
(2013) 12 JH CK 0045

In the Jharkhand High Court

Case No : Criminal M.P. No. 1786 of 2011

M/s. Auroma Coke Ltd.

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2013) 12 JH CK 0045

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Ajit Kumar Sinha, for the Appellant; M. Khan, Advocate for the C.B.I., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Ranjan Prasad, J.—This application has been filed for quashing of the FIR registered as R.C. No. 8(A) of 2011-D under Sections 120B, 420 of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The case of the prosecution as has been made out in the FIR is that on getting source information that M/s. Auroma Coke Limited, Dhanbad, the petitioner has gone in conspiracy with the officials of M/s. B.C.C.L. whereby coal is allotted by the B.C.C.L. under linkage quota for its utilization for conversion from coal to hard coke but part of the allotted coal is being sold in the black market. A joint surprise check was carried out at plant premises wherein coal found in stock was measured and after taking into account, entry made in the record. It was found that coal to the extent of 2,32,834.92 MT had been lifted from the coal company during 2008-11 under Fuel Supply Agreement (FSA). Out of which 41000 MT of coal was found to have been sold in black market which is in violation of the provision of clause 4.2 of FSA as the BCCL officials without verifying end use of coal went on supplying coal at the notified price of Rs. 2000/- approx per MT whereas it is being sold at Rs. 2800/- approx per MT through e-auction and in that manner, B.C.C.L. was put to loss to the extent of Rs. 3.28 crores.

2. Upon hearing this application as well as other connected matters, judgments were reserved but in the meantime, when charge sheet was submitted, the matter was mentioned for taking it up again as, according to the learned counsel appearing for the petitioner, the material collected during investigation does not make out any case under which FIR was registered. Under that situation, the matter was heard again.

3. Mr. Ajit Kumar Sinha, learned Sr. counsel appearing for the petitioner submitted that the petitioner is responsible company and over the years it has attained tremendous goodwill and reputation. Earlier the coal to the extent of 17,850 MT per month was being supplied by the coal company under coal linkage for its conversion into hard coke for which the petitioner had set up coal washery after investing crores of rupees.

4. In course of time in the year 2004, the coal company came with the scheme for e-auction of coal to non-core sector consumers. That scheme was challenged in various courts across the country and also in the Hon'ble Supreme Court. The Hon'ble Supreme Court in a case of Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, struck down the scheme. However, it was observed that it is absolutely necessary that some mechanism should be found out for plugging the loopholes and to control black marketing and mis-utilization of coal. Their Lordships have also noted that with a view to have coal being supplied, document had been filed to prove that they need coal genuinely and therefore, their Lordships passed order that in case where authority do have any suspicion, he may make inspection. Pursuant to that decision, the Government came with a new coal distribution policy known as Fuel Supply Agreement (FSA). As per the stipulation made in one of the clauses 4.2 of the agreement, the purchasers shall not sell/divert and/or transfer the coal for any purpose whatsoever and diversion, if any, shall be treated as material breach of agreement. The petitioner-company entered into an agreement by virtue of which the coal was being supplied to it which was being utilized for its conversion as hard coke.

5. Further in this respect it was submitted that requirement of coal to the petitioner-company was assessed as 24500 MT per month but as per FSA, maximum quantity of coal was being supplied to the extent of 13387 MT per month and therefore, the petitioner had to go for purchase of coal through e-auction.

6. Further it was pointed out that from 1.4.2008 to 31.8.2011 the petitioner had purchased approx. 2,33,873 MT coal under FSA from B.C.C.L. and approx. 2,74,288 MT coal from e-auction/non-FSA coal. Out of 2,74,288 MT coal purchased from e-auction, 2,44,788 MT coal was utilized by the petitioner whereas 29,500 MT was sold in the market. Thus, total coal approx. 2,44,788 MT + 38890 MT (which was opening stock) = 2,78,678 was purchased/available during the period for free sale.

7. By referring to the charge sheet, learned counsel appearing for the petitioner submitted that the C.B.I. has found difference of coal in between physical stock and book stock to the extent of 1748.755 MT. Similarly, 234 MT of hard coke which will consume 700 MT of coal in its conversion was found short and therefore, total difference in coal stock comes to $1748.755 + 700 = 2400.755$ MT out of 69160 MT. Therefore percentage of loss is less than 5% which is within the permissible limit. The 5% deviation in measurement of coal has been allowed for the reason that measurement of the huge stock of coal cannot be taken with accuracy and therefore, the difference is within the permissible limit of 5%, the petitioner cannot be said to have diverted the coal.

8. Learned counsel by further referring to the charge sheet submitted that C.B.I. has found shortage of 2226 MT of hard coke which is too insignificant as it constitute only 1.75 % of the total sales of approx. 125000 MT hard coke which shortage can not be a subject matter of prosecution.

9. It was further submitted that, in fact, stock of non-FSA as on 1.8.2008 was 24,616 MT, non-FSA coal purchased by the company was to the extent of 179,388.561 MT. Total non-FSA coal comes to 204,004.561 MT. FSA coal purchased was to the extent of 229,457.000 MT. Thus, total FSA and non-FSA comes to 433,461.561 MT. Out of which, only 229457 MT of FSA coal was meant for compulsory production of hard coke. Rest of the quantity purchased through e-auction was never necessarily required to be used for production of hard coke, rather the company was free to sell it of.

10. Under the circumstances, any allegation of diversion of coal to the extent of 17695 MT is imaginary and fictitious.

11. In this regard it was submitted that C.B.I. has come to the conclusion of coal being diverted as number of trucks through which coal was transported never gets reflected from the register. Even if it does not reflect, it does not mean that the petitioner has indulged itself in diverting the coal. Likewise, the C.B.I. in order to put accusation relating to diversion of coal has recorded that energy electrical or otherwise used by the company was less than what would be required to convert coal from hard coke to the extent to which it has been claimed. But that calculation never seems to be correct and thereby that can also be no ground for holding that the petitioner-company had diverted the coal and sold it in black market.

12. Further it was submitted that in any view of the matter, offence of cheating never gets attracted nor there has been necessary ingredient for constituting offence u/s 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and thereby the FIR as well as charge sheet is fit to be quashed.

13. As against this, learned counsel appearing for the C.B.I. submitted that as per the clause 4.2 of the Fuel Supply Agreement (F.S.A.), the entire coal supplied pursuant to the agreement, was meant for utilization of manufacturing hard coke. During investigation, as per the claim of the petitioner-company, the

company had lifted 229457 MT of coal under FSA during check period and had also purchased 179388.561 MT of coal from non-FSA source and thereby total comes to 408846 MT of coal but the company has been found to have produced hard coke to the extent of only 123789 MT.

14. Further it was found that the company had claimed to have lifted 17695.5 MT coal from different collieries of the BCCL in 1386 number of trucks but numbers of those trucks had never been found mentioned in the receipt register maintained by the Company and this shortage of 17695.5 MT gets corroboration from the receipt register of the accused company in which 16933 MT coal has been found short.

15. Further it was found that the company had put false claim of selling of 2226.0 MT of hard coke to certain units as those units had denied to have purchased hard coke from the petitioner-company. Further it was found that the company had claimed to have transported coal through various vehicles, number of which has been mentioned in the relevant register but in course of investigation, it was found that those vehicles were either Motor Cycle, Scooter, Auto-rickshaw, Bolero etc. Not only that the C.B.I. during investigation has further gone to check the consumption of the energy either through electrical or other source whereby it was found that production of hard coke as claimed would have consumed more energy than what has been shown.

16. Thus, under the circumstances, C.B.I. having investigated the matter thoroughly has come to the conclusion that the petitioner-company instead of using the coal purchased under FSA for conversion as hard coke has diverted it and sold it in the black market and thereby the charge sheet never warrants to be quashed.

17. Having heard learned counsel appearing for the parties and on perusal of the record, it be recorded that the C.B.I. did find shortage of coal to the extent of 1748.755 MT taking into account the physical stock and book stock which difference, according to the counsel appearing for the petitioner, is 5% which is within the permissible limit which would never entail the petitioner with criminal liability but this shortage within the permissible limit of 5%, as per the case of the C.B.I., is not applicable to the private companies rather that is applicable in case of coal companies subsidiaries of Coal India Limited.

18. Further I do find that shortage of 16933 MT was found after taking into account the claim of the company that 17695.5 MT of coal had been brought from different collieries of BCCL by 1386 number of trucks but entry of those trucks have never been found in any of the record of the company.

19. Further it has been found by the C.B.I. that the company claimed to have sold 2226.02 MT of hard coke to different units but those units have denied to have purchased. Again it is also the case of the C.B.I. that in terms of clause 4.2 of Fuel Supply Agreement (FSA) the officials of coal company was required to verify the end use but without doing so, the company went on supplying the coal

under FSA and according to the C.B.I., this has been done to put the company in advantageous position.

20. Thus, the C.B.I. did find the shortage of coal purchased under FSA and have also found the fact relating to falsification of the record and has also come with some kind of circumstances which, according to the C.B.I., is an act of connivance on the part of the company as well as Government officials.

21. Accordingly, I do not find it a fit case for quashing of the FIR and the charge sheet.

22. Accordingly, this application stands dismissed. Any finding recorded for the purpose of disposal of the case may not be prejudicial to the case of the parties.