
(2014) 06 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition Nos. 1868 and 1934 of 2014

Murli Industries Limited Company

APPELLANT

Vs

Western Coalfields Limited

RESPONDENT

Date of Decision : 16-06-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21

Citation : (2015) 1 ALLMR 287 : (2015) 2 MhLj 43

Hon'ble Judges : S.B. Shukre, J;B.R. Gavai, J

Bench : Division Bench

Advocate : M.G. Bhangde, Senior Advocate and R.M. Bhangde, Advocate for the Appellant; Anil Kumar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sunil Balkrishna Shukre, J.—Rule, made returnable forthwith. Heard finally by consent.

2. Both these petitions are being disposed of by common judgment as they involve same parties, identical facts and common questions of law.

3. Petitioner No. 1 is a company duly registered under the Companies Act, 1956 and petitioner No. 2 is its Chairman-cum-Managing Director and share holder. Respondent No. 3 is government of India undertaking under the Ministry of Coal and respondent No. 1 also a Government of India undertaking, is a subsidiary of respondent No. 3. Respondent No. 2 is Officer of respondent No. 1, whose communications dated 27/11/2013 and 23/12/2013 have been impugned in these petitions. Respondents No. 1 and 3 being a State within the meaning of Article 12 of the Constitution of India and respondent No. 2 being an officer of respondent No. 1, are amenable to writ jurisdiction of this court.

4. Petitioner No. 1-company manufactures cement, paper and allied products for the purpose of which it has set up cement and paper plants together with ancillary plants necessary for running of these plants. For manufacturing of

cement, a kiln is necessary and it runs on coal as well as power. For manufacture of paper, steam and power are necessary. The power used by petitioner No. 1-company for running of its plants is generated through its own captive power plants. For all these activities, petitioner No. 1-company requires constant supply of coal for a long period of time. Therefore, petitioner No. 1-company, under the new National Coal Distribution Policy, applied to the Ministry of Coal, Government of India for long term linkage for supply of coal. Under the new Coal Distribution Policy, an applicant is required to achieve several milestones as a pre-condition to have coal supply agreements (for short, CSAs) in it's favour. Petitioner No. 1-company submits that it had achieved all the milestones as required under the new policy and, therefore, its applications made for supply of coal by way of long term linkages were granted by the Coal Ministry through the respondent No. 1.

5. Accordingly, CSAs by way of long term coal linkages were executed by respondent No. 1 in favour of the petitioner No. 1-company on 24/4/2008, 24/11/2010, 31/10/2009 and 31/10/2009. By these agreements, respondent No. 1 undertook to supply coal to petitioner No. 1-company on long term basis for running of its captive power plants, cement plant and steam generation plants.

6. It is the submission of petitioner No. 1-company that it utilized the coal supplied to it under the CSAs only for the purposes of running its cement and paper plants. However, certain influential and powerful persons, for the reasons best known to them, made some complaints to respondents No. 1 and 3 and other authorities alleging that the coal that was being supplied to petitioner No. 1-company was not being utilized for the purpose for which it was being given and instead, was being sold in open market from time to time for earning black money. These complaints were made on 16/02/2013, 19/7/2013 and 27/02/2013.

7. Following the complaints, respondent No. 1 took inspection of the cement and paper plants of petitioner No. 1-company and made investigations by sending its officers to the plants on 07/6/2013 and 14/8/2013. Certain documents were demanded from petitioner No. 1-company, which were immediately supplied to respondent No. 1. Further, information and details were called for from petitioner No. 1-company, which was also duly supplied by it. After making of compliances and supplying necessary documents and details as demanded from time to time by respondent No. 1 from petitioner No. 1-company, it is alleged by the petitioners that without issuing any show cause notice or granting any opportunity of hearing, respondent No. 1 terminated the CSAs by communications dated 23/12/2013 and 27/11/2013 and also encashed bank guarantees by letters dated 24/12/2013 and 28/11/2013. According to the petitioners, the action of termination of coal supply agreements as well as encashment of bank guarantees is absolutely arbitrary and has caused great injury to petitioner No. 1-company. Therefore, by filing these writ petitions, the petitioners have sought quashing and setting aside of the termination orders dated 23/12/2013 and 27/11/2013 and also action of encashing of bank

guarantees.

8. According to the respondents, the action taken by respondent No. 1 is fully justified as after making due investigation into the complaints made against petitioner No. 1-company, it was found that there was material breach of the agreements warranting action of termination of CSAs and also encashment of the bank guarantees. According to it, due procedure of law has been followed by respondent No. 1 and, therefore, there is no need to make any interference with the decision taken by respondent No. 1 in this case.

9. The main thrust of argument of learned Senior Counsel Shri M.G. Bhangde is upon violation of principles of natural justice and rule of law. He submits that before terminating the CSAs, it was essential on the part of respondent No. 1 to have issued a show cause notice and also afforded an opportunity of hearing to petitioner No. 1-company. He submits that the cement and paper industries run by petitioner No. 1-company depend for their survival heavily upon continuous supply of coal on long term basis and dependent upon the industries is a lot of numerous employees and their families. He submits that sudden termination of coal linkages to the industries of petitioner No. 1-company has seriously affected their survival jeopardising the lives of several persons, who are employees of petitioner No. 1-company and members of family of the employees. Thus, the action of respondent No. 1 has serious civil consequences and, therefore, it was incumbent upon respondent No. 1, being a State within the meaning of Article 12 of the Constitution, to have followed the principles of natural justice and ensured that its actions were not arbitrary and discriminatory.

10. Learned Senior Counsel further points out that Bharat Coking Coal Limited (BCCL) is another subsidiary of respondent No. 3, just like that of respondent No. 1 and it had issued show cause notice and also granted an opportunity of hearing to its consumers having similar CSAs and against whom similar complaints were made. He submits that in one such case a show cause notice dated 26/7/2013 was issued to Sushila Chemical Private Limited by the BCCL. He also points out that respondents No. 1 and 2 had also given show cause notice and opportunity of hearing to its consumers in similar cases and one such case was of M/s. Digganath Steel Industries and Engineering Works to whom a show cause notice was given on 11/5/2013 on the allegation that it was not using the coal for the purpose for which it was given to it under the coal supply agreement dated 30/4/2008. He also pointed out that the action against such consumers was taken under Clause-4.4 of the CSAs executed with those consumers by respondents No. 1 and 2 on 30/4/2008. He submits that this Clause-4.4 is in pari materia to Clause-4.2 of the CSAs in question in both these writ petitions. He further submits that the respondents ought to have followed the same procedure as they had done in the case of similarly situated consumers.

11. Shri Anilkumar, learned Counsel for respondents No. 1 and 2, on the other hand, submits that after paying visit to the cement and paper plants of petitioner No. 1-company on 07/8/2013 and 14/7/2013, respondents No. 1 and 2 had

issued several letters to petitioner No. 1-company demanding copies of the various documents so as to satisfy themselves about the correctness or otherwise of the allegations made against petitioner No. 1-company and this correspondence, according to him, constitutes giving of notice as well as sufficient opportunity of hearing to the petitioner No. 1-company.

12. There is no doubt about the fact that respondent No. 1 is an instrumentality of the State within the meaning of Article 12 of the Constitution of India and it is a subsidiary of respondent No. 3, which is also the State within the meaning of Article 12 of the Constitution. It is now well settled law that every action of the State or its instrumentality should be fair and reasonable and should be free from non-arbitrariness. The State or its instrumentality must adhere to the principles of equality guaranteed by Article 14 of the Constitution and, therefore, whenever its action is likely to have civil consequences adverse to the interest of others, the action must be fair and initiated by following the principles of natural justice. The case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, is an authority on the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Article 14 of the Constitution.

13. In *Union of India and Another Vs. Tulsiram Patel and Others*, the Hon''ble Apex Court has held that the principles of natural justice have come to be recognised as being a part of the guarantee contained in Article 14 and violation of rule of natural justice results in arbitrariness which is the same as discrimination. The relevant observations of the Hon''ble Apex Court appearing in paragraph 95 are reproduced thus:

Violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of the State action, it is a violation of Article 14, therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law of State action violating them will be struck down. The principles of natural justice, however, apply not only to the legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such a matter fairly and impartially.

14. In the case of *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, the Hon''ble Apex Court has held that an administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin maxim *audi alteram partem*, which means that the decision maker should afford to any party to a dispute an opportunity to present his case. The person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. What is important to be noted, while reviewing an

administrative action, is that there is a duty cast upon the administration officers to act fairly and if such duty is not performed while taking an administrative action, the action is liable to be questioned and set aside. For following the concept of "fairness" or "fair procedure in the administrative action", it is now well settled that there is no need to have *lis inter partes* or to have any adjudicative settings.

15. In the case of Noida Entrepreneurs Association Vs. NOIDA and Others, the Hon'ble Supreme Court has reiterated the above principles in paragraph 39, as follows.:

State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

16. In the present petitions it is not in dispute that even though respondent No. 1 had made an enquiry into the complaints received against the petitioner-company alleging diversion of coal for earning black money and had also demanded various documents and information from time to time during the course of the enquiry from the petitioner-company, a formal show cause notice, calling upon the petitioner-company to show cause as to why the CSAs be not terminated and bank guarantee invoked, was never issued. It is also not in dispute that the petitioner-company was not heard by respondent No. 1 before issuing the impugned orders.

17. The impugned orders terminating the CSAs as well as invoking the bank guarantees have civil consequences not only adverse to the interest of the petitioner-company but also of its employees, who depend for their livelihood on the salary that they get from the petitioner-company. The power and cement plants of the petitioner-company require continuous supply of coal on long term basis for their smooth running and in the event of any interruption or stoppage of supply of coal and that too abruptly without giving any opportunity to the company to explain its stand in the matter and may be even to make necessary alternate arrangements for procuring coal, if, in case, there is any termination of CSAs by the respondents, the operation of these plants would come to a grinding halt thereby affecting adversely the interests of the company and its employees, not to speak of the consumers of the company, who may have booked orders for supply of cement, paper and allied products manufactured by the company. Therefore, respondent No. 1 and 2 were under a duty as seen from the case law

discussed earlier, to follow the mandate of Article 14 of the Constitution. Before issuing impugned communications, these respondents ought to have issued a show cause notice and afforded a reasonable opportunity of being heard to the petitioner No. 1-Company. Having not done so, on this count alone, the impugned orders are liable to be struck down as violative of the mandate of Article 14 of the Constitution.

18. Learned Counsel for the respondents has argued that various demands made by respondents No. 1 and 2 from time to time calling for several documents from the petitioner-company in order to satisfy these respondents as to the correctness or otherwise of the allegations made against the petitioner-company themselves constituted adequate notice and sufficient opportunity for the petitioner-company to answer the allegations. We are not inclined to accept this argument for the reason that it is a fact that no formal notice calling upon the petitioner-company to show cause as to why the CSAs be not terminated was issued at any point of time. Similarly, no hearing on this aspect of the matter was ever afforded to the petitioner-company. The argument, therefore, deserves to be rejected outrightly.

19. Learned Counsel for the petitioner has also assailed the impugned orders on the ground of the respondents practicing discrimination against the petitioner-company. It is submitted that respondents No. 1 and 2 have given show cause notice and opportunity of hearing on the same issue to various other consumers. One such instance is in the case of Digganath Steel Industries and Engineering Works, which was given show cause notice dated 11/5/2013 on the same allegation as has been made in these cases against the petitioner-company and action against the said company was taken under Clause-4.4 of the CSAs entered into with that consumer on 30/4/2008. It is also pointed out that the Bharat Coking Coal Limited, which is another subsidiary of respondent No. 3, has also given a show cause notice dated 16/7/2009 when an enquiry into the similar allegations was initiated.

20. In the instant matter, action has been taken against the petitioner-company under Clause-4.2 of the CSAs entered with the petitioner-company and this Clause has been not denied to be not in pari materia to Clause-4.4 of the CSAs executed in favour of Digganath Steel Industries and Engineering Works. If respondents No. 1 and 2, in similar fact situation, could issue show cause notice and also give hearing to other consumers and if subsidiary of respondent No. 3, BCCL, could also adopt the same procedure, which is fair and reasonable and consistent with the principles of rule of law, it is unfathomable to understand as to why respondent No. 1, also could not adopt the same procedure. By not following the same procedure, respondents No. 1 and 2 can be said to have been selective and discriminatory in their approach while dealing with their different consumers and this approach, we must say, is unfair. The concepts of "equality", "fairness" and "non-arbitrariness" run through the entire fabric of Part-3 and Part-4 of the Constitution. Article 21 of the Constitution guarantees the right to

live, which includes right of livelihood. If the company like the petitioner No. 1 is made to stop its operation due to sudden stoppage of supply of essential raw materials, the right to livelihood of the employees of the company would also be denied or deprived, which cannot be done except in accordance with the procedure established by law, which procedure must be fair, reasonable and non-arbitrary, in consonance with the mandates of Articles 14 and 21 of the Constitution. The deprivation of such a right must not be the product of an oppressive or discriminatory or capricious action. It must be based upon some known principles and sound reasons. That being not the case here, the impugned orders are liable to be quashed and set aside and these petitions deserve to be allowed accordingly.

I. The petitions are allowed.

II. The impugned orders dated 23/12/2013 and 27/11/2013 are quashed and set aside.

III. Insofar as encashing of the bank guarantee is concerned, the respondents are permitted to keep the amount of the entire bank guarantee into the separate account. The respondents would be at liberty to take fresh proceedings against the petitioners by issuing show cause notice as has been done in the case of the other persons and take appropriate decision in accordance with the law.

IV. The outcome of the amount of encashed bank guarantee, which is directed to be kept in the separate account with the respondents, would be subject to the outcome of the proceedings that will be taken by the respondents against the petitioner.

V. Needless to state that consequences of setting aside of the termination of the contract would follow.

VI. Insofar as prayer clause (b) of Writ Petition No. 1934/2014 is concerned, we do not find that it would be appropriate to issue the writ of mandamus as sought in the prayer clause (b). However, the respondents would be at liberty to consider the aspect of renewal of those three coal supply agreements in accordance with the law.

VII. Insofar as three coal supply agreements dated 24/04/2008 are concerned, the period is already over and as such the petition is rendered infructuous.

Rule in the above terms. No cost.