

(1991) 11 CAL CK 0023
In the Calcutta High Court
In Re: Bihar Coal Trader

Date of Decision : 27-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226(2)
Essential Commodities Act, 1955 — Section 7

Citation : (1992) 2 CALLT 465

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : A.K. Dhandhanian and Tapas Hazra, Ashoke K. Banerjee and Tapan K. Mukherjee II, Vinod K. Gupta, for the Appellant;

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The present writ petition is being moved on notice to the concerned respondents. Heard the learned Advocates for the writ petitioner, for the Union of India and the Coal Controller, for the State of Bihar and considered the materials on record.

2. The writ petitioner has come to this Court seeking reliefs, inter alia, for a Writ of Mandamus commanding the respondents to allow the petitioner to purchase, sell and/or deal in non-coking coal particularly middlings/rejects having ash content more than 35% without any licence as envisaged under the Bihar Trade Articles (Licence Unification) Order, 1984 so far as the same imposes restrictions upon consumption of non-coking coal and the said Order of 1984 is void, bad, and illegal in view of the notification dated 30th November, 1974 passed earlier. There is a further prayer to command the respondents not to apply the provisions of the said Order, 1984 and Section 7 of the Essential Commodities Act, 1955 in respect of purchase, selling and/or dealing in non-coking coal, particularly middlings rejects having ash content more than 35% without obtaining formal permission from the respondents.

3. Court's attention has been drawn to several writ petitions and interim orders passed in such writ petitions. Mr. Banerjee, learned Advocate for the writ petitioner has strongly emphasized that there is a distinctive feature and

difference as to the slurry, middlings and rejects as referred to in the petition herein. Learned Advocate for the Union of India and the State of Bihar have drawn the Court's attention to a Division Bench Judgment in the High Court of Judicature at Patna, Ranchi Bench, in the case of Nisha Coal Traders v. State of Bihar and Ors., wherein; it was found, inter alia, that the petitioner was a dealer in coal, rejects, slurry and middlings etc., and that the petitioner had no case in regard to coal, its rejects and middlings etc. as those were obviously coal or derivatives thereof. It was further found that while the Full Bench of Patna High Court held that slurry is not coal in a case where slurry has escaped out of the washery the slurry in the case before the Division Bench being within the pond of the industries from which the petitioner therein buys, the character of such slurry was entirely different from the slurry referred to in the Full Bench decision. As such, the writ petition before the Division Bench was rejected.

4. Mr. Dhandhanian, learned Advocate for the Union of India has strongly raised the point of jurisdiction also as no part of the cause of action arises in this Hon'ble Court's Jurisdiction though such an attempt was made.

5. Having heard the learned Advocates for the parties at length, and considering the materials on record, this Court finds that the interim orders referred to in the present writ petition cannot have any binding force as no ratio is applicable nor any point has already been decided. On the contrary this Court finds from the Division Bench judgment of the Patna High Court (supra) that it was mentioned therein clearly that the petitioner cannot have any case in regard to coal, its rejects and middlings etc. Besides, this Court is fully satisfied that the petitioner herein purchases and sells middlings and rejects within Bihar and the applicability of the Section 7 of the Essential Commodities Act, 1955 comes in and the application of the Bihar Trade Articles (Licences Unification) Order, 1984 has got no bearing upon the address of the petitioner within, the jurisdiction of this Court. This Court is of the further view that no part of the cause of action arises within the jurisdiction of this Court and hence the petitioner has no prima facie case to challenge the requisition and/or the applicability in the manner as canvassed. The petition is thus summarily rejected without costs.

6. Xerox copy of the order, authenticated by the Deputy Registrar (Court) be given to the Advocates for the respondents on their applying for certified copies and on complying with other formalities.