

(2020) 01 JH CK 0041

In the Jharkhand High Court

Case No : Writ Petition (C) No. 7451 of 2017

Continental Products

APPELLANT

Vs

Coal India Limited

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 JH CK 0041

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Deepak Sinha, Darshana Poddar Mishra, Piyush Poddar, A.K. Mehta

Final Decision : Dismissed

Judgement

Rajesh Shankar, J

1. The present writ petition has been filed for issuance of direction upon the respondent nos. 2 and 3 to sell and supply Run of Mines (ROM) coal from pit-heads of the respective collieries to the petitioner strictly on the basis of prices fixed by Coal India Limited as per price notification dated 01.02.2001 (Annexure-1 to the writ petition) without insisting upon the petitioner to pay any extra charge over and above the notified prices including the so-called selective loading charges as per notice dated 30.11.2001 (Annexure-2 to the writ petition). Further prayer has been made for declaration that the notice dated 30.11.2001 issued by the respondent no. 3- the Chief General Manager (Sales and Marketing), Bharat Coking Coal Limited, Dhanbad does not apply to the cokeries including the cokery belonging to the petitioner and on the basis of the same, the respondent cannot demand and realize any such charge from the said cokeries including the petitioner who are neither required to avail any such service nor availing the same. The petitioner has also prayed for a direction upon the respondent-BCCL to refund the amount illegally charged and realized from the petitioner on account of so-called selective loading charges pursuant to the notice dated 30.11.2001 with a suitable interest.

2. At the very outset, Mr. A.K. Mehta, the learned counsel for the respondent-BCCL, raises an objection regarding the maintainability of the present writ petition on the ground of huge delay committed by the petitioner as the impugned notice was issued in the year 2001 itself. It is further submitted that the petitioner being a regular coal purchaser of the respondent-BCCL did not raise any objection regarding selective loading charges levied for several years and for the first time, the same has been challenged by the petitioner by filing the present writ petition in the year 2017.

3. Heard the learned counsel for the parties and perused the contents of the writ petition.

4. The petitioner has put challenge to the notice dated 30.11.2001 issued by the respondent no. 3, whereby the coal purchasers were informed that selective loading charges were levied against them in addition to the price of coal. The petitioner appears to be a regular purchaser of coal from the respondent-BCCL. The impugned notice was issued in the year 2001. The petitioner has not assigned any reason in the writ petition as to why it committed such a huge delay in challenging the notice by which selective loading charges were levied in the year 2001. It is a settled law that though law of limitation normally does not apply in a writ proceeding of the High Court, yet any person invoking the said jurisdiction is required to satisfy the Court regarding inordinate delay committed in putting challenge to any order/notification.

5. The Hon'ble Supreme Court in the case of "State of Orissa & Anr. Vs. Mamata Mohanty" reported in (2011) 3 SCC 436 has held as under:

53. Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

6. In the case of "Eastern Coalfields Ltd. Vs. Dugal Kumar" reported in (2008) 14 SCC 295, the Hon'ble Supreme Court has held as under:

24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226

of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.

7. In the case of "Karnataka Power Corpn. Ltd. Vs. K. Thangappan" reported in (2006) 4 SCC 322, the Hon'ble Supreme Court has held as under:

6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports [(1969) 1 SCC 185] . Of course, the discretion has to be exercised judicially and reasonably.

8. In the case of "SDO, Grid Corporation of Orissa Ltd. & Ors. Vs. Timudu Oram" reported in (2005) 6 SCC 156, the Hon'ble Supreme Court has held as under:

9. The writ petition was filed after a lapse of 10 years. No reasons have been given for such an inordinate delay. The High Court erred in entertaining the writ petition after a lapse of 10 years. In such a case, awarding of compensation in exercise of its jurisdiction under Article 226 of the Constitution cannot be justified.

9. The Hon'ble Supreme Court in the case of "City and Industrial Development Corpn. Vs. Dosu Aardeshir Bhiwandiwalla & Ors." reported in (2009) 1 SCC 168 has held as under:

26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.

10. Considering the fact that the petitioner has failed to satisfy this Court regarding delay of about 16 years committed in challenging the notice dated 30.11.2001, I am not inclined to exercise an extraordinary jurisdiction of this Court under Article 226 of the Constitution of India which otherwise is discretionary in nature.

11. The writ petition is accordingly dismissed.