
(2010) 01 JH CK 0039
In the Jharkhand High Court

Bharat Coking Coal Ltd. and Another	APPELLANT
Vs	
Alok Fuels (P) Ltd. and Another, Faridabad Industries and Another, Ajay and Company Fuel Products and Another and MGM Contrade (P) Ltd. Another	RESPONDENT

Date of Decision : 07-01-2010

Acts Referred:

Citation : (2010) 4 JLJR 173

Hon'ble Judges : Gyan Sudha Mishra, C.J;Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. All these appeals have been filed against the interim orders passed by the learned Single Judge, which are common in nature, by which the learned Single Judge had been pleased to pass an order of stay against the order passed by the appellant-BCCL suspending the supply of coal to the respondents herein and it was categorically directed that the appellant-BCCL are directed to resume the supply of coal to the petitioner-respondent herein forthwith.
2. This order was passed as the learned Single Judge had been pleased to record that no material had been furnished before the Court by which the appellant-BCCL could establish even remotely by furnishing at least prima facie material that any kind of black-marketing or mis-utilization of the allocated coal was made by the petitioner-respondent. Besides this, the learned Single Judge has already left liberty to the appellant-BCCL to procure and file corroborative material after two months of the date of the order which is 6.10.2009 with regard to any of the allegations which have been levelled against the petitioners in the FIR in regard to mis-utilization of the coal which was supplied to them by the respondent-BCCL.
3. The sum and substance of the allegation levelled in the FIR , which has been registered against the petitioners-respondents, indicate that the respondents have been alleged mis-utilization of coal and are alleged to have been diverting its use for purposes other than the purpose for which it was supplied.

4. It is informed that a case has been registered by the CBI also against the respondents in this regard and, therefore, the counsel for the appellants submitted that the learned Single Judge should not have passed the order of stay regarding suspension of supply of coal which had been passed by the appellant-BCCL.

5. A question was put to the counsel to the respondents as to why the order of stay should be allowed to remain operative when a case is pending against the respondents in regard to mis-utilization of the coal supplied to them in response to which, it was explained that although cases are pending against the respondents in regard to mis-utilization, sufficient opportunity was granted to the appellant-BCCL to furnish materials in support of the allegations which were not furnished inspite of two months time granted to the appellant-BCCL.

6. However, the counsel for the appellant-BCCL submitted that the authorities of the BCCL are already examining the matter and they are likely to pass an order, terminating the agreement itself in pursuance to which the supply of coal is being made to the respondents.

7. If that is so, we fail to appreciate the anxiety of the appellants to assail the interim order passed by the learned Single Judge, especially when the learned Single Judge had already granted liberty to the appellants to furnish material in support of their allegation due to which the order of suspension was passed. We equally fail to appreciate the concern of the appellant-BCCL to file an appeal against the interim order, especially when they have not been left without remedy as the Single Bench vide the impugned order has itself granted liberty to the appellant-BCCL to furnish the material before the Single Bench itself after a period of two months which has already expired.

8. Counsel for the appellants also apprised this Court that they are conducting their own independent enquiry against the respondents in regard to the allegation of mis-utilization of the coal and they are in possession of incriminating material against the respondents and they would be cancelling the agreement itself by which the supply is made to the respondents.

9. In view of the aforesaid information, we find no reason for the authorities of the BCCL to chase the order of suspension when they are themselves equipped with the authority to cancel and terminate the agreement by which supply is made to the respondents. The step taken by the appellant-BCCL to pursue the litigation by challenging the order of suspension instead of finally terminating the agreement itself, thus appears to be unnecessary and obviously a futile exercise and it is beyond the comprehension of this Court as to what prevents the appellant-BCCL from terminating the agreement finally and harp on the order of suspension.

10. We, therefore, do not see any reason to entertain these appeals which are directed merely against an interim order passed by the learned Single Judge and hence we dismiss the same with liberty to the appellant-BCCL to file an

application before the learned Single Judge for vacating the order of stay granted in favour of the respondents as the period of two months has already expired. Accordingly, the appellants would be at liberty to file an application for vacating the order of stay as soon as they are able to procure the adverse material against the respondents and in the alternative may also pass the order terminating the agreement finally instead of pursuing this litigation for sustaining the order regarding suspension of coal.

These appeals are thus dismissed with liberty to proceed as indicated hereinabove.