

(2005) 04 JH CK 0011
In the Jharkhand High Court
Case No : L.P.A. No. 798 of 2003

Central Coalfields Ltd. and Another

APPELLANT

Vs

Techno Fuel (India) Ltd. and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Citation : (2005) 3 JCR 158

Hon'ble Judges : Altamas Kabir, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta, for the Appellant; A.K. Sinha and Saurav Arun, for the respondent No. 1 and Ananda Sen, for the respondent Nos. 2 and 3, for the Respondent

Judgement

1. This application has been filed on behalf of the writ petitioner-respondent No. 1 for vacating the interim order of stay passed in the Letters Patent Appeal on 18th May, 2004.

2. The writ petitioner-respondent No. 1 had been granted linkage by M/s. Coal India Limited for initially establishing its Unit at Patratu. The said linkage was valid for two years. Admittedly, the writ petitioner-respondent No. 1 could not establish its Unit at Patratu within the stipulated period of two years and had to shift its Unit to Rohtas, now in the State of Bihar. In the meantime, the Coal Clearance Certificate/linkage expired. The writ petitioner-respondent No. 1 thereafter applied for extension of linkage with the Apex Body, namely, the Managing Committee of the Coal India Limited which in its meeting held on 24th December, 1998 recommended to grant Coal Clearance Certificate to the petitioner's Unit for another six months by extension after obtaining the opinion of the Central Coalfields Limited.

3. The matter was remitted to the authorities of the Central Coalfields Limited, Ranchi for issuance of "no objection" certificate, but ultimately on the ground of inadequate availability of coal, the prayer for linkage was sought to be rejected. Aggrieved by the said order, the writ petitioner filed a writ petition and the

learned Single Judge by order dated 10th September, 2003, inter-alia, remitted the case with the direction upon the competent authority of M/S Central Coalfields Limited for renewal of linkage of the petitioner to enable the petitioner to request the competent authority to execute an agreement as per the new Sales Policy. A further direction was given to the competent authority of M/s. Central Coalfields Limited to renew the coal linkage of the petitioner if there was no other impediment within a period of two months from the date of receipt/production of a copy of the order.

4. Aggrieved by the directions given by the learned Single Judge on the writ petition filed by the petitioner, the respondent-Central Coalfields Limited has preferred the instant Letters Patent Appeal mainly on the ground that the learned Single Judge was not justified in issuing a mandamus to the appellants to renew the linkage of the writ petitioner Company.

5. As indicated hereinabove, on 18th may, 2004, the order of the learned Single Judge was stayed and all proceedings pursuant to the directions given in the writ petition were also stayed until further orders.

6. While considering the present application for vacating the stay order, we heard both sides on the merits of the appeals also and we are of the view that the same may be disposed of having regard to the order that we propose to pass.

7. Admittedly, the Apex Body, namely, Coal India Limited had recommended the extension of linkage to the writ petitioner Company after accepting the ground for the delay in not establishing its Unit at Patratu within the stipulated period of two years and the only ground on which the prayer of the writ petitioner-respondent No. 1 for grant of further quantity of coal on the strength of renewed linkage was rejected, was non-availability of coal.

8. Mr. A.K. Sinha, learned Senior Advocate, appearing for the writ petitioner-respondent No. 1, pointed out that the ground for refusing to grant further amount of coal in favour of the writ petitioner-respondent No. 1 was not available to the Central Coalfields Limited on account of the fact that those who had applied for linkage even after the writ petitioner-respondent No. 1 had been supplied coal. Furthermore in the very order by which the Central Coalfields Limited had chosen to reject the prayer made on behalf of the writ petitioner-respondent No. 1, it has been indicated that the writ petitioner could approach the concerned Coal Company i.e. CCL, for supply of coal under its new sales policy. It was sought to be argued that the stand taken by Central Coalfields Limited was highly contradictory and the reason given for rejecting the writ petitioner's prayer for further quantity of coal was entirely mala fide.

9. On behalf of the appellant, it was urged by Mr. A.K. Mehta that the directions given in the writ petition were such as could not be implemented by the appellants since the linkage was a matter which related to the Apex Body of the Coal India Limited and not the Central Coalfields Limited. Furthermore, the Central Coalfields Limited had adopted a new sales policy for supply of coal to

the non-core sector consumers which had been, done keeping in view the policy adopted by Coal India Limited.

10. Having considered the submissions made on behalf of the parties, we are compelled to hold that since the only criteria for fresh supply of coal to the writ petitioner-respondent No. 1 is the availability of coal, the grounds taken for refusal to supply such coal to the writ petitioner-respondent No. 1 are not genuine. On the one hand, while stating that coal was not available for supply to the non-core sector, on the other, it was indicated that under the new sales policy, such coal could be made available to the writ petitioner-respondent No. 1. The stand taken by the Central Coalfields Limited appears to be contradictory as has been pointed out by the learned Single Judge. Mr. Mehta's submission would have been valid in the event the Apex Body had not recommended the revalidation of linkage to the writ petitioner-respondent No. 1. Once such recommendation was made in favour of the writ petitioner-respondent No. 1 then it was only required to be seen whether coal was available with the appellant for such supply under the revalidated linkage.

11. In such situation, we dispose of the appeal by modifying the order passed by the learned Single Judge to the extent that as in the case applicable to all other consumers, the appellants will also supply coal to the writ petitioner-respondent No. 1 on the basis of the linkage and the yardstick which is applied to others similarly situated. It is expected that since already there has been long delay, the appellants will supply coal to the writ petitioner-respondent No. 1 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.