
(2011) 02 JH CK 0045
In the Jharkhand High Court
Case No : Writ Petition (C) No. 227 of 2011

Bharat Coal Product

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 02 JH CK 0045

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—As prayed, Petitioner is permitted to make necessary correction in paragraph 1 and prayer portion.

2. In this writ petition, Petitioner has challenged the fixation of price of slurry under price notifications dated 14.01.2008 (Annexure 5/1) and 6.11.2009 (Annexure 5/3).

3. Mr. Poddar, learned senior counsel appearing for the Petitioner referring to Clause 2.3 of the office memorandum issued by Ministry of Coal, Government of India dated 18.10.2007 (Annexure 2) submitted that the Respondent-Central Coal Fields Ltd. ("C.C.L." for short) could fix price of coal only as per the price notified by the Coal India Limited ("C.I.L." in short). He further submitted that "slurry" has been held to be "coal" in (1990) 4 SCC 557 Bharat Coking Coal Ltd. v. State of Bihar and Ors. and therefore C.C.L. could not fix the price of slurry. He further submitted that the transportation cost has been included in the consolidated price. Relying on the judgment reported in Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, he submitted that C.C.L. is enjoying monopoly and the Petitioner having Fuel Supply Agreement ("F.S.A." for short) with it, is compelled to pay the price fixed by it.

4. I am unable to accept such contentions. The portion of the said Clause 2.3 relied on behalf of the Petitioner is to be read with Clause 9.1 of the Fuel Supply

Agreement (F.S.A.) entered into between the Petitioner and the C.C.L. which reads as follows

2.3 Other consumers

75% of the quantity as per the normative requirement of the consumers/actual users would be considered for supply of coal through FSA by CIL at notified prices to be fixed and declared by CIL....

9.1 The price of Coal delivered hereunder shall be the sum of the Base Price, sizing charges, transportation charges up to the Delivery Point, rapid loading charges, statutory charges, levies and other charges, as applicable ("As Delivered Price of Coal"). The components of the As Delivered Price of Coal shall be determined on the basis of the rates/criteria duly notified by CIL/Seller/statutory authority from time to time.

5. Thus, the seller i.e. C.C.L. could determine the price. It further appears from the impugned price notification dated 14/15.01.2008 that in exercise of powers delegated by the C.I.L. Board dated 19.4.1999 the prices were revised by C.C.L. after detailed deliberations, which inter alia included the cost of transportation. Similarly the price notification dated 6/7.11.2009, was issued pursuant to revision of raw coal prices by C.I.L., including inter alia the transportation cost. The Petitioner has been purchasing on the prices so fixed on 14/15.01.2008 and on 06.11.2009, but now in this writ petition filed on 14.01.2011, the price is being challenged and refund is claimed. Slurry was held to be coal in altogether different context. Even if it is accepted that it is coal, its prices were fixed by the seller - C.C.L., in terms of the decision/policy of the C.I.L. as noticed above. Transportation includes, manual and mechanical transportation. The case of Ashoka Smokeless (supra) is of no help to the Petitioner in which the policy decision with regard to a system of sale i.e. E-auction was challenged and in that context certain observations were made in the said judgment.

6. Thus, in my opinion no grounds are made out for interference in the matter of fixation of price by C.C.L.

7. On this, Mr. Poddar submitted that at least the representation filed by the Petitioner may be ordered to be disposed of.

8. As I am not satisfied that the Petitioner has got any case, I am not inclined to issue such direction even, as it may be misused.

In my opinion, this is a frivolous writ petition which is accordingly dismissed. However, no costs.