(2010) 05 JH CK 0098

In the Jharkhand High Court

Domco Smokeless Fuels Pvt. Ltd. APPELLANT

Vs

Bharat Coking Coal Ltd. and Others RESPONDENT

Date of Decision : 29-05-2010

Acts Referred:

Citation : (2010) 05 JH CK 0098

Hon'ble Judges : M.Y. Eqbal, Acting C.J.

Bench : Single Bench

Judgement

M.Y. Eqbal, A.C.J.

1. This application has been filed by the petitioner for initiation of contempt proceedings against the Opposite Parties for willful disobedience and violation of the order dated 22.9.2008 passed by this Court in a writ petition being W.P. (C) No. 3040 of 2005.

2. It appears that the aforementioned petition was filed by the petitioner for a direction restraining the respondents-opposite parties to charge or realize the price determined during E-auction for the linked quantity of coal which was booked prior to E-auction on the basis of scheduled price fixed by the respondents, but the said booked and valued paid quantity of coal was not lifted. The petitioner also prayed for a direction upon the respondents to continue supply of linked quantity of coal to the petitioner''s unit as per the notified price in terms of the order passed in C.W.J.C. No. 2750 of 1997(R) as also the order passed by Supreme Court in Civil Appeal No. 6317 of 1998. The writ petition was heard and disposed of by learned Single Judge on 22.9.2008 taking into consideration the earlier order passed in the writ petition and also the direction issued by the Supreme Court For better appreciation, the relevant portions of the order passed in the writ petition, which is the subject matter of this contempt proceeding, are reproduced herein below:

From the records, it appears that the present writ application was filed originally challenging E-auction proposed to be conducted by the respondent BCCL in respect of linked quantity of coal with a prayer for a direction to the respondents to release the price determined during E-auction of the linked quantity of coal in the light of the orders passed in CWJC No. 2750 of 1997(R) which was affirmed by the Supreme Court in Civil Appeal No. 6317 of 1998.

Subsequently, on the allegation that the orders were not complied with, petition was filed by the petitioner vide I.A. No. 4 in Com Pet. (C) No. 138 of 2007 in C.A. No. 5324 of 2006. While hearing all the contempt petitions together in Transfer Petition (Civil) No. 100 of 2006, the Apex Court had passed an interim order on 30. 10. 2007 in following terms:

Let the amount deposited by the Coal India Ltd. be invested on a short term fixed deposit for 60 days.

It is stated by the learned Solicitor General that Mr. A.P. Singh, General manager (Sales) CCL, has not been able to appear in Court today as his father has expired. His personal appearance is exempted.

The learned Solicitor General appearing on behalf of the alleged contemnors tenders an unqualified apology on their behalf. The learned Solicitor General does not press the other I.As. He also does not press the other contentions raised in the affidavits of the respective alleged contemnors.

It is submitted by the learned Solicitor General that the amount paid by the petitioners, in excess of the notified price shall be refunded to them upon verification of the documents which may be submitted in that behalf.

We, while accepting the apology tendered by the alleged contemnors, direct as under:

i. The petitioners shall furnish all documents to the learned Advocates-on-Record of the respondents, showing the actual payments made to any of the subsidiaries of the Coal India Ltd. and the difference between the amount paid and the amount notified, by 12th November 2007.

ii. The documents furnished by the petitioners shall be verified by the officers of the concerned coal companies within four weeks thereafter.

iii. In case of any difference, the Learned Counsel would deliberate upon the matter so as to enable them to come out with an accepted solution.

iv. The Bank guarantee furnished by the petitioners shall stand discharged.

In view of the aforementioned directions, personal appearance of the alleged contemnors is dispensed with till further orders.

Post this matter for further orders, if any, on 8th January, 2008.:

Learned Counsel for the petitioner submits that in the light of the above direction of the Apex Court, the petitioners is entitled to refund of the excess payments made by the petitioner over and above the notified price.

Considering the above facts and circumstances, in terms of the above stated order of the Apex Court, the petitioner shall, furnish all requisite documents, if not already furnished, to the Counsel for the respondents, showing actual payments made to any of the subsidiaries, to enable assessment in proper perspective regarding the actual payment of money made, if any, by the petitioner over and above the notified price. After making final assessment in this regard, the parties shall sit together and decide all the issues relating to refund of the excess amount and the mode of refund of such amount, between themselves.

This writ application along with the I.A. No. 4 of 2008 are disposed of with the aforesaid observations.

3. From the order passed by the Supreme Court it is evidently clear that the learned Solicitor General appearing before the Supreme Court, admitted that excess amount was realized by the respondent-Coal Company and, therefore, the said amount in excess of the notified price shall be refunded to them upon verification of documents. In the light of the order passed by the Apex Court, the learned Single Judge directed the petitioner to furnish all documents showing actual payment made to any of the subsidiaries so that the amount in excess of notified price could be refunded. Instead of refunding the said amount, now the respondent-opposite party is taking a different stand that the claim for refund of the amount pertaining to the period between January, 2005 to April, 2008 is not tenable as the said amount i.e., 13.4% was a part of notified price w.e.f. January, 2005. No such stand was taken by the respondent-Coal Company before the Supreme Court It cannot be disputed that the power of fixing and notifying price was with the Ministry of Coal and the said power was delegated to Coal India Limited. Hence, any amount cannot be added with the notified price by the subsidiaries of Coal India Limited inasmuch as those subsidiaries were never vested with the power to add any amount in the notified price. It appears that the matter before the supreme Court was in relation to the undertaking given with regard to refund of the amount deposited by the Coal Company in excess of the notified price.

4. Recently a similar question arose with regard to refund of the excess amount deposited by the Coal Company in a writ petition before the Patna High Court being CWJC No. 6530/2009 and the Patna High Court directed refund of the amount collected by the Coal Companies in excess of the notified price.

5. In the light of the order passed by the Supreme Court and the direction issued by this Court, the respondents-opposite parties are bound to refund the excess amount with interest in excess of the notified price collected by the Coal Companies from the petitioner for the period in question. The stand taken by the respondents in the show cause cannot be accepted.

6. In the facts and circumstances, although a prima facie case is made out for initiation of contempt proceeding against the respondents, but instead of

proceeding further the respondents are directed to refund the amount collected in excess of notified price together with interest for the period in question within a period of one month from today.

7. With the aforesaid direction, this contempt application is disposed of.

