
(2001) 10 JH CK 0029
In the Jharkhand High Court
Case No : LPA No. 637 of 2001

Bharat Coking Coal Ltd.

APPELLANT

Vs

The Industries and Commerce Association and Others

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 10 JH CK 0029

Hon'ble Judges : Vinod Kumar Gupta, C.J.;D.N. Prasad, J

Bench : Division Bench

Advocate : Mukul Rahtagi, ASCCG, A.K. Sinha, M.M. Banerjee and A.K. Mehta, for the Appellant; Biren Poddar, B. Poddar and A. Poddar, for the Respondent

Judgement

1. The appellant appears to be aggrieved by the operative part (contained in the last para) of the order dated 26th September. 2001. passed by a learned Single Judge of this Court in WP (C) No. 4724/2001, whereby it has been directed to supply coal to the respondent-writ petitioners as per the existing linkage, at present rates and subject to the availability of coal. Even Though we have heard the detailed arguments of the learned counsel appearing for the parties, since we propose to remit the matter to the learned Single Judge for final decision in the writ application itself, we refrain from making any comments or expressing any views on the disputed questions of law and facts involved in this case.

2. In so far as the grievance of the appellant with respect to the aforesaid impugned portion of the order dated 26th Sept. 2001 is concerned, we feel that the interests of both the parties (the appellant-supplier-seller as well as respondents-writ petitioners-purchasers) can be appropriately protected and properly safeguarded by modifying the aforesaid part of the order in the manner indicated hereinbelow. We accordingly direct;--Until the disposal of the writ application by the learned Single Judge, the supply of coal by the appellant shall be made in accordance with the Colliery Control Order dated 1st January, 2000, as issued by the Ministry of Mines & Minerals (Department of Coal), New Delhi. It

shall also be regulated by and in accordance with the manner prescribed by the appellant as indicated in the appellant's Advertisement (Annexure 4 to the Memo of Appeal). However, the respondents-writ petitioners, even though may make deposit of earnest money and enter into agreements with the appellant for purchasing the coal, as is prescribed in the aforesaid Advertisement and the Coal Policy, the deposit of the earnest money so made, the execution of the agreements and the purchase of coal shall all be subject to the final result of the writ application. We also direct that the earnest money deposited by the respondents-writ petitioners shall continue to remain in deposit with the appellant, subject to the result of the writ application. With respect to such deposit, however, the appellant shall not claim any right which may disentitle the respondents-writ petitioners to the refund of the earnest money, if such refund is claimed at any stage. Also, if the respondents-writ petitioners desire or demand that the earnest money deposited by them be adjusted in the purchase price of the coal that they may ultimately resort to, on termination of the agreement or otherwise, this deposit shall remain subject to that condition as well,

3. At this stage, Mr. Poddar learned counsel appearing for the respondents-writ petitioners submits that they may not be required to deposit fresh amounts towards the earnest money since large amounts of money belonging to the respondents-writ petitioners are already lying in deposit with the appellant. Keeping that request in view, we direct that at the stage of deposit of the earnest money and keeping that requirement in mind, it shall be open to the respondents-writ petitioners to represent to the appellant to adjust the amounts already lying with them in surplus towards the earnest money. On receiving such representations, if the appellant does find that any such amount, in effect and indeed, is lying in surplus with it, it may decide to adjust the same towards the deposit of the earnest money.

4. Mr. Poddar also submits that the earnest money deposited by the respondents-writ petitioners with the appellant should carry interest on it. We refuse to make any comments on this question and leave it open.

5. The impugned portion of the order dated 26th Sept. 2001 shall stand modified to the aforesaid limited extent.

6. The appellant herein and all other respondents in the writ application shall file counter affidavits to the writ application before the learned Single Judge within three weeks from today. Rejoinder, if any, shall be filed in two weeks thereafter. Time for filing pleadings shall not be extended.

7. The writ application shall be listed before the learned Single Judge on 27th Nov. 2001 in first five cases under the heading of "Specially fixed cases", but for final disposal.

The appeal is finally disposed of. No order as to costs.