

(2006) 03 JH CK 0073
In the Jharkhand High Court
Case No : L.P.A. No. 358 of 2003

Central Coalfields Limited and Others	APPELLANT
Vs	
Mahabir Prasad Rungta and Others	RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Citation : (2006) 03 JH CK 0073

Hon'ble Judges : S.J. Mukhopadhaya, J; Dilip kumar sinha, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta and Ananda Sen, for the Appellant; Pandey Niraj Rai, for the Respondent

Judgement

1. 1st appellant M/s Central Coalfields Limited (hereinafter to be referred as Company) and others have preferred this appeal against the order dated 24th March 2003 passed by the learned Single Judge in W.P.(C) No. 6006 of 2002, whereby and whereunder the learned Single Judge while held that in the change position the Court cannot direct that the 1st respondent- writ petitioner be remedied by lifting linkage slurry and thereby refused to grant relief to that extent; further held that the 1st respondent-writ petitioner having been discriminated will be entitled to damage and gave liberty to the appellant to escape from such liability by providing slurry to the 1st respondent- writ petitioner on the terms and condition on which it was made available to the 6th respondent, M/s Bharat Coal Products, Bokaro.

2. As the appeal may be disposed of on the short point, it is not necessary to discuss all the facts except the relevant one.

3. The 1st respondent- writ petitioner and another M/s Bharat Coal Products, Bokaro, 6th respondent herein applied for linkage. They having not been granted, had to move before the Calcutta High Court and, pursuance of the direction of the Calcutta High Court, their case was considered by the Coal Controller of India. The Coal Controller of India recommended and directed the

Company to grant linkage in favour of 1st respondent- writ petitioner at the rate of 60,000/- M.T. per annum. Similar direction was also given in respect of 6th respondent. Thereafter, the Company though issued linkage in favour of 6th respondent, no such linkage was issued in favour of 1st respondent- writ petitioner.

4. The 1st respondent- writ petitioner in the meantime was purchasing coal slurry from open market at higher rate, no linkage having been issued for lifting coal slurry from Kathara colliery as per direction of Coal Controller of India. Thereafter, the 1st respondent -writ petitioner preferred the writ petition in question, in which prayer was made to direct the Company to grant permanent linkage in his favour for lifting slurry from Kathara washery at the rate of 60,000/-M.T. per year; further prayer was made to declare that he was entitled to such permanent linkage w.e.f. 11th December 1994 i.e. the date on which the coal linkage was allowed in favour of 6th respondent herein.

5. The appellants who were respondents in the writ petition had taken plea of non- availability of slurry; apart from the plea that a new sales scheme was likely to come into effect.

6. Having noticed the aforesaid submission the learned Single Judge refused to grant relief to 1st respondent- writ petitioner in the manner it was sought for and made the following observations:

Now the question is whether in view of the statement made before this Court that there is no availability of slurry in face of the argument of learned Counsel for the respondents that a new sales scheme which is likely to come Into effect within one month and the petitioner will be dealt with Under this scheme the writ is dismissed. The availability status has come vide Annexure 24 prior to June 2001 and the petitioner has come before this Court in the year 2002. Therefore, if the petitioner would have come in June 2001 then a direction could have been given that if the slurry is available he should be granted linkage but now but now as the position has changed then this Court cannot direct that the petitioner be remedied by lifting linkage slurry.

7. However, taking into consideration that 6th respondent herein was similarly situated like the 1st respondent- writ petitioner, the learned Single Judge held that the 1st respondent- writ petitioner will be entitled to damage and made the following observations:

In the entire circumstances, it is directed that new sales policy when comes into force, the petitioner should be given first preference and if it does not come in force within a period of one month as stated by the learned Counsel for the respondents then the petitioner will be entitled to damages because the policy is a creation of the authority of the C.C.L. themselves and it has resulted in discrimination and the petitioner was not treated on equal footing with the respondent No. 8. If the C.C.L. wants to escape this liability then the C.C.L. will provide slurry to the petitioner within ten days on the terms and conditions on

which it has been made available to the respondent No. 8.

This writ is disposed of at the stage of admission itself.

8. Learned Counsel for the appellants while relied on first quoted portion to suggest that the relief sought for was rejected, submitted that the learned Single Judge should not have made observation nor should have given any direction as made in the last portion of the judgment and quoted above.

9. Learned Counsel for the 1st respondent- writ petitioner highlighted the discrimination meted out to the party; inspite of order passed by the Coal Controller of India no linkage was granted to it.

10. Admittedly a person having no linkage can not be allowed to lift slurry on same terms and conditions on which slurry is made available to linked consumer. In absence of any Coal linkage in favour of 1st respondent- writ petitioner, it was not open to the learned Single Judge to direct the appellants- respondents to provide slurry to writ petitioner on same terms and conditions on which it was made available to the 6th respondent herein. In fact the learned Single Judge should have determined the issue as to whether 1st respondent- writ petitioner was entitled for coal linkage in terms with the direction given by the Coal Controller of India, it having been allowed in favour of the 6th respondent herein.

11. In the facts and circumstances and in the interest of justice while we set aside the order dated 24th March 2003 passed by the learned Single Judge in W.P.(C) 6006 of 2002, remit the case to the competent authority of the Company (M/s. Central Coalfields Limited) to decide as to whether the coal linkage be issued in favour of the 1st respondent- writ petitioner in the light of the recommendation/ direction made by the Coal Controller of India, such benefit having already been granted to similarly situated consumer, namely, 6th respondent herein. Such decision should be taken and communicated to the 1st respondent-writ petitioner within a period of two months from the date of receipt / production of a copy of this order.

12. If for one or other reason the authority takes adverse decision, it will communicate the ground and will also make clear as to whether 6th respondent herein will get the benefit of coal linkage or not.

13. We have also noticed the submission made on behalf of the Company that a new sales scheme has come into effect, but it has not brought to our notice. If such plea is taken by the authority it will make clear as to how they are releasing slurry to other linked slurry consumer So far as damages in favour of the 1st respondent- writ petitioner is concerned, there being nothing on the record to suggest that such prayer was made by the 1st respondent-writ petitioner before the competent authority of the Company, no decision is given in regard to such claim. If the 1st respondent-writ petitioner is interested for such damage, may approach the competent authority or a civil Court of competent jurisdiction.

14. This appeal stands disposed of with observations and directions as given

above. However, there will be no order as to cost.