

(2008) 01 PAT CK 0167
In the Patna High Court
Case No : CWJC No. 10653 of 2007

M/s Sushila Chemicals Pvt. Ltd.

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2008) 2 PLJR 720

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Chitranjan Sinha, for the Appellant; V.M.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—There are 46 writ petitioners in this writ petition. All of whom are industries whose sole raw material is coal, which is supplied by the respondent-Coal Company. They are aggrieved by order by which documents as furnished by them having been found deficient in one manner or they are held to be non-established industries and supply of coal to them have been stopped with immediate effect. Counter affidavit has been filed and rejoinder thereto and with the consent of the parties this writ petition is being disposed of at the stage of admission itself.

2. Mr. V.M.K. Sinha, learned counsel appearing for the respondents points out that so far as petitioner No. 2 is concerned, i.e. M/s Eastern Fuels, the business of the same is located in the State of Uttar Pradesh and the supplies were to be made by the Coal Company from the State of Jharkhand and as such he cannot maintain a writ petition in this State of Bihar. On this objection being taken, learned counsel for the petitioners in support of the writ petition Mr. Chitranjan Sinha, learned senior counsel, seeks permission to delete the name of petitioner No. 2 from the array of petitioners with liberty to the said petitioner to take such appropriate step as may be available to him independently in a properly constituted proceeding elsewhere.

3. Leave is granted.

4. The short issue raised by the petitioner in this case is that before respondent-Coal Company, which is conceived as a State within the meaning of Article 12 of the Constitution took a drastic decision to stop supply of coal to the petitioners' industries. The Coal Company under obligation to disclose the ground and the action proposed to be taken so that the petitioners could meet those grounds and satisfy the company that the grounds were non est or deficiency as pointed out therein. In other words, as submitted, without complying with the basic principle of natural justice the respondents would not have taken such a drastic action, which is virtually closure of all the industries.

5. To this Mr. V.M.K. Sinha, learned counsel for the respondent submits that petitioners were required to submit certain documents for verification of authenticity of the industries and its coal users. All petitioners were aware of the documents that was required to be submitted. They submitted the documents. A Committee was formed by the Coal Company to scrutinize the documents. The Committee scrutinized the documents and finding various discrepancies in the documents, coal supply to such industries were stopped. He submits that the respondents had a fair chance to supply the documents. They supplied inadequate documents and must necessarily suffer the consequences.

6. In my view, the issue is even where the documents were certified in any manner whether the respondent-Coal Company under obligation to notice the petitioners with regard to discrepancies and granting them an opportunity to meet those deficiencies before taking such a drastic action or not. In my view, the answer to the issue is that before any authority takes an action which is drastic civil consequences, the person to the documents of such action is taken must be disclosed the grounds and must be given an opportunity of deficiency himself. In most of the cases one or other document was found deficient. This court today itself has disposed of the two writ petitions of similar nature. It has gone through the effect as pointed the defects were found to be non est yet punitive action has been taken.

7. It is not in dispute and it has not been disputed, that Coal Company were under legal obligation to supply the coal to the petitioners provided petitioners were genuine units. The obligation to supply coal with its obligation to receive. If there is an obligation on the part of the Coal Company to supply them the Coal, the Coal Company is escaped with obligation only if the other side is noticed in this regard. Where the Coal Company held that the documents were unnecessary found deficiency in any manner then it was incumbent upon it to disclose the same first to the parties concerned and grant them an opportunity to make up deficiency or explain the same but without doing so on a self ex parte appraisal they could not take a decision to the detriment (sic-detriment ?) of the industries which virtually amounted to a de-flow to the industries.

8. In my view, principle of natural justice have to be lead in and it has to be

deemed that they have not been complied with rather the action taken by the authority has in gross violation of principle of natural justice. The law in this regard has been dealt with by the Apex Court in the case of S.L. Kapoor Vs. Jagmohan and Others, . On behalf of respondents it is not disputed that no notices whatsoever were issued to the petitioners granting them opportunity either to make up the deficiency or explain the deficiency before a decision to stop supply of coal there only raw material. That being the position, the decision to stop supply of coal is non est and void ab initio being in flagrant of principle of natural justice. It is so declared and the decision to stop supply of coal to the petitioners is held to be void ab initio and unenforceable. The consequence is the writ petition is allowed and the decision of respondent-Coal Company to stop supply of coal to the petitioners is set aside and the respondents are directed to forthwith resume supply of coal to the petitioner.