

(2004) 03 JH CK 0068
In the Jharkhand High Court
Case No : Writ Petition (C) No. 2769 of 2002

Jai Laxmi Fuels (P) Ltd.

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 19-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 226

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Mahesh Tewari, for the Appellant; S.N. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard the parties.

2. The prayer of the petitioner in this writ application is for quashing of the order dated 31.10.2001 as contained in Annexure 13 to the writ application, whereby the Chief General Manager, Bharat Coking Coal Ltd., Dhanbad Informed the petitioner that since he failed to book 1,26,167 MT of slurry out of the allotted quantity of 1,96.667 MT and therefore, under the penalty Clause 8 of the tender the security deposit of the petitioner amounting to Rs. 7,44,385.30 paise for unbooked quantity of slurry was forfeited and further that the petitioner was found to be entitled for refund of the amount of Rs. 3,95,614.70 paise plus the value of the balance quantity of slurry, if any, after surrendering the original sale order. Further, prayer of the petitioner is for direction to the respondents to refund the entire amount deposited by him to the tune of Rs. 11,40,000/- (Eleven lakhs forty thousand).

3. From the order as contained in Annexure 12 passed by this Court in Civil Revision No. 290 of 2001 dated 10.8.2001 it appears that with regard to the matter connected with the relief claimed, a Title Suit bearing Title Suit No. 29 of 2000, filed by the petitioner was pending in the Court of Munsif, Dhanbad. The

aforesaid Civil Revision No. 290/2001 was filed by the B.C.C.L. against the order of the Munsif, Dhanbad in the aforesaid title suit. It appears that in course of argument of the Civil Revision Application before this Court, the learned counsel for M/s. Jai Laxmi Fuels (P) Ltd., i.e., the opposite-party the revision application and the present writ petitioner, made statement in the Court that his client is not interested any more in operating the contract in the sense that he does not want to slurry to be lifted any more and that he wants the arrangement to come an end and he only prayed that the security money lying with the petitioner may be ordered to be refunded to the opposite-party.

4. In view of the above statement made by the learned counsel, this Court dismissed the Revision Application to be infructuous with certain directions which are reproduced hereinbelow :

"This Revision Petition is dismissed as having been infructuous. Petitioner No. 2 is hereby directed to consider the issue relating to the refund of the amount of security, deposited with the petitioners, in favour of the opposite-party. Upon this consideration, he shall pass a specific order with regard to the opposite-party's entitlement to this amount. This order shall be passed by the petitioner No. 2 within a period of three weeks from today, with or without the opposite-party making any representation for the purpose. If the opposite-party is held entitled to the refund of the entire amount of the security deposit made by it with the petitioners, there is no need to pass a speaking and reasoned order. However, if the petitioners feel that the opposite-party is either not entitled at all, or is entitled to less than the amount deposited by it, they shall pass a reasoned and speaking order. In any event, the amount to which the opposite-party is held entitled to, if at all, shall be refunded to the opposite-party within a period of one week from the date of the passing of the aforesaid order."

5. Therefore, from the aforesaid order it appears that this Court directed the respondents to consider and pass a specific order with regard to opposite-party's entitlement for the refund of the security amount and in case if it was found that the present petitioner was not entitled all or was entitle to less than the amount deposited then he had to pass a reasoned and speaking order.

6. Accordingly, as per the direction of this Court, Annexure 13, i.e., the impugned order has been passed by the respondents by invoking Clause 8 of the terms and conditions of the agreement between the parties.

7. The learned counsel for the petitioner has submitted that since the respondents have failed to supply the quantity of slurry as per the agreement and therefore, in view of Clause 8 aforesaid which speaks that in case the seller fails to deliver the quantity within the stipulated period, it shall refund the full value of the unlifted coal without any interest and as such the petitioner is entitled for the refund of the entire deposit made by him to the tune of Rs. 11,40,000/- (eleven lakhs forty thousand).

8. In my view, since, it is totally a money claim arising out of a contract and

therefore, this Court in its writ jurisdiction cannot decide the entitlement of the petitioner for refund of any amount as per the terms of the agreement. Accordingly. I find no merit in this writ application and thus, this writ application is dismissed.