(2006) 07 JH CK 0003

In the Jharkhand High Court

Case No : C.W.J.C. No. 3000 of 1997 (R)

Shivang Transport Co. APPELLANT

Vs

Bharat Coking Coal Ltd. and Others RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Citation : AIR 2007 Jhar 9 : (2006) 4 JCR 168

Hon'ble Judges : Amareshswar Sahay, J

Bench : Single Bench

Advocate : V.P. Singh, A.K. Sahani, for the Appellant; Anoop Kumar Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Originally the writ application, was filed by the petitioner-company for quashing of the order as contained in Annexure-13 dated 24.9.1997 issued under the signature of the respondent No. 3, whereby the petitioner-company was black listed from doing any transportation job with the management of the BCCL. Subsequently by filing amendment application, further prayer was added in the writ application for direction to the respondent to pay the amount of outstanding bills of the petitioner, which was pending before the respondents as disclosed in Annexures-18 and 18/1 with interest @ 18% p.a.

2. In course of argument Mr. Singh, learned senior counsel appearing for the petitioner submitted that during the pendency of this writ application the entire outstanding amount, which was due to the petitioner, has already been paid to him and, therefore now he has no grievance so far as the payment of any outstanding dues is concerned but he submits that no interest as claimed by the petitioner, has been paid over the said amount and, therefore, the petitioner is confining this writ application for quashing of Annexure-13, i.e. black listing of the petitioner and for payment of the interest over the amount, which was withheld by the respondents and subsequently, paid by them till the date of payment.

3. The relevant facts in short are that vide Annexure-1 the petitioner was awarded a work order on 14.11.1996 by the respondents for transportation of raw coal from Kusunda Open Cast Project of Kusunda Area to Sudamdih Washery vide Annexure-1 to the writ application. An agreement was entered into between the parties with regard to the said work order on 14.11.1996.

4. Subsequently, by issue of Annexure-4 dated 22.8.1997 the Additional General Manager, Sudamdih issued a notice to the petitioner asking him to explain within seven days as to why action be not taken against him including the black listing for the allegations mentioned in the said letter. The first paragraph of the said letter wherein the allegations have been made are quoted hereinbelow for ready reference:

It has been reported that on 21.8.1997 at about 00.30 hrs. One Tipper No. BR 17-G-0808 of M/s S.T.C. (Shivang Transport Co.) entered Sudamdih Washery Weigh Bridge for weighment, it was carrying coal from Kusunda Open cast Project to Sudamdih Washery. After weighing at the weigh Bridge, the tipper instead of dumping the coal in the yard, which is about just 30 mtrs. or so away, turned back and started moving in the out-by direction towards the check post. The Weigh Bridge Foreman saw the. same and immediately sent the Weigh Bridge Clerk with another Tipper to intercept the above Tipper. The fleeing tipper was stopped in between the Weigh Bridge and the Railway level-crossing and it was brought back to the Washery Dump. CISF was informed.

5. Since, no reply was received and, as such, on 26.8.1997, again a letter was issued to the petitioner by way of reminder stating therein that no reply of the letter dated 22.8.1997 was received and, therefore, the petitioner was again asked to submit his reply within 48 hours. It was also stated in the said letter if no reply was received it would be presume that the petitioner has got no explanation to offer and the Management will take all necessary action as deem fit. This letter dated 26.8.1997 was also issued under the signature of Additional General Manager, Sudamdih.

6. The petitioner sent a letter on 27.8.1997 to the Additional General Manager, Sudamdih Project wherein he stated that he needed the true copy of the ''reported report'' on the basis of which such notices were issued to the petitioner. This letter dated 27.8.1997 was served on the respondents on 28.8.1997 as is evident from Annexure-6 itself. The petitioner again sent a letter on 2.9.1997 to the Additional General Manager, Sudamdih area, by way of reminder asking for the papers as had been asked by him through his previous letter dated 27.8.1997. However, it appears that a detail reply show cause was submitted by the petitioner to the Additional General Manager, Sudamdih vide Annexure-11 on 24.9.1997. The grievance of the petitioner is that without considering the reply show cause of the petitioner, the respondents wrongly and illegally issued Annexure-3 by which the petitioner was black listed from doing any transportation job in any manner with the Management of BCCL.

7. Mr. V.P. Singh, the learned senior counsel appearing for the petitioner submitted that the black listing of the petitioner by issue of Annexure-13 was illegal and bad in law for the following reasons:

(1) The petitioner was neither afforded reasonable opportunity to show cause nor a chance of being heard was given to him before taking action of black listing since the papers/documents demanded by him was not supplied.

(2) Though the notices as contained in Annexures-4 and 5 were issued by the Additional General Manager, Sudamdih project but the final order for black listing was passed by the General Manager, respondent No. 5.

(3) The petitioner had submitted an explanation/show cause to the Additional General Manager, Sudamdih but the same was not considered and the respondent No. 5, without issuing any fresh notice to show cause to the petitioner, passed the impugned order contained in Annexure-13 black listing the petitioner.

8. As noticed in the foregoing paragraphs, the first notice to show cause was issued to the petitioner vide Annexure-4 on 22.8.1997 to show cause within seven days and then again on 28.8.1997 by way of reminder when no reply from the petitioner was received to show cause within 48 hours.

9. No doubt the petitioner by filing a written application asked for some papers to know about the details of the allegations made against him for filing his show cause but from perusal of the first show cause notice, Annexure-4, dated 22.8.1997 it appears that the details of the allegations against the petitioner were already stated in the said notice, which have been quoted in the foregoing paragraph of this Judgment. Therefore, it is apparent that the details of the allegations were already there in the first show cause, dated 22.8.1997 and therefore, the petitioner could have very well submit his explanation/show cause meeting the allegations, but he did not chose to do so.

It is significant to note that the petitioner to note that the petitioner filed a detailed show cause reply on 24.9.1997, which he served on the respondents, at 4.45 p.m. but as it appears that by that time Annexure-13 had already been passed and issued by the respondents black listing the petitioner. It is important to note that when the petitioner filed his detailed show cause reply on 24.9.1997 then he could have very well filed the same within the time specified in the notice to show cause dated 22.8.1997 but he did not submit his show cause before issuance of the impugned Annexure-13.

10. In this view of the matter, it cannot be said that the petitioner was not given reasonable opportunity to show cause before passing the order of black listing as contained in Annexure-13 to the writ application. As a matter of fact he was given reasonable and adequate opportunity but the petitioner failed to avail the said opportunity by filing show cause and for that the petitioner should blame himself.

11. Now coming to the next submission of Mr. Singh to the effect that the notice, le. Annexure-4 and 5 were issued by the Additional General Manager, Sudamdih and the impugned order Annexure-13 was passed by the General Manager, BCCL who had no nexus in the matter is fit to be rejected for the following reasons. The General Manager, who passed the impugned order, was superior to the Additional General Manager and therefore, there was nothing wrong if he passed the impugned order Annexure-13. The superior office sitting in the headquarter dealing with the file, cannot be said that he had no nexus in the matter. So far the question of issuing a fresh notice to show cause by the General Manager, who passed Annexure-13 is concerned, I hold that since the Additional General Manager had already issued notices to show cause to the petitioner twice and, therefore, it was not at all necessary for the General Manager to issue notice to show cause again to the petitioner before passing the impugned order Annexure-13.

12. So far as the prayer for awarding interest over the amount of outstanding bill, which according to the petitioner was belated paid to him in the year 2000 is concerned, I find that pursuant to the order of this Court dated 26.7.1999, the respondents cleared the entire amount to the petitioner and, therefore, I do not feel inclined to award any interest over the said amount as prayed for by the petitioner. Moreover nothing has been brought on record by the petitioner that in case of delayed payment, as per the terms and condition of the agreement the respondents were liable to pay interest.

14. Accordingly, in view of discussions and findings above, I hold that the petitioner is not entitled to any relief and, as such, this writ application is dismissed.

