

(2013) 09 JH CK 0087

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5583 of 2009

Sri Salasar Mineral Processing Works

APPELLANT

Vs

Jharkhand State Mineral Development Corporation Ltd. and
Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2013) 09 JH CK 0087

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Rajiv Ranjan and P.K. Sinha, for the Appellant; A.K. Mehta for J.S.M.D.C., S. Haque and A.K. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—In these writ applications, petitioners pray for quashing the Memo No. 1940 dated 17.11.2009 issued under the signature of respondent No. 4, whereby and where under he suspended the supply of coal to the petitioners' Units. Petitioners further pray for a direction commanding respondents to resume coal supply to the petitioners' Units for the month of October, 2009 and onward. Petitioners further pray for a direction commanding the respondents to enter into a fresh agreement with the petitioners for supply of coal which had been stopped by the respondents in violation of principles of natural justice. It appears that the petitioners are Small Scale Industries, duly registered with the District Industries Centre and Sales Tax Department. It is further stated that Jharkhand State Mineral Development Corporation (in short J.S.M.D.C.) issued a Notice Inviting Tender (N.I.T.) for supply of coal to the non-linked consumers, small scale industrial units and other non-core sectors industrial units whose maximum annual coal consumption is upto 4200 MT. Aforesaid NIT issued according to the provisions of Coal Distribution Policy of Ministry of Coal, Govt. of India. It appears that the petitioners being SSI Units applied for supply of coal in accordance with the terms and conditions of the N.I.T. It further appears that

J.S.M.D.C. requested the Deputy Commissioner, Palamau for conduction inquiry regarding the status of petitioners. It is further stated that Deputy Commissioner, Palamau constituted three members committee constituting of District Mining Officer, General Manager, D.I.C. Medninagar and Additional Collector, Palamau. It is stated that after conducting inquiry, three members committee recommended that 315 MT coal per month be allotted to each of the petitioners' units. Accordingly, J.S.M.D.C. entered into art agreement with the petitioners on 08.08.2009. It is stated that thereafter, petitioners were supplied coal for two months i.e. for the month of August, 2009 and September, 2009. It is stated that petitioners deposited price of coal for the month of October, 2009, but the coal had not been supplied to them. Petitioners stated that J.S.M.D.C. served letter No. 1940 dated 17.11.2009 to the petitioners stating therein that J.S.M.D.C suspended supply of coal to the petitioners' units on the direction of department of Industries. Aforesaid memo No. 194 dated 17.11.2009 challenged by the petitioners, mainly on the ground that the same was issued without giving them any opportunity of hearing.

2. It appears that earlier these writ applications were heard along with other writ applications by a learned Single Judge. It further appears that as per direction of learned Single Judge, an inquiry conducted by the Vigilance Bureau, Jharkhand, regarding the status of industries (including the petitioners' units) who filed writ applications against Annexure-6. It further appears that learned Single Judge after receiving inquiry report submitted by Vigilance Department, dismissed all the writ applications, including present writ applications. It then appears that petitioners preferred letters patent appeal against aforesaid order of learned Single Judge vide L.P.A. No. 242/2010 and 243 of 2010 respectively. In the aforesaid appeals judgment learned Single Judge dated 19.05.2010 had been set aside and the matter was remanded back for re-hearing. Accordingly, both the writ applications listed before this court for hearing.

3. Shri Rajiv Ranjan, learned counsel appearing for the petitioners submitted that before passing the impugned order (Annexure-6) petitioners were not given any opportunity of hearing. Thus, impugned order as contained in Annexure-6, is violative of the principles of natural justice. Sri Rajiv Ranjan further submits that high level committee of units which are enumerated in letter No. 1653 dated 06.07.2008. He submits that names of petitioners' units do not find figure in the aforesaid letter. Thus, there is no direction of the High Level Committee of the Industries Department to suspend the supply of coal to the petitioners' units. But in spite of that respondent No. 4 suspended the supply of coal of the petitioners' units which is wholly arbitrary. It is submitted that due to arbitrary action of the respondents, fuel supply agreement entered in between the petitioners and the respondent J.S.M.D.C. lapsed due to efflux of time. Thus, respondents are duty bound to enter into a fresh agreement with the petitioners for supply of coal.

4. On the other hand, Sri A.K. Mehta, learned counsel appearing for J.S.M.D.C.

and learned JC to G.P.I. appearing for the State submit that from perusal of Annexure-6, it is clear that coal supply was suspended till the inquiry made by the officers of J.S.M.D.C. as well as Industries Department regarding complaint received against the industrial units situated in the district of Palamau. It is submitted that during the aforesaid inquiry petitioners would have got ample opportunity of hearing, but petitioners approached this court against Annexure-6, even before start of such inquiry. Thus, writ applications filed by petitioners are pre-mature. It is further submitted that Annexure-6 resolution of the High Level Committee reveals that Industries Department had directed for suspending the supply of coal to all industrial units situated in the district of Palamau, because maximum complaint received from Palamau district regarding illegal utilisation of coal by them. It is further submitted that during the pendency of these writ applications, fuel supply agreement entered with the petitioners stands terminated on 08.08.2011 due to efflux of time, as such now there is no agreement between the petitioners and J.S.M.D.C. for supply of coal. Under the said circumstance, no writ and/or direction can be issued to the respondents for supply of coal. It is submitted that no mandamus can be issued commanding respondents to enter into an agreement with the petitioners for supply of coal. It is submitted that it is pre-requisite for issuance of writ of mandamus that petitioners must have a legal right and respondents have statutory duty to perform. In the instant case, there is no statutory right available to the petitioners on the basis of which they can claim supply of coal. Thus, prayer of the petitioners for issuance of a direction to enter into an agreement is wholly illegal, thus, liable to be rejected.

5. Having heard the submissions, I have gone through the records of the case.

6. From perusal of Annexure-6, impugned memo No. 1940 dated 17.11.2009, it appears that supply of coal has been suspended until a committee consisting of senior officers of Department of Industries and representative of J.S.M.D.C. enquired about the working status of the Industrial units and submit its report. It appears that petitioners challenged the said memo even before commencement of the inquiry. Under the said circumstance, I find force in the submissions of learned counsel for the respondents that writ applications filed by the petitioners are pre-mature. In my view, during inquiry, petitioners would have got ample opportunity of hearing. Thus, before commencement of inquiry, it is not open for the petitioners to say that they have not been given any opportunity of hearing. Under the said circumstance, first contention raised by the learned counsel for the petitioners does not inspire confidence, hence, rejected.

7. So far second contention, that there is no order of High Level Committee to suspend coal supply of the petitioners Units, also appears to be against the record. It manifest from Annexure-C to the counter-affidavit, tiled by the respondents Nos. 1, 3 and 4, that the Secretary, Department of Industries had ordered that supply of coal of all the industries situated in Palamau be suspended till completion of inquiry of those industrial units, because several complaint

received against them that they are misutilizing the coal. Thus, I find that respondent No. 4 had issued Annexure-6 suspending the supply of coal to the petitioners' units on the direction of Industries Department. Thus, the same cannot be said to be arbitrary.

8. It appears that during the pendency of these writ applications, fuel supply agreements entered in between the petitioners and J.S.M.D.C. have lost their force due to efflux of time. It is relevant to mention that life of said agreements were of 24 months from the date of execution. It is admitted that the said agreement signed on 08.08.2009. Thus, from that date aforesaid agreements lost their force on 08.08.2011. It is worth mentioning that as per the terms and conditions of the agreements, the same can be extended for another 12 months on mutual agreement of the parties. There is nothing in the writ applications to show that petitioners applied for renewal of the agreements before their expiry. Under the said circumstance, the basis of petitioners' claim for supply of coal is now not in existence. Thus, on the basis of dead agreements, no direction can be given to the respondents for resuming supply of coal to the petitioners. Accordingly, I find no merit in the prayer of the petitioners for issuance of a direction for supply of coal to the petitioners' units.

9. So far third prayer of the petitioners that a direction be issued commanding the respondents to enter in fresh agreement with the petitioners for supply of coal, I find that said relief cannot be granted in writ jurisdiction. It is well settled that it is pre-requisite for issuance of a writ of mandamus that there must be an existing legal right to the parties who is asking the writ to compel an authority to perform his statutory duty. Reference in this connection may be made to *Oriental Bank of Commerce Vs. Sunder Lal Jain and Another*,

10. In the instant case, I find that petitioners had no statutory or legal right to claim supply of coal nor respondents had any legal duty to supply coal to the petitioners. It is clear from N.I.T. (Annexure-1) that J.S.M.D.C. supplying coal to S.S.I. Units on the basis of New Coal Distribution Policy of the Central Government. Thus, in my view, aforesaid Coal Distribution Policy is an executive instruction and/or executive decision taken by the Govt. of India for supply of coal. The same has no statutory force. Thus, in view of the aforesaid law laid down by their Lordships of Supreme Court, no mandamus can be issued commanding the respondents to enter into an agreement with the petitioners for supply of coal. In view of the discussions made above, I find no merit in these writ applications. Accordingly, the same are dismissed.