
(2015) 01 JH CK 0130
In the Jharkhand High Court
Case No : LPA No. 198 of 2014

Bharat Coking Coal Limited and Others	APPELLANT
Vs	
Domco Smokeless Fuels Pvt. Ltd.	RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Citation : (2015) 3 JLJR 125

Hon'ble Judges : Virender Singh, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Anoop Kr. Mehta and Amit Kumar Sinha, for the Appellant; Anil Kumar Sinha, R. Krishna and Amit Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.

1. Appellants are respondents before the Writ Court. A Fuel Supply Agreement (for short "FSA") dated 29th of September, 2008 was entered into between the respondent-writ petitioner (for short "petitioner") and the appellants for supply of coal to the petitioner on the condition set out in the FSA. When the appellants found certain irregularities having been committed by the petitioner resulting into violation of certain conditions, a letter/notice No. BCCLS&M: PS: F-Linkage/5613 dated 3rd February, 2010 was served upon the petitioner to produce certain documents to show the end use of coal pursuant thereto, the petitioner furnished the required information requesting the appellants to inspect the unit as per the direction of Hon'ble Supreme Court passed in the case of Ashoka Smokeless Coal Pvt. Ltd. dated 1st of February, 2006. It is thereafter, another communication/notice was sent to the petitioner vide letter No. BCCL:S&M:C:F-Linkage/852 dated 8th June, 2010 intimating the petitioner that he had not submitted the documents in support of end use of coal for a particular month i.e. April, 2010 stating further that failure to comply with the same can end up in suspending the coal supply to the unit. Ultimately, the coal supply to the unit of the petitioner and other similarly situated coal units was stopped with

effect from 1.7.2010 which arbitrary step of the appellants was protested by the Association and the matter ultimately landed up in Hon"ble "Supreme Court in Special Leave Petition (C) No. 21959 of 2010. It is thereafter the supply of coal was resumed to the petitioner unit. Appellant, however, vide letter No. BCCL: S&M:C:F-Linkage/1224 dated 9.11.2010 terminated the petitioner's Fuel Supply Agreement which was questioned by the petitioner through the medium of W.P. (C) No. 2102 of 2011. The said writ petition now stands allowed vide impugned judgment dated 1.4.2014 of learned Single Judge primarily on two grounds, firstly; that no notice was issued to the petitioner asking him to show cause as to why the Fuel Supply Agreement be not terminated, secondly; the aforesaid notice did not mention that there was reselling or diverting the coal by the petitioner, on the other hand, it mentioned that proper utilization and end use of coal lifted by the petitioner could not be proved to the full satisfaction of the appellant, therefore, there was no violation of Clause 15.1.5 of FSA for the termination of the said Agreement. Hence, the instant Letters Patent Appeal. Mr. Anil Kumar Sinha, Senior Advocate, has put in appearance on behalf of the petitioner unit.

2. The instant appeal is at admission stage. Learned counsel for both the sides agreed for disposal of the appeal at this stage itself.

3. Heard learned counsel for both the sides, gone through the impugned judgment and the Writ Court record.

4. Mr. Mehta, appearing for appellant-BCCL, submits that the finding returned by the Writ Court that no show cause notice was served upon the petitioner before terminating Fuel Supply Agreement is factually not correct as before terminating the said Agreement vide aforesaid letter No. BCCL:S&M:C:FLinkage/1224 dated 9.11.2010, two notices dated 3.2.2010 and 8.6.2010 were served upon the petitioner unit. He then submitted that in both the notices, BCCL had asked for production of certain documents but the required documents were not produced and it is thereafter only Fuel Supply Agreement was terminated.

5. Learned counsel further submitted that perusal of the order No. BCCL:S&M:C:F-Linkage/1224 dated 9.11.2010 reflects that it is a case of reselling and diverting of the coal by the petitioner unit and, therefore, in terms of Clause 15.1.5 of FSA, the Agreement was terminated.

6. Per contra, Mr. Anil Kumar Sinha, learned Senior Counsel for the petitioner submitted that Mr. Mehta, while appearing before the Writ Court, had admitted that no show cause notice was served upon the petitioner, therefore, it does not lie in the mouth of Mr. Mehta to assert that show cause notice was served upon the petitioner before terminating FSA. Mr. Sinha submitted that if it appears to be an error apparent on record, BCCL could ask for review of the order instead of filing the instant Letters Patent Appeal.

7. Learned Senior Counsel further submitted that otherwise also, first notice dated 3.2.2010 is with regard to production of certain documents to show the

end use of coal and that the petitioner had furnished all the required documents as is clear from the reply dated 5.2.2010 sent by the petitioner to BCCL in which it was also made clear that BCCL would also personally inspect the unit of the petitioner which exercise was never carried out in this case. Learned Senior Counsel further submitted that in the second notice dated 8.6.2010 where there is a reference to the earlier letter/notice dated 3.2.2010, reference is with regard to non-supply of certain documents in support of end use of coal for a particular month i.e. April, 2010. He submitted that even if the petitioner had not furnished/produced required documents for a particular month as asked for whereas it is the specific case of the petitioner that all required documents were furnished to BCCL, still that could not be a ground to terminate FSA as in the said notice/letter dated 8.6.2010 it is made clear that in default of complying the said notice, the management would be compelled to suspend the coal supply to the unit which was ultimately suspended also with effect from 1.7.2010 but resumed after the Hon'ble Supreme Court passed the order in the aforesaid Special Leave Petition (C) No. 21959 of 2010. Learned Senior Counsel submitted that these two letters cannot, in any case, be said to be a show cause notice in strict sense to the petitioner unit for termination of Fuel Supply Agreement. Therefore, depriving the petitioner to put forth his stance in this case by itself is a good ground to quash the aforesaid letter No. BCCL:S&M:C:F-Linkage/1224 dated 9.11.2010, as held by learned Single Judge.

8. Learned Senior Counsel further submitted that even otherwise, the letter of termination does not spell out at all that there is reselling or diverting of the coal by the petitioner. It only mentions about the proper utilization and end use of coal lifted by the petitioner. He submitted that from the impugned letter it appears as if BCCL had presumed reselling of coal or diverting of coal from unsized coal lying at the unit of the petitioner. According to learned Senior Counsel, all this cannot be said to be violation of Clause 15.1.5 of the Fuel Supply Agreement which would give the right to BCCL to terminate the said Agreement. Learned Senior Counsel, on the strength of aforesaid submissions, thus, supported the impugned order.

9. During the course of arguments, it has also been brought to our notice that the Agreement dated 29.9.2008 entered into between BCCL and the petitioner was only for five years, the term of which has since expired during the pendency of the writ petition.

10. Having heard learned counsel for the parties and gone through the entire records, it is clear that the impugned order terminating Fuel Supply Agreement of coal to the petitioner has been passed without the petitioner unit having been afforded any opportunity to show cause, as such, we are of the view that the said order has been passed in violation of principles of natural justice and this ground alone is sufficient to quash the said order as already held by the learned Writ Court. Even otherwise, on the strength of Clause 15.1.5 of the said Agreement, the impugned order is not sustainable.

11. We have been informed by Mr. Sinha, learned Senior Counsel that the Fuel Agreement has already outlived its life and that the quashment of termination order would make the petitioner entitled for entering into fresh agreement with the appellant, certainly on all the terms and conditions to be fixed by it, otherwise, nothing survives in the instant appeal for adjudication on merits. Considering the instant appeal on all counts, we do not find any reason to disturb the impugned judgment of learned Single Judge. Resultantly, the instant Letters Patent Appeal merits dismissal. Ordered accordingly.