**(2004) 10 JH CK 0031**

**In the Jharkhand High Court**

**Case No :** C.W.J.C. No. 1864 of 2001

Chandranidhi Merchandise Pvt. Ltd. and Others APPELLANT

Vs

Central Coalfields Ltd. and Others RESPONDENT

**Date of Decision :** 29-10-2004

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2005) 1 JCR 19

**Hon'ble Judges :** Tapen Sen, J

**Bench :** Single Bench

**Advocate :** B. Poddar and Ajay Poddar, for the Appellant; Benani Verma, for the Respondent

**Final Decision :** Dismissed

## Judgement

Tapen Sen, J.—Heard the parties.

2. The petitioners pray for quashing the letters dated 11.4.2001 (Annexure-13 Series) passed by the respondent No. 2 refusing to supply coke. According to the petitioners, these orders are contemptuous in nature being in derogation to the Orders/direction passed by the High Court vide Orders dated 23.1.2001 (Annexure-5); 28.2.2001 (Annexure-7) and 22.3.2001 (Annexure-10) whereby, the respondents had been directed to release coal. The petitioners also pray for quashing the fresh sale/tender notice dated 7.4.2001 as contained in Annexure-15 issued for the sale of 3,000 M.T. of B.P. (O) Hard Coke.

3. According to the petitioners, pursuant to a sale notice dated 23.10.2000 (Annexure-1) for the sale of 3,000 M.T. of B.P. (O) Hard Coke, the petitioners had applied on 4.11.2000 submitting application in the prescribed form together with all documents for the purchase of 500, 500 and 990 M.T. respectively (Total of 1,990 M.T.) and had paid the price at the rate notified i.e. Rs. 2,600/- per M.T. plus 8% Sales Tax per M.T. by Bank Draft as per Annexure-2 appended to the Writ Petition.

4. The grievance of the writ petitioner is that the fresh tender notice dated 7.4.2001 (Annexure-15) issued by the respondents is bad because their intention to purchase 1990 M.T. has been frustrated and the respondents have refused to supply and therefore, the petitioners pray for issuance of writ of mandamus directing the respondents to deliver and/or issue release order for lifting of 1990 M.T. from the Giridih Coke Oven Plant at the rate of Rs. 2,600/- per M.T. i.e. as per rates notified by Annexure-1. According to the petitioners, since they have already exposed their intention to purchase the Coke as per the Notification as contained in Annexure-1 and since they have already deposited Demand Draft, the respondent cannot and should not be allowed to issue a fresh Notification.

5. The petitioner, being aggrieved by the non supply of coal in spite of their having deposited Bank Drafts strictly as per Annexure-1 which gave out an impression that coal would be released on "first come first serve" basis with effect from 6.11.2000, sent a legal notice on 2.12.2000 vide Annexure-3 series asking the respondents to release the coal. When no response was received, the petitioners then filed three writ petitions bearing C.W.J.C. Nos. 4430 of 2000, 4436 of 200 and 4437 of 2000. Three counter-affidavit were filed and it has been stated in paragraph 18 of this petition that the main stand of the respondents in those counter-affidavits was, that the notice dated 23.10.2000 (Annexure-1) was withdrawn on 1.12.2000 as applications for release of 4870 M.T. were received whereas the offer in Annexure-1 was only for 3,000 M.T.

6. AT paragraph-20, these petitioners have stated that on 23.1.2000, when the cases were called out, it was submitted (as would be evident from reading paragraph20 and Annexure-5 herein) that the Committee had recommended the rates of the coal at Rs. 2,900/- per M.T. but in the advertisement/notice (Annexure-l), it had wrongly been shown as Rs. 2,600/- per M.T. On 23.1.2001, all the Writ Petitions, vide Annexure-5 herein, was disposed off with a direction to release appropriate M.T. of Hard Coke taking into consideration the applications made by one or other petitioners in terms of rate as was fixed by the authorities prior to issuance of the advertisement. It was also observed that if in terms of the earlier rates, one or other petitioner was liable to pay any further amount, then they would accordingly inform the petitioners on the date when they would make their appearance.

7. According to the petitioners they are not aware of any recommendation of any Committee fixing the Hard Coke price at Rs. 2,900/-. The learned counsel for the petitioners submitted that Annexure-1 clearly lays down that the price was fixed at Rs. 2, 600/- per M.T. and that should be the sheet anchor for purposes of taking a decision in the instant case.

8. Mr. B. Poddar, learned counsel for the petitioner further submitted that the respondents have acted in a discriminatory manner in so far as other persons are concerned and that the respondents are still supplying variety of Hard Coke etc. to other persons namely 4/s. K. R. Associates at the rate of Rs. 2,600/- per M.T. The petitioners rely on Annexure-6 and 6/1 appended to the instant Writ Petition.

 

The petitioners, it appears, filed revision petition also against the order dated 23.1.2001 (Annexure-5) and the said petitions were disposed off by a common order as contained in Annexure7 being Civil Review Nos. 16, 17 and 18 of 2001. The only grievance in the said Review petition appears to be that the rate of Hard Coke taken note of to the extant of Rs. 2,900/- per M.T. was not correct and that it should have been Rs. 2,600/- per M.T. The Review petitions were disposed off giving liberty to the petitioners that if Hard Coke is sold at Rs. 2,600/- per M.T., they could bring the said fact to the notice of the concerned authorities who was expected to deal with the matter in accordance With law.

9. It is stated that even thereafter, the respondents did not give any response whereafter, they again sent legal notice and they met the respondents personally also. In paragraph-31, it has been stated that on 19.3.2001, when they went to the office of the respondent Nos. 2 and 3, they were told that if they were willing to receive Hard Coke at Rs. 2,900/- per M.T. plus 8% Sales Tax, then their cases would be considered. Otherwise, they would not be considered. It is, therefore, that the petitioners again filed three more Writ Petitions being CWJC Nos. 1106 of 2001, 1120 of 2001 and 1111 of 2001. By order dated 22.3.2001 (Annexure-10), these Writ Petitions were disposed off with a direction upon the Chairman-cum-Managing Director to hear the representatives of the petitioners and dispose them off in accordance with law and if the claims of the petitioners were found to be genuine, then appropriate orders were directed to be passed in relation to the release of coal in question.

10. Pursuant to the aforementioned order, the petitioners filed representations vide Annexure-11 Series whereafter, they received the letter dated 5.4.2001 by which they were asked to appear on 10.4.2001 (Annexure-12 Series). The petitioners appeared but no hearing was given as has been stated in paragraph 37 and they were simply told that Hard Coke cannot be released at the rate of Rs. 2,600/- per M.T. According to the petitioners, the respondents acted in violation of the orders passed above as a result whereof, they filed Contempt Application being MJC Nos. 301, 302 and 303 of 2001.

11. On 18.4.2001, the petitioners received the letter dated 11.4.2001 (Annexure-13 Series) by which, in purported compliance of the order passed by this Court on 22.3.2001, it was intimated that the earlier notice dated 23.10.2000 (Annexure-1 herein) had been withdrawn by notice dated 1.12.2000 and that there had been a revision of coal prices and as such, it was not possible to allot coal at the rate mentioned in the earlier notice dated 23.10.2000. According to the petitioners, those impugned letters do not meet one of the principle contentions of the petitioners to the effect that Hard Coke was being released to other similarly situated persons at the rate of Rs. 2,600/- per M.T. The petitioners further state that on 23.4.2001, they received three letters dated 21.4.2001 by which the respondents advised the petitioners to apply for refund of the money deposited by them whereafter, according to the petitioners, newspaper publication was made on 7.4.2001 (Annexure-15) inviting

 

applications for purchase of B.P. Ordinary Hard Coke of 3000 M.T. This fresh notice, according to the petitioners, is bad for the reasons stated

12. Mrs. Banani Verma, learned counsel for the respondents submitted that there have been fluctuations in the price on account of various factors. She further submitted that even at the time of depositing the money on 4.11.2000, the petitioners had agreed to various terms and conditions, one of which is contained in Clause-21 of the General Terms to the applicant which inter alia lays down that "The seller reserves the right to accept and/or reject any Application and also to cancel and/or modify the scheme/terms and conditions partially, any time without, assigning any reason whatsoever. The seller also reserves the right to accept or reject application either for...... (illegible) partial quantity (s) without any notice to the buyer."

13. She further submits, with reference to the counter-affidavit, that there is no willful disobedience of the order of this Court in as much as the order dated 23.1.2001 passed in CWJC No. 4430 of 2000 and other analogous cases clearly took into consideration that if the petitioners were found to pay any further amount, liberty was given to the respondents to inform the petitioners of the same and therefore, they did comply with this order.

14. Upon perusal of the pleadings made in this Writ Petition and also taking into consideration the statements made in the counter-affidavit (specially paragraph 13), this Court takes into consideration Clause-23 of the General instructions to the applicant which lays down that any dispute and/or difference between the seller and buyer arising out of sale of Hard Coke, shall been transferred to the Chief General Manager (Marketing) whose decision shall be final and binding on both the parties. Let it be recorded that in this Writ Petition what the petitioners really want is a mandamus upon a Coal Company to direct them to sell coal at a particular rate of their choice. Such a prayer is beyond the purview of a writ of mandamus because a Coal Company is certainly entitled to modify and/or change their prices from time to time on the basis of so many factors which pertain to the sale of coal. These factors cannot be mandated to be either fixed or revised or changed by the High Court under Article 226 of the Constitution of India exercising powers of judicial review. Additionally, let it be recorded that even earlier, when the petitioners came to this Court earlier vide CWJC No. 4430 of 2000 and other analogous cases, the factors in relation to the revision of rates to Rs. 2,900/per M.T. was duly taken note of and it was directed that Hard Coke would be released and if in terms of earlier rate it was found that the petitioners were liable to pay further, the respondents were required to inform them about such rates. In other words, no mandamus was issued upon the respondents that they had to supply coal at a certain rate.

15. Taking all these into consideration, it cannot be said that the petitioners have an existing right to claim for the issuance of a writ of mandamus for the supply of coal at a particular rate of their choice. So far as the question of discrimination is concerned, the respondents have stated that the rate of Rs. 2,600/- was a

 

reserved price for a particular tender for disposal of only 1,000 M.T. of Hard Coke. The validity of this tender ended on 30.9.2000.

16. In any event, sale of coal is dependent on a large number of factors. They include the cost of mining which is also dependent on other factors and the prices may fluctuate on account of price rise in relation to wages, cost of diesel and cost of so many other factors.

17. In that view of the matter, a Coal Company cannot be mandated by a writ Court to supply coal to particular persons at a price of their choice and that too, when the offer/price was apparently withdrawn on 1.12.2000 as is apparent from the statements made in paragraph-18 of the Writ Petition itself.

For the foregoing reasons, this Court holds that there is no merit in this Writ Petition. It is accordingly dismissed. There shall however be no order as to costs.

 