
(2014) 01 JH CK 0115
In the Jharkhand High Court
Case No : L.P.A. No. 121 of 2005

M/s. Bharat Coking Coal Ltd. and Others	APPELLANT
Vs	
M/s. Sarswati Hard Coke Manufacturers and Others	RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 3 JLJR 657

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta, for the Appellant; Mahesh Tewari, for the Respondent

Judgement

R. Bhanumathi, C.J.—This Letters Patent Appeal is preferred against the order passed in W.P.(C) No. 5368 of 2002 dated 10.09.2003 in and by which, the letter issued by Sales Manager (Legal) of the appellant dated 08.09.2003 was recorded and direction was issued to the authorities to strictly abide with the assurances made therein. The respondent is a Hard Coke manufacturer commonly known as Cookeries. The respondent entered into an agreement with the appellants on 31.05.1980 for a period of 24 months for supply of coal and it continued to produce Hard Coke since 1980 till 1997. The unit of the respondent is said to have suffered some set back beyond their control which included breakdown of their infrastructure etc. and therefore they could neither book nor lift coal after November, 1997 and on 29.01.1998 the respondent informed the Chief General Manager (Sales), Bharat Coking Coal Limited, Dhanbad that the unit of the respondent had been closed and in case of resuming the functioning of the unit, they would be informing the appellant later on. The respondent unit remained closed till about June, 2001 whereafter, the respondent unit returned to normalcy and expressed his desire of restarting his unit all over again. The respondent expressed their desire of re-starting their unit by letter dated 22.08.2001 to the Chief General Manager (S&M), BCCL, Dhanbad. By the order dated 12.12.2001, the appellant informed the respondent that the matter has been examined and

since the respondent had not booked/lifted any coal from BCCL continuously for more than 36 consecutive months, the respondent's linkage, as per the terms and conditions, lapsed permanently.

2. Challenging the said communication, the respondent filed W.P.(C) No. 3568 of 2001. The said writ petition was disposed of vide order dated 06.03.2002 directing the respondents to file a representation and further directing the appellant to consider the representation filed by the respondent in the light of the observation made in the order dated 06.03.2002 and also with a direction that the case of the respondent should be looked into sympathetically. In pursuance to the said order, the respondent filed a representation before the appellant on 18.03.2002. The appellant passed the order on 21.08.2002 stating that since the respondent had not lifted coal from November, 1997 which is more than 36 months consecutively, under the condition of the linkage order, said linkage ipso facto lapsed permanently.

3. Challenging the said order dated 21.08.2002, the respondent filed W.P.(C) No. 5368 of 2002 to set aside the order dated 21.08.2002 and to issue direction to the appellant to immediately release the monthly allotted quota of coking coal to the respondent. In the said writ petition the appellant produced a letter dated 08.09.2003 in which the Sales Manager (Legal) has informed that the competent authority has been pleased to resume coal supply to the unit from the month of September, 2003. Referring to the said letter dated 08.09.2003 passed by the Sales Manager (Legal), the learned Single Judge disposed of the writ petition W.P.(C) No. 5368 of 2002 vide dated 10.09.2003 observing that the writ application has become infructuous and therefore, no further order need be passed in the case.

4. As against the order passed in W.P.(C) No. 5368 of 2002 dated 10.09.2003, the appellant filed S.L.P.(C) No. 27 of 2004 before the Hon'ble Supreme Court. By final order dated 11.02.2005 the said SLP was disposed of with direction to file Letters Patent Appeal in the High Court within 30 days and the appellant filed the present L.P.A. No. 121 of 2005.

5. Vide order dated 26.04.2006, L.P.A. No. 121 of 2005 was dismissed which was challenged by the appellant before the Hon'ble Supreme Court in S.L.P.(C) No. 8503 of 2007. By the order dated 03.11.2008 the Hon'ble Supreme Court remanded the matter back to the High Court and hence this L.P.A. No. 121 of 2005 is again before this Court.

6. Reiterating the contents of the letter dated 21.08.2002 the learned counsel for the appellant Mr. Anoop Kumar Mehta submitted that BCCL's case is that the status of the respondent was that of a traditional linkage consumer and since the respondent had not booked or lifted coal from November, 1997 which was more than 36 months consecutively under the condition of the linkage order such linkage ipso facto lapsed permanently. It was further submitted that without deciding the correctness of the order dated 21.08.2002 passed by the 3rd

appellant, the learned Single Judge issued show cause notice in contempt thereby putting the appellants under the threat of contempt which has resulted in issuance of the letter dated 08.09.2003 by which order for resumption of coal supplies was issued. According to the appellants, in view of the interim stay order dated 16.01.2004 passed by the Hon"ble Supreme Court in S.L.P.(C) No. 27 of 2004, supplies of coal were never effected to the respondent. It was contended that the order passed by the learned Single Judge in W.P.(C) No. 5368 of 2002 is in contravention to the terms and conditions of the agreement and also in contravention to the policy of the linkage applicable uniformly and the learned Single Judge erred in allowing the respondent to lift coal even though the linkage has permanently lapsed due to non-booking/lifting of coal for a continuous period of 36 months and the order dated 10.09.2003 is unsustainable and liable to be set aside.

7. The learned counsel for the respondent Mr. Mahesh Tewari submitted that in the case of Hard Coke units who have not lifted their monthly quota of coal for 36 consecutive months, snapping of linkage as in the case of non-core sector is not applicable. In this regard, learned counsel placed reliance upon order dated 08.05.2002 of this Court in the case of Borio Fuel Company and others v. Coal India Ltd. & Ors. (W.P. (C) No. 4321/2001). The learned counsel has drawn our attention to the then policy regarding coal linkage which was then prevailing. Drawing our attention to the distribution policy regarding coal linkage prevailing in the year 2001, the learned counsel submitted that in case, if the consumer does not draw the supply continuously for 36 consecutive months, the policy of "snapping of linkage" is not applicable in case of manufacture of special smokeless fuel (SSF) and Cokery units (manufacturer of BH Hard Coke), separate norms/system exists.

8. The learned counsel for the respondent Mr. Mahesh Tewari contended that so far as Hard Coke manufacturing units are concerned the distribution of coal is definitely distinct and different from the manner of distribution done through the linkage. It was further submitted that merely because of non-lifting of coal for 36 months, the linkage is not snapped. The learned counsel further submitted that only because respondent-unit suffered set back beyond their control, which includes break-down of their infrastructure, they could not book nor lift coal after November, 1997 and the unit remained closed till about June, 2001 and whereafter the respondent returned to normalcy and expressed their desire of re-starting the unit all over again and, therefore, the linkage is not snapped. It was submitted that in view of the conduct of the appellant taking contradictory stands, suitable direction be issued for supply of the monthly allocation of coal to the respondent.

9. We have considered the rival submissions and also perused the materials on record.

10. The respondent is Hard Coke manufacturing unit who had entered into agreement with the appellant-BCCL on 31.5.1980 for a period of 24 months and

the unit was functional till 1997. According to appellant there was no formal order of linkage as the respondent was a traditionally linked consumer and was drawing supply of coal for manufacture of Hard Coke in its unit.

11. Case of the respondent is that since the snapping of linkage is not at all applicable in the Hard Coke units who have not lifted their monthly quota of coal for 36 consecutive months and the respondent relies upon an un-reported decision in the case of Borio Fuel Company and others (W.P. (C) No. 4321/2001). In this regard, Mr. Mahesh Tewari, learned counsel for the respondent has drawn our attention to the then policy regarding coal linkage (Annexure C/n containing date 10.5.2001). In the said policy regarding coal linkage to non-core sectors, it is stated that "in case any consumer does not draw supplies continuously for 24 consecutive months, the linkage is treated as "snapped". Restoration of snapped linkages is done by the concerned contact sales office".

12. Learned counsel appearing on behalf of the respondent submitted that above procedure of "snapping of linkage" is not applicable in the case of manufacturers of special smokeless fuel (SSF) and cokery units (manufacturers of BH hard coke).

13. In response to the counter affidavit, the appellant had filed rejoinder referring the 85th meeting held on 16.11.1996 of Linkage Committee.

14. In the 85th meeting of the Linkage Committee for Non-core Sector Consumers held on 16.11.1996, the committee is said to have resolved that the coal allocation letters issued to SSF Units and Cokery units should be treated as Linkage Advise Letters which are issued to other non core sector units. The resolution of 85th Meeting of the Linkage Committee reads as under:

23. Linkage of coal to SSF Units and Cokery Units:-

The committee deliberated on the agenda item and decided that SSF Units and Cokery Units which have been allocated coal by Coal India Limited, should be treated as "Linked Units", in the same manner as other linked Industrial Units in the non core sector. The committee also decided that-

(a) Coal Clearance letters/coal allocation letters issued to SSF Units and Cokery units should be treated as Linkage Advise Letters which, are issued to other non core sector Units.

(b) The present system of capacity assessment for SSF Units by CMPDI and for Cokery Units by a Joint Team of officers from Coal Co./CMPDI/CIL should continue.

(c) All Cokery units should be required to obtain sponsorship /recommendation letters from the concerned State Governments in the same manner as sponsorship/recommendation is required for other core sector Units.

15. As per the said resolution of the 85th meeting of the linkage committee allocation letter issued to SSF Units and Cokery units should be treated as

linkage advise letters. Admittedly, there was no formal order of linkage to the respondent who was Hard Coke manufacturer and the respondent was a traditionally linked consumer.

16. According to the respondent, the Government of India, Ministry of Coal signed an Addenda vide no. 23011/11/2001-CPD (Vol. II), Government of India, Ministry of Coal dated 1st January, 2004 about the new coal sales policy for non-core sector and clause 3 of the Addenda reads as under:-

Clause 3-In respect of several traditional non-core linkage who could not lift coal due to various genuine reasons which were beyond their control and as a consequence had got their linkages snapped/lapsed, the New Coal Sales Policy note for non-core sector stands amended to the extent to facilitate the genuine snapped consumers to draw coal based on fresh recommendation made by the State authorities concerned. The coal companies shall revive and restore linkage to these consumers after satisfying themselves on the reasons for closure of the units.

17. The Industries and Commerce Association had also made "representation (vide letter dated 16.03.2010) to the State Government that in spite of the repeated representation to the Ministry of Coal and the concerned Departments for registration, Linkages to the SSF registered hard coke linkage units have not been restored. In the said letter sent by the Industries and Commerce Association, the name of the respondent namely, Sarswati Hard Coke Manufacturers, figures as Serial No. 8. Even in the said letter of Industries and Commerce Association, the respondents along with other Hard Coke units prayed for revival of monthly linkages and seeking intervention of the State Government but it is clear that the respondent is only a traditionally linked consumer. The agreement for supply of coal to the respondent was entered into on 31st May, 1980 and admittedly after 1997, the agreement has not been extended and thus, in absence of any coal allocation letter, it cannot be held that the respondent is "existing linkage holder".

18. The facts and circumstances of the case and also the various orders passed by this Court and the conduct of BCCL is to be kept in view. As pointed out earlier, the respondent had genuine difficulties in operating the unit and intimation was also given to BCCL on 29.1.1998 stating that due to break-down and repairing work the plant had been closed since November, 1997. By letter dated 13.6.2001, the respondent informed that the plant is ready for production of Hard Coke and requested BCCL to permit the respondent to book their monthly allocation quantity. By the communication dated 12.12.2001 BCCL informed the respondent that the respondent had not booked/lifted any coal from BCCL continuously for more than 36 consecutive months and as per the linkage terms and conditions, Clause-5, the linkage of respondent has lapsed permanently and that release is not possible. However, liberty was given to the respondent to take up the matter for fresh linkage at C.I.L.

19. In W.P.(C) No. 5368 of 2002, the counsel appearing for the BCCL produced the letter dated 8.9.2003, which is to the effect that the competent authority had resumed coal supply to the unit from September, 2003. Recording the contents of the said letter dated 8.9.2003 that the competent authority has resumed supply to the respondent, the writ petition being W.P. (C) No. 5368 of 2002 was disposed of. The contempt proceeding initiated against the appellant-BCCL was also dropped.

20. Now the contention of the appellants is that the competent authority decided to resume coal supply to the respondents from September, 2003 (as indicated in letter dated 8.9.2003) only under the threat of contempt proceeding initiated against the BCCL and that the said decision to resume coal supply was subject to the final decision of the writ petition being W.P.(C) No. 5368 of 2002. If the BCCL was of the view that the decision to resume coal supply was only subject to the final decision of W.P.(C) No. 5368 of 2002, the BCCL should have insisted in the writ petition for deciding the matter on merits. By producing letter 8.09.2003 stating therein that the supply of coal has been resumed, the appellant got the contempt proceeding withdrawn. But at the same time, the appellant-BCCL has challenged the order passed in W.P.(C) No. 5368 of 2002 in S.L.P.(C) No. 27 of 2004 and vide order dated 16.1.2004, the Hon"ble Supreme Court stayed the impugned order. After the SLP was dismissed (by order dated 11.2.2005), the appellant-BCCL has filed the present L.P.A. Having obtained the order of dropping of contempt proceedings, the appellant-BCCL was not justified in denying the coal supply to the respondent.

21. The question falling for consideration in the light of change in coal distribution policy is what is the remedy available and what is the relief that can be granted to the respondent. Pursuant to the judgment of the Hon"ble Supreme Court in Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, the Ministry of Coal, Government of India formulated a "New Coal Distribution Policy" (NCDP, 2007), which was implemented from 18.10.2007. Coal distribution to various scheme of consumers was being done through two means namely, (a) through Fuel Supply Agreement (FSA) at fixed notified price and (b) through e-auction means at market driven price i.e. bid price. The respondent cannot be said to be existing linkage holder on account of new NCDP, 2007, and therefore, no positive direction could be given to the appellant to enter into Fuel Supply Agreement with the respondent. This L.P.A. is disposed of directing the respondent to make a fresh application for allocation of coal to its Hard Coke linkage unit. On such application being submitted by the respondent, the appellant is directed to consider to same in the light of the New Coal Distribution Policy, 2007 and also the fact that the respondent was earlier a consumer.