

(2008) 09 JH CK 0077
In the Jharkhand High Court

Domco Smokeless Fuels Pvt. Ltd.	Vs	APPELLANT
Bharat Coking Coal Ltd. and Others		RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Citation : (2008) 09 JH CK 0077

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—I.A. No. 4 of 2008 has been filed on behalf of the petitioners praying for modification of the order dated 31.8.2007 as well as for disposal of the writ application in the light of the orders passed by this Court.

2. Learned Counsel for the petitioner explains that LA. No. 931 of 2007 was disposed of by this Court with the observation that "orders and directions passed by the Supreme Court shall also govern this case on the basis of the submission made by the counsel appearing on behalf of the Coal Companies has submitted before the Hon"ble Supreme Court that the amount paid in excess of the notified prices shall be refunded to them upon verification of the documents which may be submitted on their behalf. Learned Counsel submits that the petitioner therefore prays for modification in the order dated 31.8.2007 and to direct the respondents to release the entire amount paid by the petitioner over and above the notified price in between January 2005 till October 2007 along with 12% interest.

Shri A.K. Mehta, learned Counsel appearing for the respondents, submits that the order of the Supreme Court referred to by the petitioner in the present interlocutory application, is exhaustive and self-explanatory and since by the earlier order passed by this Court, specific observation was recorded that the direction passed by the Supreme Court shall also govern this case, there appears no need for any modification in the order as sought for by the petitioner or for any further orders in terms of the petitioner's prayer.

3. 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.

4. Subsequently, on the allegation that the orders were not complied with, petition was filed by the petitioner vide LA. No. 4 in Cont. 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

5. Learned Counsel for the petitioner submits that in the light of the above direction of the Apex Court, the petitioner is entitled to refund of the excess

payments made by the petitioner over and above the notified price.

6. 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.

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