
(1992) 02 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 1985 of 1991 (R)

Industrial Fuel Co. (P.) Ltd.	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Citation : (1992) 02 PAT CK 0007

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ petition, the Petitioner has prayed for issuance of a writ mandamus directing the Respondents to refund the amount of cess to the Petitioner with interest @ 18% per annum from 4-4-1991.

2. In view of the points involved in this writ petition, it is not necessary to state the fact of the matter in details. Admittedly, the Petitioner entered into contract with Central Coal-Fields Limited for lifting 24,000 metric tonnes of Kargali Washery rejects and 42,000 metric tonnes of Giddi Washery middlings/slurry/dirty slurry in terms of the agreement contained in the letter dated 26-10-1989.

3. On behalf of the Petitioner it was Contended that from the various documents, it would appear that while fixing the price for selling the said washery products, the Central Coalfields Limited (C.C.L. for short) had taken into consideration the amount of royalty and cess paid by them to the State of Bihar.

4. Counter affidavit has been filed on behalf of the Respondent Nos. 2 and 3. The Petitioner has filed rejoinder to the said counter affidavit. Clauses 9(a) and 9(b) of the contract reads as follows:

9. (a) The price of coal/middling will be as per Government Price Notification Inclusive of all taxes, levies and other relevant statutory charges imposed from time to time.

(b) The price of rejects/mid-dlings/slurry/dirty slurry shall be as indicated under:

Price per tonne.

Kargali Rejects Rs. 169.80 + Sales Tax

Giddi Rejects Rs. 169.80 + Sales Tax

Giddi Middlings Rs. 234.20 + Sales Tax

Giddi Slurry Rs. 364.80 + Sales Tax

Giddi Dirty Slurry Rs. 234.20 + Sales Tax

5, Mr. Mittal, learned Counsel for the Petitioner, has raised a very short point in support of the case of the Petitioner. He submitted that in terms of the judgment of the Supreme Court in *M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others*, as also *Federation of The Federation of Mining Associations of Rajasthan, and Vs. State of Rajasthan and Another*, , no cess is payable atleast with effect from 4-4-1991. Learned Counsel has also placed before me various documents to show that the said washery products are considered by the authorities of the Respondent-Company to be equivalent to Grade-D and F coal (non-Coking coal) and the prices thereof have been fixed on that basis upon considering the amount of cess charged on the actual value thereof.

6. Mr. Banerjee, learned Counsel for Respondent Nos. 2 to 9 submitted that from a perusal of Clauses 9(a) and 9(b) of the said agreement/contract, it would appear, that the Petitioner is not required to pay anything except the price of rejects, slurry, middlings and dirty slurry, apart from the sales tax payable on those goods. According to Mr. Banerjee although for arriving at the price of coal, the element of royalty, Cess etc. might have been taken into account, to which the Petitioner agreed, but what is realised from the Petitioner is not the cess, but the amount paid by Respondent No. 1 under these heads, which are the elements in the cost structure taken into consideration for determining the contractual price payable by a purchaser, and thus this writ petition is not maintainable. In support of his contention, Mr. Banerjee has relied upon a decision of this Court in C.W.J.C. No. 1718 of 1987 (R) disposed of on 3rd August, 1988.

7. Coking coal raised from coal mines are washed in washeries for reducing the ash percentage of coal. Such coking coals are graded as Grades I and II etc. whereas non-coking coals are graded as Grades A, and B so on. Cess in terms of Bengal Cess Act, 1880, is payable on coal raised from coal mines. No cess is thus payable on Washery products Coal mines. No cess is thus payable on Washery products. The agreement/contract entered into by and between the Petitioner and the Respondent-Company for selling such washery product is covered by the contract-qua-contract. For arriving at the sales price it is possible that the Respondent-Company might have taken into consideration the amount of cess paid by it to the State of Bihar but as indicated above, no amount of cess as such is being realised from the Petitioner. It has also been admitted at the bar that the price of reject coke has not been fixed up by the Central government by Issuing any Notification under Clause-3 of the Colliery Control Order, 1945. In his

situation the price of washery products sought to be purchased by the Petitioner Respondent-Company by reason of agreement/contract dated 26-10-1989 is a matter of contract between the parties thereto and thus this Court in exercise of its writ jurisdiction cannot direct the Respondent-Company to refund the amount of cess which was taken into consideration for the purpose of arriving at the price of the washery products.

In C.W.J.C. No. 1718 of 1987 (R), referred to above, a Division Bench of this Court held as follows:

In other words, in the fixation of price to be paid, by the Petitioner under the contract, the element of royalty, cess etc. is taken into account and added to the price of coal for arriving at the total price payable. The Petitioner also agreed to purchase coal at such price. What is therefore realised from the Petitioner is not royalty or cess as such, but only the amounts paid by the Respondent No. 1 under those heads, which are the elements in the cost structure that are taken into consideration in determining the, contractual price payable by a purchaser. We find no reason why the Respondent No. 1 cannot recover the amount paid by it under the aforesaid heads from the purchasers.

In that case also the Petitioner had questioned the authority of the Respondent-Company to collect the amount of royalty and cess by way of price of slurry sold by it. In that case the Petitioner thereof relying on the decision of the Full Bench of this Court in Kundori Labour Co-operative Society Ltd. and Vs. State of Bihar and Others, , had contended that as slurry is not coal, no royalty or cess is payable thereon. The Full Bench in Khandori Labour Co-operative Society Ltd., (supra) held that industrial effluents which flow out of coal washeries and settle on river bed is not coal. In C.W.J.C. No. 1718 of 1987 (R) (supra) it was held that the decision in Khandori Labour Cooperative Society, (supra) was not applicable to the case of the Petitioners of C.W.J.C. No. 1718 of 1987 (R) as the Petitioner was not purchasing industrial affluent. Although the Supreme Court has reversed the decision of this Court in Khandori Labour Co-operative Society (supra) and has held that slurry is coal, the position has not changed so far matter relating to payment of cess on the washery product is concerned. In that view of the matter although the Division Bench in C.W.J.C. No. 1718 of 1987 (R) has rendered the judgment prior to the decision of the Supreme Court in India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, and Orissa Cement Limited (supra) and of this Court in Central Coalfields Ltd. and Others Vs. The State of Bihar and Others but for the reasons aforesaid the decision of this Court in C.W.J.C. No. 1718 of 1987 (R) is still a binding precedent. That being the position, this writ petition must fail.

8. In result, this application is dismissed. But in the circumstances of this facse, there shall be no order as to costs.