

(2008) 05 JH CK 0031
In the Jharkhand High Court

Vishal Briquetting Industries

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Citation : (2008) 3 JCR 565

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—In this writ petition, the petitioner has prayed for a direction on the respondents to restore the coal linkage quota, which was earlier given to the petitioner.

2. It has been stated that the petitioner was allocated 1157 M.T. Steam Coal for its consumption. The petitioner had been regularly lifting the said quota/stock of coal from the Respondent-BCCL.

3. In the beginning of the year 2005, the respondents introduced a system of "E-Auction". In that system, every linked or non-linked unit was supposed to participate in the "E-Auction" for purchasing coal of its need. Even the parties, non-participating in the "E-Auction", were supposed to pay the price fixed or quoted under the said scheme.

4. The system of "E-Auction" was challenged before the Supreme Court. The Hon'ble Supreme Court in SLP (C) No. 20471 of 2005 and connected matter held the "E-Auction" unconstitutional.

5. According to the petitioner, since the matter regarding "E-Auction" was pending before the Hon'ble Supreme Court, the petitioner did not lift the coal from February, 2005 to December, 2006. The petitioner was waiting for the result of the said case. The linkage cannot be snapped because of non-lifting of the allocated coal by the petitioner during the said period. The petitioner is, thus,

entitled for restoration of its earlier linked quota.

6. The respondents have contested the writ petition, stating, inter alia, that though it is true that the petitioner was given linkage, it did not booked/lifted the coal for its unit from February, 2005 to December. 2006. The petitioner also did not switchover to the booking of coal through "E-Auction". It has been stated that since the petitioner did not lift the coal for consecutive 12 months, the linkage automatically stood snapped. The petitioner failed to lift the linkage coal for about 23 months. There is no question of resumption/restoration of already snapped quota, due to failure on the part of the petitioner to lift the coal under the linkage system for 12 consecutive months. The petitioner is not entitled to any relief, as prayed for.

7. I have heard learned Counsel for the parties.

Learned counsel for the petitioner submitted that even if the petitioner's linkage is snapped for non-lifting of the coal for more than 12 consecutive months, the petitioner is entitled for restoration of the linkage under the terms of the linkage system. Mr. A.K. Mehta, learned Counsel, appearing on behalf of the respondents, submitted that the petitioner has never approached the competent authority for restoration of linkage and has rushed to this Court without making any such request to the department. It has been stated that since the petitioner has not approached the department, the writ of mandamus filed by it is not maintainable and is liable to be dismissed.

8. I find substance in the submissions made by learned Counsel for the respondents. The petitioner should have represented before the departmental authority, demanding Justice before approaching this Court in extra ordinary writ Jurisdiction. This writ petition is accordingly, dismissed.

9. However, the petitioner is at liberty to approach this Chief General Manager (Sales), Bharat Coking Coal Ltd., Dhanbad, respondent No. 3 in view of the provisions of restoration of linkage system. If any such request/representation is made by the petitioner, the same shall be considered and disposed of in accordance with law, within a period of six weeks from the date of receipt of the representation.