
(2012) 07 PAT CK 0114

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.1215 of 2012

M/S Bhagwati Coke Industries Pvt. Ltd.

APPELLANT

Vs

The Coal India Ltd.

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Citation : (2013) 2 BBCJ 641

Hon'ble Judges : Mr. V.N. Sinha, J.

Bench : Single Bench

Advocate : Mr. S. D. Sanjay, Mr. Gautam Kumar Kejriwal, Mr. Raj Kishore Prasad, Mr. Tej Bahadur Roy, Mr. Arbind Kumar Jha and Mr. Satyadarshi Sanjay, Advocates, for the Petitioner; Mr. Vishwa Mohan Kumar Sinha, Advocate, for the Coal India Ltd.; Mr. R.K. Sinha, A.C. to G.P. 4, Mr. D.K. Singh, A.C. to G.P. 4, Mr. Narendra Kumar Singh, A.C. to G.P. 2, Mrs. Meera Kumari, A.C. to S.C. 26, Mr. Sanjay Mandal, A.C. to S.C. 27, Mr. Deepak Kumar, A.C. to G.P. 3, Mr. Sunil Kumar Mandal, S.C. 24, Mr. Bipin Kumar, A.C. to S.C. 24, Mr. Umesh Kumar, A.C. to G.P.-I, Mr. Awanish Nandan Sinha, G.P.-11. and Mr. Shubhankar Sharma, A.C. to G.P. 11, for the State

Final Decision : Disposed Off

Judgement

Mr. V.N. Sinha, J. (Oral)—Heard learned counsel for the petitioners, State and the counsel for the Central Coal Fields Limited.

2. Petitioners in this batch of writ petitions are Small Scale Industrial Units (hereinafter referred to as the "Unit"). They receive supply of coal from Central Coal Fields Limited for use as raw material. Earlier petitioners were linked with the coal company for receiving supply of coal. Later, agreement was signed by and between the petitioners and the coal company for supply of coal. The link letters and the coal supply agreement have been placed on record.

3. By filing this batch of writ petitions petitioners question notice dated 3.12.2011, Annexure-7, where under competent authority of the coal company decided to release monthly scheduled quantity of coal from December, 2011 to

only those Units which will submit the documents specified in the notice. Serial No. 4 of the notice require the Unit to furnish Existence and Operational Status of the Unit duly certified by the Director, Industries/concerned General Manager, District Industries Centre.

4. Aforesaid Clause 4.4 has been challenged in this batch of writ petitions on the ground that the agreement where under the coal is being supplied to the petitioners does not require any certification about the existence and operational status of the Unit from a third party, in the instant case Director, Industries/General Manager, District Industries Centre. In support of the aforesaid plea learned counsel for the petitioners have relied on the Division Bench judgment of the Nagpur Bench of the Bombay High Court passed in the case of Hind Steel and others v. Union of India and others, [C.W.J.C. No. 1222 of 2011], Annexure-9 and with reference to the said judgment it is submitted that by imposing a restriction which is beyond the agreement, the action of the coal company is nothing but unreasonable, arbitrary violating the rights of the petitioners enshrined in Articles 14, 19 (1) (g) of the Constitution.

5. Counsel for the Coal Company opposed the submission and submitted that rights under Article 19(1)(g) of the Constitution is subject to reasonable restrictions. In the instant case, however, by asking for certification about the existence and operational status of the Unit receiving coal supply from the coal company from the Director, Industries/General Manager, District Industries Centre, the Coal Company is only ensuring to control misuse of the coal supplied by the Company to the Unit receiving coal supply. Coal being natural resource and national asset, it is the bounden duty of coal company to check its misuse. The Director, Industries or the concerned General Manager of the District Industries Centre being the authorities under the State can always be requested by the Units receiving coal supply from the coal company to furnish its existence and operational status. Even otherwise petitioners are submitting returns to the coal company indicating the quantity of coal received and the quantity of the finished product produced by them and such information included in the return is only required to be authenticated by the Director, Industries or the General Manager, District Industries Centre.

6. Counsel for the State of Bihar with reference to the letter of the Deputy Secretary, Director Industries dated 29.1.2004, 16.3.2004 respectively submitted that it may not be possible for the Director, Industries or the concerned General Manager, District Industries Centre to certify about the Existence/Operational Status of the Unit receiving coal supply from the coal company in view of the minutes of the Hon"ble Minister, Industries not to issue certificate regarding utilization/misutilization of coal received by the different Units by way of raw material from the coal company. It is further submitted by the learned counsel for the State that in view of the aforesaid instruction of the Government as communicated to the Director, Industries and the General Manager of the District Industries Centre it is not possible for the authorities of the State Government to

issue certificate about utilization/ misutilization of coal by the Units.

7. Learned counsel for the parties also brought to my notice order dated 2.4.2012 passed in Special Leave to Appeal (Civil) No.(s). 10386-10837/2011 filed by Western Coalfields and anr. against the order passed by the Bombay High Court in the case of Hind Steel and others (supra). Counsel for the parties further brought to my notice interim order dated 23.4.2012 passed by the Hon''ble Supreme Court in Special Leave to Appeal (Civil) No. 11206 of 2012 filed by Central Coalfields Ltd. & Anr. assailing the interim order passed by this Court in this batch of writ petitions directing the Coal company to ignore Clause 4 of the notice dated 3.12.2012 and continue to supply coal to the petitioners as per the different clauses of the agreement. They also brought to my notice order dated 9.4.2012 passed in Transfer Petition (Civil) No(s). 431 of 2012 filed by the Central Coalfields Limited & Anr. for transfer of the petitions to the Hon''ble Supreme Court.

8. From perusal of the three interim orders of the Hon''ble Supreme Court dated 2.4.2012, 23.4.2012, 9.4.2012 it does not appear that the Hon''ble Supreme Court has stayed further proceedings in this batch of writ petitions before this Court. In the aforesaid background, I have considered the matter and the submissions of the counsel for the parties noted above.

9. Petitioners are the Industrial Units engaged in production of soft coke and special smokeless fuel which is common man's fuel in household as also required for production of bricks in the brick kiln. The raw material used by the petitioners is national asset and considering its importance Government of India nationalized the coalfields in 1972, 1973 by an Act of Parliament and since then coal is being produced by Government companies. In order to ensure that coal produced by the Government company is not misused restrictions have been put by the coal company on the users of coal which has been subject matter of litigation from time to time. Earlier linkage was allowed to consumers of coal but for the present coal is being supplied to the consumers under agreement entered into by and between the coal company and the coal users. In terms of the agreement entered by and between the coal company and the Units petitioners are required to furnish monthly return to the coal company indicating the quantum of raw material received by the Unit on monthly basis as also the production made by the Unit. Clause 4 of the impugned notice dated 3.12.2011, Annexure-7 require issue of certificate by Director Industries/concerned General Manager of the District Industries Centre that the Unit is not only in existence but also about its operational status so as to enable the coal company to confirm the information received by it from the Units in terms of Clause 4.4 of the agreement which the petitioners have signed with the company. The certification asked for is about existence and operational status of the Unit. Petitioners are registered as Small Scale Industrial Units either with the Director, Industries/General Manager of the District Industries Centre or with the Bihar Industrial Area Development Authority. Once the Unit is registered with the Director, Industries or the

concerned General Manager of the District Industries Centre or Bihar Industrial Area Development Authority, the Unit is under regulatory control and supervision of the registering authority. Having granted registration the registering authority, in my opinion, is duty bound to certify about the existence and operational status of the Unit by indicating in the certificate issued for the purposes of Clause 4 of the notice dated 3.12.2011 the quantum of raw material i.e. coal received by the Unit from the coal company for a particular month together with quantum of finished product produced by the Unit in that month so as to enable the coal company to verify the contents of the return which the Unit submitted with the coal company pursuant to clause 4.4 of the agreement.

10. The only hindrance in grant of such certificate by the Director of Industries/ concerned General Manager of the District Industries Centre is the instruction of the Government contained in letter dated 29.1.2004, 16.3.2004, Annexure-6 in C.W.J.C. No. 3245 of 2012 which is in the light of the minutes of the Hon'ble Minister, Industries at page 69 of the brief of the said writ case rendered in the light of the opinion of the learned Additional Advocate General. Close perusal of the minutes of the Minister, Industries indicate that the Hon'ble Minister was advised by the Additional Advocate General that it may not be proper for the Industries Department to certify about the utilization/misutilization of coal received by any Unit as raw material from the coal company. In the instant case, however, the coal company is only asking the Director, Industries and the concerned General Manager, District Industries Centre to certify the existence and operational status of the Unit and not utilization/misutilization of coal by the Unit. Certification about existence and operational status of the Unit can be made with reference to the quantity of coal received by the Unit in a particular month and the end product produced by the Unit in that month. In my opinion therefore, the opinion rendered by the then Additional Advocate General to the Government not to certify utilization/misutilization of coal has been misconstrued by the authorities of the Government while rendering instructions dated 29.1.2004, 16.3.2004 not to certify existence and operational status of the Unit receiving coal supply from the coal company which is, accordingly, quashed with direction to the Director, Industries/General Manager of the District Industries Centre and the Incharge of the Bihar Industrial Area Development Authority with whom Unit is registered to certify about the Existence and Operational Status of the Unit which is receiving coal from the coal company and using as raw material by indicating in the certificate the quantum of raw material received by the Unit for a particular month as also the end product produced by the Unit in that month so as to enable the Unit to receive allotment of coal for the subsequent month.

11. The writ petitions are, accordingly, disposed of.