
(2023) 11 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 372 Of 2018

M/S Jan Lime Klin & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 17-11-2023

Acts Referred:

Citation : (2023) 11 J&K CK 0035

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Amir Latoo, Saima Mehboob, T. M. Shamsi, Sufaiya

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) The petitioners claim to be small scale industrial units registered with the Industries Department of the Government of Jammu and Kashmir. The petitioners were registered to undertake manufacture of Chemicals, Fertilizers, Metals Briquettes and other allied industrial activities. One of the raw materials in the industrial units of the petitioners is steam/slake cola. The said raw material was required to be procured by the petitioner from Bharat Coking Coal Ltd Dhanbad (hereinafter referred to as BCCL).

2) It has been submitted that the Industries Department of the Government of Jammu and Kashmir recommended to BCCL for supply of raw material to the petitioners against the cash payment. The petitioners were granted linkage of steam coal by Coal India Ltd. and the coal was being supplied through its Subsidiary BCCL, Dhanbad. According to the petitioners, on the basis of the linkage granted to them, they were being supplied steam coal as per their allocated quantity against the cash payment by BCCL. However, in July, 2002, the supply of coal was abruptly stopped by BCCL without giving any opportunity to the petitioners. It has been submitted that the petitioners had made advance payments to BCCL for supply of coal but neither the coal was supplied to them

nor the advance payments were re-funded. This has compelled the petitioners to seek a direction upon the respondents to supply full booked quantity of steam coal to them on the rates applicable in the year 1998-2002 or in the alternative to release the withheld amount along with interest @18% per annum from the date of deposition of the said amount by the petitioners with BCCL

3) The respondent BCCL has filed its reply to the writ petition in which it has been submitted that it cannot be held responsible for delay in processing the refund and, as such, there is no question of payment of interest to the petitioners. According to BCCL, the advance coal value was withheld by it because all the relevant record relating to deposition of advance coal value and issuance of sale orders of all the units of Jammu and Kashmir including the petitioners was under the custody of CBI till December, 2004. It has been further submitted that Jharkhand High Court vide its order dated 24.12.2004 passed Writ Petition No.3301 of 2004 upheld the decision of the respondent BCCL in not releasing any type of refund to the units of Jammu and Kashmir. It has been further submitted that the petitioners have claimed refund of un-lifted quantity which has been already lifted by their agents. According to the respondents, the CBI has in its note dated 30.07.2004 noted in a case related to M/S Nasser Lime Kilns that there are 26 firms in J&K having linkage quota of CIL who have drawn coal from BCCL, Dhanbad, on the pattern of the suspected firm M/S Naseer Lime Kiln during the period 1998-2002. It has been submitted that though M/S Nasser Lime Kiln is not a petitioner in the present petition but the same modus operandi may have been adopted by the present petitioners. It has also been submitted that CBI, Dhanbad, forwarded the case PE No.3(A)/2002 (D) to the Chief Secretary to Government of Jammu and Kashmir, recommending an enquiry in the matter, therefore, BCCL cannot be held responsible for withholding the advance amounts.

4) I have heard learned counsel for the parties and perused the record of the case.

5) The controversy involved in this case has been subject matter of deliberation and discussion in another writ petition bearing OWP No.803/2005 titled "Isha Chemical & Micro Nutrients & Ors. Vs. Union of India & Ors." Decided on 28th September, 2018. The contentions raised by respondent BCCL in the instant writ petition for denying the refund of advance amounts paid by the petitioners are exactly similar in nature as were the contentions raised by the said respondent in the aforesaid writ petition. In the said judgment it was held that in the absence of documentary proof in support of claim of BCCL that the CBI or the J&K Government had directed it to withhold the advance amounts of the petitioners therein, their contention cannot be accepted. In the instant case, also the respondent BCCL has not placed on record any document to show that either the CBI or the Government of Jammu and Kashmir had, at any stage, asked respondent BCCL to withhold the advances paid by the petitioners. It is not the case of the respondents that the petitioners were involved in the case registered

by the CBI. It is also not their case that the enquiry conducted by the Government of Jammu and Kashmir has indicted the petitioners. Merely because role of some other small scale industrial unit has been found to be doubtful during the enquiry conducted by the CBI, the petitioner cannot be denied their rightful claims.

6) The plea of respondent BCCL that the order passed by the High Court of Jharkhand entitled it to withhold the payment has also been dealt with by this Court in Isha Chemical & Micro Nutrient's case (supra). It has been observed that there was no letter or communication from the J&K Government to withhold the advances in favour of the industrial units of the Jammu and Kashmir but respondent BCCL has misled the High Court of Jharkhand by pleading that the Government of Jammu and Kashmir had stopped them from releasing the advances.

7) The judgment passed by this Court in Isha Chemical & Micro Nutrient's case, so far as it pertains to issues raised by respondent BCCL which were identical in nature, has been upheld by the Division Bench of this Court in LPAOW No.05/2019 decided on 29.10.2021. The Supreme Court in the SLP filed against the judgment of the Division Bench has also refused to interfere in the judgment of the Division Bench but the Supreme Court did modify the order of the Division Bench to the extent that the rate of interest has been slashed to 12% per annum from 18% per annum. This was done by the Supreme Court vide its order dated 25.08.2023 passed in Special Leave to Appeal (C) No.6160/2022.

8) In view of what has been discussed hereinabove, the issues raised by respondent BCCL having been decided and determined by this Court in the case of Isha Chemical & Micro Nutrients (supra) and the said decision having attained finality, the same cannot be re-opened in this writ petition. Therefore, the fate of this writ petition has to be the same as the case of Isha Chemical & Micro Nutrients (supra).

9) Accordingly, the writ petition is allowed and the respondents are directed to release the advance amounts that may have been collected by BCCL from the petitioners for supply of steam coal along with interest @12% per annum from the date of its deposition with respondent BCCL till its realization.