

(2008) 01 PAT CK 0017
In the Patna High Court
Case No : CWJC No. 11491 of 2007

M/s. Bandana Fuel Industries

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (2008) 1 PLJR 804

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Arbind Kr. Jha, for the Appellant; V.M.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Sri Jai Mangal Singh carries on business in the name and style of M/s Bandana Fuel Industries, the petitioner. M/s Bandana Fuel Industries is as such a proprietary name of the business of Sri Jai Mangal Singh. The petitioner had established an industry on technology made available by the Council of Scientific and Industrial Research, Govt. of India for production of soft coke. For manufacturing soft coke, coke (coal) is the only raw material and the same is supplied by the respondent-Coal India Limited and its subsidiary Bharat Coking Coal Limited. The petitioner's industry having been established, it was duly registered with the Sales Tax Department and also got a registration as a small scale industry with the Govt. of Bihar. In order to verify the genuineness of the unit and the genuineness of users of coal, the Coal Company started an enquiry process. Under those decisions the users were asked to furnish various informations. One of the said notices dated 7.4.2005 has been annexed by the respondent as Annexure-R/5. That list out 19 documents, which are required to be furnished. Petitioner furnished those documents. It appears that a Committee of the Coal Company considered the said documents and then drew up a consideration chart, which has been annexed as Annexure-R/7 to the counter affidavit. Petitioner was then communicated by a communication dated 3.8.2007

(Annexure-10) that the Committee had found the unit not to be established on three counts and as such the Coal Company (BCCL) was unable to supply its raw material any more. This stoppage of coal (raw material) has brought the petitioner to this Court. Counter affidavit and rejoinder have been filed and parties have been heard for disposal of this case at the stage of admission itself.

2. Petitioner submits two points for consideration of this Court, firstly that as apparent from the grounds given, all three grounds are non est and could not form the basis of such a drastic action, which is a de-flow to the industry. The discrepancy, if any, could not reasonably lead to the conclusion that the industry itself was not established. Thus, the finding was perverse in fact and in law, and secondly, it is submitted, that if the authority found some deficiency in the information supplied before they could take action to terminate supply, they had to comply with the principle of natural justice inasmuch as stoppage of supply was virtually de-flow of the industry and the same could not have been done without hearing the petitioner, for which a reliance has been placed on the judgment of the Apex Court in the case of S.L. Kapoor Vs. Jagmohan and Others, .

3. On the other hand, learned counsel for the Coal Company submitted that the petitioner had no right to enforce. The petitioner was given opportunity to file papers and the papers having been found deficient, action was taken on that basis. This was sufficient compliance of principle of natural justice and nothing more was to be done. In support of his contention respondents have annexed the deliberation of the Committee, vide AnnexureA/7 to their counter affidavit as also the notice requiring to supply documents issued generally to all (Annexure-R/5 to the counter affidavit). In my view, both the issues as raised by the petitioner are short, simple and must be accepted.

4. So far first issue that the ground for cancellation it would first be relevant to refer to the relevant clauses being clauses 5, 16, 18:-

(5). Audited accounts and balance sheet for the year 2001-02,

(16). Power bill, Diesel bill and payment, and

(18). Record of machinery purchased and installed.

And the deliberation of the Committee as contained in Annexure-R/7 respectively-

3. Audited Accounts and B/S for Financial Year 2001 -02.

Submitted. Power and Fuel expenditure has been shown as Rs. 16,144.30 but the P&L A/c and Balance-sheet has not been signed by the proprietor.

10. Power/Diesel Bills & Payment.

Power bill submitted in the name of Proprietor. Diesel bill submitted. Xerox copy of cash memo submitted.

12. Record of machinery purchased & installed.

Bill & Challan submitted but no money receipt in discharge of payment of bill submitted.

5. A reference to the requirement first would show that so far as audited accounts and balance-sheet for the year 2001 -02 is concerned, they were duly submitted. The defect being raised is that P&L account and balance-sheet are not signed by the proprietor though there is no dispute that audited accounts and balance-sheet would not certify by the auditor and was duly filed.

6. A reference to the requirement would show that all was required was audited accounts and balance-sheet signed by the proprietor. Therefore, on the face of it the ground is non est.

7. Next is with regard to power bill/ diesel bills and payment, the defect is that the power bill etc. were submitted but they were in the name of proprietor. I am afraid this shows total lack of awareness of the legal position before taking decision. A person is a proprietor of a business and carrying on his business in the name and style, which has referred as proprietor's business though in law there cannot be a firm of a single person. It is the business in the name of the proprietor. There is no distinction in law between proprietor and the firm's name. This is totally different when he came to partnership firm and incorporated body like a company. There is a distinction between the person constituting that body and the body itself. It is not there in case of a proprietor business. This ground is equally misconceived and non est

8. With regard to record of machinery purchased and installed, petitioner had submitted bill and challan. The defect is that no money receipts in discharge of payment of bills were submitted. This was not a requirement as mentioned in clause 18 of the notice. This ground also thus became non est. Thus all the three grounds are non est and for non est ground the petitioner's industry has been deprived of his sole raw material by virtue of ipse dixit of the so-called action. This court cannot be a silent spectator in the matter when the very fundamental right as contained in Article 19(1)(g) of the Constitution is infringed in irresponsible manner as has been done by the respondents in this case.

9. On the face of it, the order holding up petitioner in not establishing industry on the three counts above is unsustainable either on fact or in law and basis of non est ground. The same cannot be sustained.

10. In view of the facts noted above, though it is not necessary to decide the second issue with regard to issuance of notice prior to cancellation of allotment and supply but it is too late to the date to secure as respondent wanted that requirement of natural justice is not to be laid into such action. In similar matter this Court and the Ranchi Bench of this Court (now Jharkhand High Court)) have rightly held that before linkage/supply of the sole raw material to the industry are stopped, the industry must be disclosed the ground and given an opportunity to meet them. In other words, that principle of natural justice which is an amenable part of Article 14 of the Constitution has to be laid in all such action.

This is clearly supported by a judgment of the Apex Court in the case of S.L. Kapoor (supra) wherein principle of natural justice and its applicability have been dealt in detail. The same will squarely apply. Thus, even on this count action of the respondent is vitiated. For the reasons stated above, the writ petition is allowed and the impugned order stopping the coal supply to the petitioner is quashed. The respondents are directed to resume supply of coal forthwith.