

(2008) 08 JH CK 0111
In the Jharkhand High Court

Shri Durga Slurry and Briquette Industries	APPELLANT
Vs	
Bharat Coking Coal Ltd. and Others	RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 18

Citation : (2009) 1 JCR 60

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—This writ application has been filed for a direction upon the respondents commanding upon them to issue sale order by accepting the offer of the petitioner for leaving old Waste Slurry of the respondents on payment of price and also in terms/conditions fixed by the respondents as per the scheme from the lease hold lands of the petitioner situated at Mauza Kenduadih, Fularitand, Barmasia and Maheshpur.

2. In order to have better appreciation of the case, certain backgrounds of the events as highlighted in the counter affidavit and also in the Interlocutory Application bearing No. 137 of 2006 filed on behalf of the respondents-B.C.C.L. need to be taken notice of.

3. M/s. B.C.C.L. has established various washeries for the purposes of washing of coal after extraction from the coal mines and crushed into different sizes. The slurry ponds and re-circulation dumping systems are invariably built on the boundary of the washery premises. The washery premises having slurry pond are separated from the outside private field by a boundary wall from the private raiyati land. Due to various reasons, the slurry gets overflowed from the pond and gets deposited over the raiyati land and sometimes even flowed down to the river causing water pollution and, therefore, Bihar State Pollution Control Board raised objections at several occasions but attempts made by the BCCL to lift the slurry deposited in others land got frustrated because of the resistance from the owners of the land, as they started claiming the ownership over the slurry

deposited in their lands. This misery got worsen when the Government of Bihar started leasing out these slurries to the owners of the land and started collecting royalty and cess against that. This action of the Government of Bihar was objected by the BCCL on the ground that the slurry is the property of the Company and this objection resulted into several litigations and ultimately the matter came before the Hon"ble Supreme Court and the Hon"ble Supreme Court a in case bearing Civil Appeal No. 4521 of 1986 reported in 1990 (4) SCC 557 held that the slurry escaping from the washeries and getting deposited into private land is nothing but "coal" being comprised of fine particles of coal and hence removal of the slurry amounts to "mining of coal" and, therefore, the provisions of the Mines & Minerals (Development & Regulation) Act, 1957 get attracted. It was further held that for the removal of slurry flowing out of slurry ponds and getting deposited over the land not belonging to the coal Company, a rule is required to be framed by the Central Government under Sections 13 and 18 of the Mines and Minerals (Development & Regulation) Act, 1957. Thereafter BCCL in the light of the aforesaid judgment constituted a Committee to suggest a scheme for disposal of the slurry escaped from the slurry ponds of the washeries belonging to M/s. BCCL and got deposited on the private lands. Accordingly, the Committee formulated a scheme which got approval of the Board of Directors of M/s. BCCL. The said schemes are given under:

- (1) The slurry may be first offered to the land owners on notified prices, on the basis of quality assessed by CFRI or any other Government agency.
- (2) In case such land owners do not come forward to take this slurry as per Clause 1, it should be put up on sale through tenders as we are doing in case of other washery products. Even though, there may be risk of resistance from them but In that case we can go to the Court for redressal.
- (3) If the land owner participates in the tender but he is not a H-I tender and he opts for taking slurry at H-I price, he should be offered 50% of the assessed quantity or whatever quantity he wants upto to the limit of 50%.
- (4) The security deposit should be as per norms of the company.
- (5) Where land owner does not allow assessment of quantity, tender notice should contain Clause that the quantity indicated in the tender is approximate and the company does not bind itself to supply the full quantity, if land owner creates any problem in lifting.
- (6) The reclamation will be done by the tenderers themselves. The tenderers should acquaint themselves with the site conditions under which they are to reclaim the slurry. Before bidding, they must visit the site and obtain deJ tils whatsoever required.
- (7) The slurry will be weighed on the BCCL weighbridge or any, other weighbridge approved by BCCL.
- (8) All trucks carrying such reclaimed slurry should pass through BCCL Check

Post and weighbridge.

(9) Supply will be against 100% payment at the time of booking.

(10) Whatever land owners do not allow assessment of quantity, the product should be offered for sale on "as is where is basis" by assessing quantity on eye estimation. In any case, the final dispatch will be only through our weighbridge. Quality in such cases, will be determined by 3rd Government party on truck to truck basis.

4. But that action of the respondents was not sufficient for getting slurry removed from the private land, as the rule in this regard needs to be formulated under Sections 13 and 18 of the Mines & Minerals (Development & Regulation) Act, 1957 and as such when the Chairman-cum-Managing Director of M/s. BCCL realized that the Central Government may take time in formulating the rules, wrote a letter to the Secretary, Government of India, Department of Coal, New Delhi requesting therein to frame rules in this regard or the alternative scheme prepared by M/s. BCCL may be approved with or without modification. The said request was taken in right earnest by the Ministry of Coal, Government of India and the matter was taken up for deliberation in a meeting. After deliberation, a resolution, as contained in Memorandum dated 7/12.9.2005 (Annexure 3 of LA. No. 137 of 2006) was passed and the concluding portion of the said Minutes reads as follows:

As the framing of rules would take some time, BCCL was directed to explore the possibility of getting one time exemption from the competent Court so that slurry could be disposed of in a manner so that the interest of BCCL could be safeguarded.

5. Under these situations, one Interlocutory Application bearing No. 137 of 2006 was filed on behalf of the respondents-BCCL praying therein to grant one-time exemption so that the slurry overflowed from the slurry pond and got deposited on the raiyati land/river bed can be disposed of in terms of the scheme formulated by the respondent particularly when the Government of India has no objection of one-time disposal of slurry and also in view of the fact that the respondents are desirous of disposing of the slurry deposited on the raiyati lands/river bed from the washery of Dugda and Barora.

6. The Union of India in his counter affidavit has also shown its anxiety for one-time exemption for disposal of slurry in terms of the prayer made by the BCCL.

7. In view of the situation, as stated above, learned Counsel for the petitioner submits that this writ application now can be disposed of in terms of the prayer made on behalf of the BCCL and also by the Union of India, whereby the respondents may be directed to issue sale order by accepting the offer of the petitioner for lifting slurry from the lease hold land of the petitioner on payment of price fixed by the respondents as per the scheme.

8. However, the respondents-BCCL in their counter-affidavit have denied that the land over which slurry overflowed from Dugda and Barora washeries got deposited belongs to the petitioner and that the petitioner has never at any stage has filed any document showing that the land over which slurry of Dugda and Barora washeries deposited belongs to it.

9. It has already been noticed that under the scheme, the slurry deposited over the land may be first offered to the land owners on notified prices on the basis of the quality assessed by CFRI or any other Government agency, but if the land owners do not come forward to take slurry, other options as per the scheme are left with the BCCL for disposal of the slurry.

10. Keeping in view this aspect of the matter and also the fact that the BCCL has been losing money on account of the non-disposal of the slurry and at the same time proving to be health hazardous for the general public being prone to cause water pollution due to over flowing of the slurry to the river, the respondent-BCCL is granted one-time exemption for disposal of the slurry deposited in the raiyati lands.

11. Accordingly, the BCCL is directed to take steps for its sale by offering slurry deposited from the washeries, namely, Dugda and Barora, over the lands to the land owners including the petitioner, on being satisfied with the documents if any produced by the petitioner that he is the land owner, on the notified price and if the land owners do not come forward to take slurry on the notified prices, the BCCL may go for other options as per the scheme.

12. With this observation, this writ application stands disposed of.