCL. On 25.9.99 a team of CISF personnels during patrolling duty, received confidential information that illegal coal is being carried by cycles from the East Basaria Colliery and the same are being dumped in the premises of the petitioner's unit. On the basis of the said information the CISF personnels, with the help of Barwada police, raided the petitioner's premises and found that stolen coal carried by cycles were unloaded. The raiding party succeeded in nabbing two persons after hot chase. 17 bicycles which were loaded with coal, were also found there. The raiding party investigated the papers, seized the stolen coal along with bicycles and lodged FIR to that effect being Govindpur PS case No. 264/90. The respondents, thereafter, stopped supply of coal and issued show cause notice to the petitioner as to why the petitioner should not be debarred from supply of coal and doing any trade.

7. There is no denial from the side of the petitioner about the fact that the CISF personnels along with the local police raided the premises of the petitioner and found 17 bicycles loaded with coal which were being unloaded in the premises of the petitioner firm. The petitioner has also not denied the fact that some of the persons were apprehended and the bicycles along with coal were seized from the premises of the petitioner-firm. Mr. Sen submits that once order for release of the seized articles has been passed by the Chief Judicial Magistrate recording a finding that the seized coal was genuine, then the petitioner is entitled for resumption of supply of coal. The submission of learned counsel has no force at

all. The Chief Judicial Magistrate, in the release order, simply relied upon the verification report of the Investigating officer who reported that the seized coal is genuine because there is no other claimant of the seized coal. The Chief Judicial Magistrate, on that ground, released the seized coal. Merely because the Chief Judicial Magistrate, by an interlocutory order, released the coal in favour of the petitioner, it cannot be presumed that the FIR lodged against the petitioner is false and baseless. Mr. Sen also put heavy reliance on the judgment and order passed in CWJC No. 2787/2000 : 2001 (1) JCR 63 (Jhr) (Maa Chhimnamastika Coke Industries Ph. Ltd. v. State of Bihar). In that case the question which came for consideration before the court was whether supply of coal can be stopped which was granted on the basis of quota fixed by the Linkage Committee on mere direction of the District industries Centre. The fact of that case was that on confidential information petitioner's unit was raided and huge quantity of unexplained coal was found lying in the premises. Accordingly a criminal case was lodged under Sections 414/120B of the Indian Penal Code. This court took a view that in absence of any regulatory provision in respect of sale, purchase, storage and consumption of coal, a dealer or consumer of coal cannot be subjected to any regulatory provision. The court further held that there is no storage limit and merely because a huge quantity of unexplained coal was found in the premises, the supply of coal cannot be stopped on the basis of a criminal case. This court, therefore, after setting aside the letter issued by the Director of Industries stopping supply of coal, held that the authorities of CCL can decide the application of the petitioner for supply of coal in terms of the linkage granted.

8. In the instant case, not only unexplained coal was seized from the premises of the petitioner but the employees of the petitioner-firm were caught red-handed carrying coal in bicycles and the same was being unloaded in the premises of the petitioner's unit. The said persons along with their bicycles and loaded coal were apprehended and seized. This fact has not been denied by the petitioner. In such circumstance, it cannot be held that since there is no regulatory provision of coal, the dealers and the linkage holders can be allowed to commit theft of coal from the coal mines. The Chief General Manager-BCCL, after giving due consideration to the show cause filed by the petitioner and after giving personal hearing, came to the conclusion that since the petitioner did not give any satisfactory explanation with regard to recovery of cycles loaded With coal, carrying coal to the premises of the petitioner-firm, there is prima facie, proof of committing theft of coal by the petitioner-firm. In my opinion, therefore, the authority rightly rejected the show cause and held that supply of coal shall not be resumed till the conclusion of the investigation/trial. I am also of the opinion that if on the facts of the case, the supply of coal is resumed then the same would amount to encouraging such type of dealers/linkage holders to remain involved in illegal mining and committing" theft of coal from the coalfields.

9. For all these reasons I do not find any illegality in the order passed by the Chief General Manager. This writ application is, accordingly, dismissed.

10. Writ application dismissed,