

(1991) 08 CAL CK 0029
In the Calcutta High Court
Case No : Matter No. 1903 of 1991

Shri Satya Dev Singh and Others

APPELLANT

Vs

Indian Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226

Citation : (1991) 2 CALLT 450

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by 175 persons claiming to be the members of the Central Co-ordination Committee of Associations of Railway Plots-cum-Soft Coke Licencees of Calcutta Railway Sidings, praying, inter alia, for an appropriate writ of Mandamus commanding the respondents not to withhold the supply of breeze coke to the petitioners as per the sponsorship made by the Director of Consumer Goods, Government of West Bengal.

2. There is a further prayer for rescinding, cancelling and/or setting aside the impugned notices dated November 26, 1990 and February 22, 1991 (Annexures J and P) to the writ petition issued by the Indian Iron and Steel Company Limited being respondent No. 1.

3. It is stated in details that the writ petitioners are carrying on business to supply breeze coke for domestic use. For such supply of breeze coke to the consumers the petitioners had to obtain licence from the Director of Consumer Goods, Government of West Bengal in order to distribute such breeze coke to the consumers at a reasonable price and also to supply the same according to the requirement of the consumers.

4. It is stated further that the Director of Consumer Goods of the State being the

controlling authority is to nominate and/or sponsor the names of the dealers on the basis of the total number of wagons fixed for the purpose by the railway who will have priority of the supplies and the list of the sponsored are sent by the Director of Consumer Goods to the Executive Director, Rail Movement for rake movement after a consent is obtained from the manufacturers who in their turn be assured of the payment of price of such coke by the petitioners either directly or through their agents.

5. It is placed on record that by the impugned notices viz, Annexures "J" and "P" Indian Iron & Steel Co. Ltd. have taken up a decision to give priority to the industries, i.e. the actual users and as per current policy no supply can be effected to the erstwhile pattern of demand, and they will not sell the breeze coke to the petitioners.

6. It will further appear that by Annexure "P" it has been made clear that all Mini Cement Plants/Industries/Actual Users of Coke Breeze who were interested in lifting the material from Burnpur Works, IISCO LTD., by RAKE Piecemeal Wagons have been invited to submit applications subject to production of sponsorship from appropriate Government Agencies and as such there is no entertainment of the claim of the petitioners to obtain the supply of breeze coke.

7. Being aggrieved the petitioners have come to the Writ Court seeking reliefs on the ground that the respondent authorities by not allocating the consent to the sponsored wagons in favour of the petitioners by imposition of illegal and irregular restrictions to the supply of breeze coke to the prejudice of interest of the petitioners. There is alleged violation of Article 19(1)(g) and Article 21 of the Constitution of India regard being had to the facts and circumstances of the case.

8. The Writ petition is contested by the respondent authorities by filing Affidavits. It is highlighted that IISCO is not the monopoly authority to sell the breeze coke. The breeze coke is available from other sources. A decision has been taken to sell the breeze coke to industries for consumption and not to sell otherwise. All other allegations of the petitioners have been controverted. The petitioners have filed an Affidavit in Reply reiterating the original stand and further they have added that in fact, the petitioners are dealing with breeze coke for the availability of the same to actual consumers for the purpose of their domestic use. If this policy is adopted to deny the supply of breeze coke to the original consumers will be hard hit and the entire steps taken by the respondents are unwarranted and uncalled for.

9. With great anxiety this Court considers the submission made on behalf of the respective parties. The attention of this Court is drawn to the decision in the case of Sree Jagadamba Coke Mfg. Enterprises and Others Vs. Union of India (UOI) and Others, ; as to the jurisdiction of the Writ Court as to the public policy. It has been held that the Court should refrain from embarking upon the uncharted ocean of public policy. But the said principle is not absolutely unqualified. There is no manner of doubt that the State authorities can frame the public policy and

such right to frame public policy cannot be challenged but in framing such policy or implementing the same, if statutory right of any person¹ is violated or the fundamental rights guaranteed by the Constitution of India are infringed, the Court is certainly within its jurisdiction to scrutinise such public policy or part thereof which either infringes any statutory right or comes in conflict with any provisions of the Constitution of India. Law is well settled that the State and/or public bodies in discharging duties and functions of a public nature must not act arbitrarily or capriciously and in framing such policy or implementing the same, there should not be any hostile discrimination against any one similarly circumstanced unless for a very good and cogent reason any deviation from the general principle or norm is justified. In an appropriate case, if the Court is satisfied that a particular policy framed in the discharge of public duties and functions has infringed a statutory or constitutional right of the person affected by such policy and/or the policy though otherwise unexceptionable has been implemented in such a manner that it has resulted in hostile discrimination to others similarly circumstanced, it cannot only strike down such policy and/or the unjust state action in implementing the policy, but may also give guidelines and in an appropriate case may even frame scheme as to how the policy should be framed and/or the same should be implemented.

10. Regard being had to the materials on record this Court finds that the acts done by the IISCO authorities to deny the supply of breeze coke to the writ petitioners by formulating a policy is contrary to law and it appears to be unjust. The State is free to take a policy but such a policy is always subject to judicial scrutiny if it appears to be unfair and unjust. The reasons assigned by the respondent authorities in negating the supply of breeze coke to the petitioners holding, inter alia, that they are middle men and supply would be effected to industries only as specified in the circulars in question are not well justified. This Court does not appreciate the justiciability of the stand taken by the respondents inasmuch as by restricting the supply to a specific section of the industry, the supply of breeze coke to the ordinary consumers will be totally ignored and such a stand appears to be totally unreasonable.

11. Considering this aspect it will be just for the respondent authorities to ask for necessary tenders from all concerned for the sale of their product and not to restrict the sale to a particular section which does not appear to be reasonable.

12. For the following reasons this Court finds sufficient merit in the contention of the writ petitioners and makes an order allowing the prayer of the writ petitioners to the extent by issuing an appropriate writ commanding the respondent authorities to have effective steps for the sale of their product of breeze coke by inviting tenders and there is no bar and/or impediment in law to prohibit the petitioners to participate in purchasing the breeze coke in accordance with law. The impugned circulars should not be given effect to for the supply to a limited class as indicated above.

13. There will be no order as to costs.

As prayed for the operation of this order is stayed for a fortnight.

All parties to act on a signed copy of the operative portion of the judgment on the usual undertaking.