

(2004) 03 PAT CK 0103

In the Patna High Court

Case No : C.W.J.C. No's. 1183, 15837 and 15853 of 2001, 1192, 1835, 2908, 3660, 3783, 3867, 4827, 4919, 5069, 5534, 10907 and 11065 of 2002 and 12221 of 2003

M/s Aman Coke Plant Pvt. Ltd. and Others

APPELLANT

Vs

The B.C.C.L. and Others etc. etc.

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Citation : (2004) 4 PLJR 76

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : R.C. Jha, Kameshwar Pd. Gupta in 1835, 3783, 4827; Mr. Kameshwar Pd. Gupta in 5069, 3867; M/s Y.V. Giri, Nand Kishore Pd. Sinha in 11065; Mr. Raj Kishore Pd. in 10907, 12221, for the Appellant; V.M.K. Sinha, for the Respondent

Judgement

Radha Mohan Prasad, J.—As in all these writ petitions, grievance of the petitioners is common as against the Respondent-Coal Company to ensure booking and supply of full linkage quantity of coal per month on regular basis, with consent of the parties, they have been heard together for final disposal, and, thus, are being disposed of by this common order. In fact, the claim of the respective petitioner is that their case stand on similar footing as of the petitioners of C.W.J.C. No. 2750 of 1997(R), and, as such, they are entitled for full quantity of coal i.e. initial/linked quantity of coal and not as per the "Maximum Permissible Quantity (MPQ).

2. In short the relevant facts are that the petitioners in all the cases are either cokery plant or mini special smokeless fuel, in short "ssf", plant, manufacturers of agriculture equipment. Petitioners' industries were established on the basis of the decision taken by the Coal Ministry, Government of India to make available coal to the private entrepreneur for production of Special Smokeless Fuel Technology, which was developed by Central Mines Planning & Design Institute

(in short CMPDI). This decision of the Coal Ministry was approved by the Coal India Ltd. and pursuant to advertisement made by Coal India Ltd. for establishment of special smokeless fuel plants for the purpose of manufacture of domestic coal to be supplied to the consumers, the petitioners agreed for the same and they after obtaining project report from the CMPDI agreed to establish such industry. The petitioners were provided technical know-how by CMPDI and they invested crores of rupees in the establishment of Special Smokeless Fuel Plant and on the assurance of the Respondents to supply fixed quantity of coal for their establishment. As per the capacity of the plant, petitioners were to get 5000 Metric Tonnes Coal as fixed in the project report and agreed by the coal company. Petitioners are duly registered under the Industry Department. The grievance of the petitioners is that despite minimum requirement of 5000 Metric Tonnes of Coal, Respondents are not releasing full quota of coal to the petitioners.

3. It appears that the question regarding booking and supply of full linkage quantity of coal per month on regular basis came up for consideration in several round of fight in this Court, in Jharkhand High Court and even in the Supreme Court. In C.W.J.C. No. 2750 of 1997(R) Ranchi Bench of this Court (as it then existed) in order to resolve the dispute for future transactions held that the respondents shall henceforth issue release order and despatch the fixed quantity 5000 MT of monthly quota of coal, i.e. graded washery 0III/IV or equal grade of coal within 45 days from the date of deposit of value of coal and before the deposit of the amount for the subsequent month. The Supreme Court finally in Civil Appeal No. 566 of 2001 filed by the Respondent-Coal Company vide order dated 15.1.2001 while clarifying its earlier order dated March 22, 1999 in Civil Appeal No. 6317 of 1998 directed that the said order shall not come in the way of either party to seek appropriate relief from the High Court should there be any change of circumstances. Thus, directed that whether there is any justification for modification of the judgment and order dated 28.11.1997 passed in CWJC No. 2750 of 1997 in the light of the above shall have to be decided by the High Court, uninfluenced by the orders made in Civil Appeal No. 6317 of 1998 on March 22, 1999, and remanded the application seeking modification to the High Court for its fresh disposal in the light of the above. The Supreme Court further observed that it shall be open to the respondent to raise all such objections in the High Court as are permissible in law, including the preliminary objection to maintainability of the application. Pursuant to the said order, application filed by the Respondent-company was finally disposed of by the High Court of Jharkhand vide order dated 16.10.2001 passed in C.W.J.C. No. 2750 of 1997(R) (Annexure-9 to the rejoinder on behalf of the petitioner filed in C.W.J.C. No. 1835 of 2003). In the said case the Jharkhand High Court did not find any reason to modify the judgment and order passed in the writ petition, and, thus, rejected the modification application filed by the Respondents.

4. From the aforementioned order dated 16.10.2001 of the High Court of Jharkhand (Annexure-9), it appears that Respondent-Coal Company did not dispute entitlement of linked consumer to get regular supply of coal irrespective

of the New Colliery Control Order or new sales policy or other guidelines like MPQ.

5. It may be noted here that the Apex Court while disposing of the Civil Appeal No. 6317 of 1998 passed the following order:

By consent of the parties, this appeal itself is taken for hearing. The impugned order to the extent that it directs the petitioners to supply coal from any specific Colliery is set aside. The appellant, however, states that subject to availability, the direction for supply of coal shall be, as far as possible, from a nearby Colliery. It is directed accordingly. The Civil Appeal is disposed of.

and the Respondents-Coal Company in Civil Appeal No. 566 of 2001 sought for clarification of the said order, which was finally disposed of by order dated 15.1.2001 referred to above.

6. According to the Respondent-Coal Company due to increasing demand of coal by the core sector (Steel, Fertilizer, Power, Cement etc.) on one hand and on the other hand non-booking of the entire allocated quantity by the non-core sector linked customers as well as availability of limited coal it was decided by the Coal India Limited, parent company to supply the coal to the non-core sector units taking best of 12 months in three years i.e. 1998, 1999 and 2000 and due information to this Rule was given to all consumers vide notification dated 4.6.2001 as per the guidelines of Coal India Limited dated 27.3.2001.

7. It appears that in a subsequent decision in the case of Super Coke Industries vs. C.C.L. (WP (C) No. 2765 of 2001) High Court of Jharkhand vide its order dated 13th November, 2002 while dismissing the writ petition held that the judgment of C.W.J.C. No 2750 of 1997 (R) was passed in the peculiar facts and circumstances of that case and the benefit of that judgment cannot be given to other cases unless it is established that the facts are squarely covered by the judgment. In another case (Writ Petition (Civil) No. 4790 of 2001) filed by M/s Maya Fuel Pvt. Ltd. Ed.-Reported in 2002(3) JLJR 394, the High Court of Jharkhand held that "linkage quantity" is nothing else but the "Maximum Permissible Quantity" (MPQ) of coal assessed in respect to a consumer linked with a coal company. According to the learned Judge, the only issue is as to how the "Maximum Permissible Quantity" (MPQ) is to be assessed and the authority who can assess it. The Court considered the various factors, such as, requirement of coal (linkage quantity) of a linked consumer, and availability of coal with a coal company and held that while it is open for a consumer to ask for revision of "linkage quantity" i.e. Maximum Permissible Quantity (MPQ). It is always open to the coal company to review and refix such "linkage quantity" i.e. Maximum Permissible Quantity (MPQ), in case of availability of lesser Quantity of coal. The Court, further, directed that the question as to how the "linkage quantity" i.e. Maximum Permissible quantity (MPQ) is to be determined is a question to be determined by the Coal Companies, having direct knowledge of availability of coal. The only thing to ensure is that the determination/assessment is reasonable and not arbitrary, and on discussion the Court came to

the following conclusion:

(i) The "Linkage Quantity" and "Maximum Permissible Quota" (MPQ) are not different but same.

(ii) It can be revised on the request of a linked consumer for good ground and similarly the coal company can also revise the linkage quantity/MPQ, in cases such as less availability of coal than the demand, lifting of lesser quantity than the linkage quantity for years together by the linked consumer etc.

(iii) The assessment of linkage quantity/MPQ can be made by a subsidiary coal company with whom a consumer is linked.

(iv) The assessment based on the best booking of consumer during any of the three calendar year is reasonable and not arbitrary having nexus with the consumption of a consumer and availability of coal.

(v) In case of wrong assessment of linkage quantity/MPQ based on incorrect data etc., the linked consumer can request the coal company for re-assessment of linkage quota/MPQ.

8. It appears that a Division Bench of this Court in the case of M/s Central Coalfields Limited & Ors. vs. M/s Rahul Industries & Ors. (L.P.A. No. 558 of 2001) while considering the application for vacating/modifying the order of stay directed that now the coal will be supplied to the Respondents as per the guidelines subject to availability of the coal. In none of these cases, learned counsel for the petitioners has argued on merit in the light of the judgment of the High Court of Jharkhand in Writ Petition (Civil) No. 4790 of 2001 or the order of the Division Bench of this Court in L.P.A. No. 558 of 2001. Thus, in my opinion, it will not be fair on the part of this Court to dwell into the matter during the pendency of the L.P.A. No. 558 of 2001 as it may unnecessarily create further complication. All the writ petitions are, thus, disposed of with a direction to the Respondent-company to supply the coal to the petitioners keeping in view the direction given by the Jharkhand High Court in the case of M/s Maya Fuel Pvt. Ltd. Ed.-Reported in 2002(3) JLJR 394 and by this Court in the aforementioned L.P.A.