
(2014) 06 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 7243 of 2012

Electrosteel Castings Limited

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Citation : (2014) 3 AJR 608

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Sinha, Sr. Advocate and Indrajeet Sinha, Advocate for the Appellant; Faiz-ur-Rahman, CGC, Advocate for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—The petitioner, a company registered under the Companies Act, had established a steel plant in the State of West Bengal. Its associate company had also established a steel plant in the State of Andhra Pradesh. Upon establishing the steel plants, the petitioner applied for allocation of coal block in the year 2004. Pursuant to that the Central Government vide its order dated 07/07/2005, allocated Parbatpur Coal Block, situated in the District of Bokaro. Conditions was laid down under the letter dated 07/07/2005, wherein one of the stipulations as contained in Clause (ix) was as below:--

"ix. No coal shall be sold, delivered, transferred or disposed of except for the stated captive mining purposes except with the previous approval of the Central Government".

Further stipulation as has been made in Clause (xiii) is that "The State Government at the time of seeking previous approval for the grant of mining lease shall submit a draft of the mining lease containing the above relevant conditions for vetting by the Central Government. The final mining lease shall be as vetted/modified by the Central Government. Any deviation from the vetted/modified draft shall render the mining lease deed ab initio null and void and without effect".

2. After allocation of the coal block, the petitioner did approach to the State Government for executing a deed of lease. The State Government did approve the allocation of the grant of coal block by the Central Government subject to condition as laid in Clause 8(ix) to the effect that 80% of the coal, extracted from the coal block, shall be used in the State of Jharkhand and rest 20% of the coal can be used out side of the State.

3. Thereupon, as per the case of the petitioner Elctrosteel Steel Limited as sister concern of the petitioner's company established a steel plant at Chandankiyari in the District of Bokaro in which the petitioner company was having 39% of the equity holding. Crores and crores of rupees was invested in establishing the said Company. After its establishment, the petitioner wrote a letter to the Central Government in terms of the conditions as have been stipulated for giving permission to use the coal, extracted from Parbatpur Coal Block in the State of Jharkhand. In response to that letter, an order was passed as contained in letter dated 22/02/2010 (Annexure-7), wherein one amongst the other, the following condition was imposed:--

"The equity shareholding of M/s. Electro-steel Castings Ltd. in M/s. Electro-steel Integrated Ltd. shall have to be raised to 51% and this should be maintained at all times during the life of the two projects, i.e. mining as well as the end use plant. Suitable provisions to this effect shall have to be inserted in the Memorandum of Association and Articles of Association of both the companies and furnish copy of MOA and AOA of ECL and EIL".

That order is under challenge.

4. Mr. Anil Kumar Sinha, learned senior counsel appearing for the petitioner submits that under the guidelines issued earlier by the Central Government equity ownership of the holding company in associate company, had been fixed as 26% but without there being any change in the said guidelines, the Authority by issuing a letter dated 22/02/2010 (Annexure-7) asking the petitioner to enhance its equity share from 39% to 51%, has exceeded its jurisdiction and, therefore it suffers from vice of arbitrariness and, hence, it is fit to be quashed.

5. The other point, which has been taken on behalf of the petitioner is that in similar situation TISCO who had also equity holding in its two other associate companies to the extent of 37% and 47%, was allowed to consume the end-product of the coal block in associate company. Not only that two other Companies namely CICC and CIPCO, who were having holding equity to the extent of 26% only in its associate company, have been allowed to use the end-product of the coal in its associate company and, thereby, the act of the Authority has been discriminating in asking the petitioner to raise equity holding from 39% to 51% and, thereby, on this ground also the order dated 22/02/2010 (Annexure-7) is fit to be quashed.

6. Learned counsel in this respect, has further submitted that the limit of having 26% of holding equity had earlier been fixed under the guidelines issued by the

Central Government, but without there being any change in the policy of the Government, the Authority has passed an order for raising the equity share from 39% to 51%, which would be quite illegal in view of the decisions rendered in a case of Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, and in a case of Smt. Leelabai Gajanan Pansare and Others Vs. The Oriental Insurance Co. Ltd. and Others, and under the circumstances, the order as contained in letter dated 22/02/2010 (Annexure-7) is fit to be quashed.

7. The other point, which has been taken in this writ petition is that while the dispute was going on, coal produced remained unused as a result of which stock of coal increased considerably at the stockyard and under that situation the Pollution Board raised objection as the water was getting polluted due to spilling of coal/water from the coal stock and, therefore, a letter was written to the Central Government requesting therein to allow the petitioner to use the surplus coal in the steel factory situated in the State of Jharkhand. Instead of permitting the petitioner to use the coal, an order was passed directing the petitioner to handover the surplus coal produced from the Parbatpur coal block, if any, to the local CIL subsidiary or to any person designated by it immediately in compliance with condition No. (iii) of this Ministry's letter dated 07/07/2005, under intimation to this Ministry. That order was challenged by way of interlocutory application bearing I.A. No. 2804 of 2014, wherein this Court on 16/05/2014, passed an order to the effect that the respondents shall not take any coercive action for acquisition of coal stock of the petitioner.

8. As against this, Mr. Faiz-ur-Rahman, learned counsel appearing for the Union of India submits that raising of equity holding to the extent of 51% is under the decision of the empower group of Ministers and for establishing it the respondents in its counter affidavit have given example of Reliance Power Limited to which M/s. Chitarngi Power Private Limited is its subsidiary company, wherein an order was passed to the effect that minimum equity share holding should be 51%.

9. In the entire counter affidavit no averment is there that there has been change in the policy/guidelines of the Central Government requiring only 26% of equity holding in the associate company.

10. A reply to the aforesaid statement made on behalf of the Central Government has been given by the petitioner wherein it has been stated that the Authority had never taken any decision for raising equity share holding to the extent of 51% and, thereby, it was submitted that there has been absolutely no Government's decision in this regard and, therefore, discriminatory orders are being passed wherein for other company it has stucked to same 26% of holding equity whereas in case of petitioner's company order has been passed to raise equity holding from 39% to 51%.

11. Having heard learned counsel appearing for the parties, there has been no dispute that the petitioner company was allocated a coal block. After allocation of

the coal block when the matter came for approval before the State Authority, the State Authority put a condition of using the end product in the State of Jharkhand to the extent of 80%. The petitioner did agree to this proposal and, therefore, the holding company invested 39% of equity share in associate company namely Electrosteel Steels Limited. After establishment of the said company when the petitioner company made a request from the Central Government to allow him to use the end product in the said steel factory, the Central Government asked the petitioner to raise equity share from 39% to 51%. That is under challenge.

12. It be stated that earlier the Central Government had issued a guideline for allocation of captive blocks and conditions of allotment. One of the guidelines is at Sl. No. 8 relating to mining of coal by allottee Companies. Sub-clause (iii) of Clause-8 reads as follows:

"(iii) There can be a holding company with two subsidiaries i.e. (I) a company engaged in any of the approved end-uses (ii) an associated coal company formed with the sole objective of mining coal and supplying the coal on exclusive basis from the captive coal block to the end-user company, provided the holding company has at least 26% equity ownership in both the end-user company and the associated coal company".

13. This guideline seems to have been followed by the Authority of the Central Government in case of the companies namely CICC and CIPCO when they had asked the Central Government to allow them to use the end product in their subsidiaries company, which would be evident from the order passed in the representation received from M/s. TISCO. From the said order it also does appear that the TISCO who was having 47% and 37% equity share in its associate company, has been allowed to use the coal, but in case of the petitioner, the petitioner, by the order dated 22/02/2010, as contained in Annexure-7, has been asked to raise equity share from 39% to 51% before the holding company be allowed to use its coal in the subsidiary company namely Electrosteel Steels Limited. Thus, on one hand the Government has allowed the other companies, who have not having equity share to the extent of 51% to use coal in its subsidiary companies. But on the other hand, the petitioner company has been asked to raise equity share from 39% to 51% and that can easily be termed to be discriminatory. Not only that even the Coal Controller had made recommendation to the effect that the petitioner company be also asked to have its equity to the extent of 26% as in case of TISCO the subsidiary company of TISCO have been allowed to be supplied with the coal as having less equity holding than 51%. In spite of that letter dated 22/02/2010 (Annexure 7) was issued asking the petitioner to have 51% of equity holding in its subsidiary company.

14. Similar was the opinion of the Attorney General of India, whose advise was sought in connection with the relevant matter, which has been brought on record by way of Annexure-7 series, but that also does not seems to have been followed.

15. In that view of the matter, there appears to be discrimination. Nothing has been brought on the records to establish the special features in which different treatment has been meted out to the other companies than the petitioner company. Nothing has also been stated on behalf of the State regarding nexus of having 51% of the equity holding with the supply of coal to the subsidiary company. There has been no denial of the principle that there may be discrimination but that discrimination should have nexus with the object sought to be changed. In this respect I may refer to a decision rendered in a case of Smt. Leelabai Gajanan Pansare and Others Vs. The Oriental Insurance Co. Ltd. and Others, wherein Their Lordships have held as follows:

"We may note that to meet the challenge of discrimination under Article 14 it is not sufficient to state that there is an intelligible differentia, but it is further an essential requirement to show that the differentia has a rational nexus to the object sought to be achieved by the statute in question".

16. Further, I may refer to a decision rendered in a case of Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, wherein Their Lordships have held that every action of the State or its instrumentalities should not only be fair, legitimate and aboveboard but should be without any affection or aversion. It should neither be suggestive or discriminatory nor even apparently give an impression of bias, favouritism and nepotism. The decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the anti-thesis to the decision taken in accordance with the rule of law.

17. Here in the instant case, as I have already indicated that earlier a guidelines had been laid down by the Central Government in the matter of allocation of the coal block and the use of its endproduct, wherein one of the stipulation was that if the holding company does have equity share to the extent of 26% and more it may be allowed to use coal in its subsidiary company. Thereupon, no subsequent guidelines seems to have been issued in this respect as had that guidelines been there this guidelines could have brought on records as Union of India has been given number of opportunities to bring that guidelines on the records.

18. In that view of the matter, I am constrain to hold that the Authorities have arbitrarily taken decision asking the holding company to raise its equity holding from 39% to 51 % and, thereby, it is not sustainable under the law. Accordingly, the order as contained in letter dated 22/02/2010 (Annexure-7) is hereby set aside.

19. Further going into the matter it be stated that while the dispute as aforesaid was going on, the holding company went on extracting coal and on account of non use of the coal the stock increased and its started creating water pollution. In that event, the Pollution Board gave notice to remove the stock otherwise necessary action shall be taken. That order was challenged before this Court and the counsel for the Union of India was asked to take instructions in this regard.

Thereupon, an order was passed by the Authority of the Central Government vide its order dated 12/05/2014 to hand over the surplus coal to the CCL, which was also challenged by way of interlocutory application. Since, the stipulation made by the Central Government for raising equity holding from 39% to 51% has been set aside and that the State Government has already executed lease in favour of the petitioner company, there would be no difficulty in using the coal by the holding company for its subsidiary company after having formal permission from the Central Government. Thus, this application stands allowed.