

(2003) 09 JH CK 0111

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 529, 530, 536, 853, 854 and 1607 of 2003

Western U.P. Coal and Fuel System

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others
 Ganpati Fuel and
Others Vs CCL and Others
 Babul Sookeless Fuel
Industries Vs CCL and Others
 Sriram Sodium Silicate
Industries, Sriram Lime Works and P.S. Glass Industries Vs
CCL and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 283

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : R.S. Mazumdar, in WP C Nos. 529, 530, 536 and 1607/2003, Ajit Kumar, in WP C Nos. 853 and 854 of 2003 and Ananda Sen, in WP C No. 757 of 2003, for the Appellant; A.K. Mehta, except in WP (C) No. 530 of 2003 and M.M. Banerjee in WP (C) No. 530 of 2003, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In all these cases, as common questions of law Involved and similar decisions of suspension of supply of coal are under challenge, they were heard together and are being disposed of by this common order.

2. The common case of the petitioners is that they are linked consumer of Coal Companies, such as, Bharat Coking Coal Limited (for short BCCL) and Central Coalfields Limited (for short CCL). They have been granted linkage by Coal India Limited (for short CIL) and used to lift coal from their linked Coal Companies.

3. Their grievances is that the respondents by different orders, which are under challenge herein, have either suspended supply of coal in their favour or rejected their request to supply coal and submitted adverse report against them.

4. The petitioner M/s. Western U.P.. Coal and Fuel System of WP (CJ No. 530 of

2003 has challenged the Wireless Message No. BCCL : S&M ; F-41 : 676 dated 26th October, 2002, whereby the Deputy Chief Sales Manager (R&S) of BCCL, Dhanbad suspended booking/ supply of coal to petitioner and some others in pursuance of verification report of internal BCCL Team, vide No. VIG/F/62/VOL-III/1476 dated 10th October, 2002.

Petitioner Ganpati Fuel and others of WP (C) No. 529 of 2003 have challenged letter Nos. 1665; 1666 and 1667, all dated 30th December, 2002 (Annexure-8 series), whereby and whereunder, the General Manager (S&M) of CCL, Ranchi rejected the petitioners' claim for resumption/or re-determination of Coal Linkage Quantity/ Maximum Permissible Quantity (for short MPQ) on the ground that the inspecting team after inspection of their units found the units in-operative.

In WP (C) No. 536 of 2003, the petitioner M/s. Babul Smokeless Fuel. Industries (P) Ltd. has challenged the Wireless Message No. : CCL : HO : C-I : RDS Policy : 320, dated 30th July, 2002 issued by the General Manager (S&M) of CCL, Ranchi, whereby and whereunder, the supply of coal to petitioner and others was suspended.

The petitioner M/s. F.G. Engeecom & Industries and another of WP (C) No. 757 of 2003 and M/s. P.S. Glass Industries and others of WP (C) No. 1607 of 2003 have challenged a Wireless Message circulated vide No. CCL : HQ/C-4/VIG/SUSPN/6364, dated 7th September, 2002 issued by the General Manager (S&M) of CCL, Ranchi. By the aforesaid Wireless Message, giving reference to a report of Internal Vigilance Team of CCL, Communicated vide No. CMD/CCL/1806-C, dated 7th September, 2002, it has been ordered to keep in abeyance the coal booking and supply to those petitioners' units and 70 (seventy) other units.

So far as petitioner M/s. Shivam Sodium Silicate Industries of WP (C) No. 854 of 2003 and M/s. Shivam Lime Works of WP (C) No. 853 of 2003 are concerned, supply of coal in their favour was suspended by the Wireless Message dated 30th July, 2002 issued by the Chief General Manager (S & M) of CCL, Dhanbad.

They earlier moved before this Court in WP (C) Nos. 5251 of 2002 and 5252 of 2002. Both the cases were heard together and disposed of by common order dated 30th September, 2002, (see also Shivam Lime Works v. CCL 2003 (1) JCR 484) whereby their cases were remitted to the competent authority of M/s. CCL for re-determination of issue relating to supply of coal in their favour. Liberty was also given to the competent authority of CCL to re-determine/revise the coal linkage quantity/MPQ of one or other petitioner for good ground such as non-functioning of unit, requirement of lesser coal etc.

The authorities thereafter having rejected their claim for resumption of supply of coal or to re-determine the Coal Linkage Quantity/MPQ, they have challenged their respective rejection orders, contained in letter No. CCL/HQ/C-4/Status Report/ 1669 dated 30th December, 2002 and letter No. CCL/HQ/C-4/Status Report/1670 dated 28th December, 2002.

5. The petitioners have challenged their respective orders of suspension of coal supply as communicated vide Wireless Message dated 26th October, 2002; 30th July, 2002; and 7th September, 2002 or orders of rejection of supply of coal communicated vide letters, as referred to above/or the Status Report, mainly on the following grounds :

(i) the Status reports were prepared and submitted behind their back without notice to the petitioners, Inspections, if any, made by any Team were so made behind the back of the petitioners or their representatives;

(ii) the so called Status report submitted in the case of one or other petitioner cannot be relied upon being vague, not specific and having prepared without application of mind; and

(iii) they have alleged mala fide in law and also alleged that the Status reports have been hurriedly prepared just to reject their claim for some extraneous consideration.

6. The respondents have denied the allegations made by the petitioners. They have placed reliance on one or other report submitted by their respective Vigilance Team/or a team constituted to enquire into the functioning of the units.

7. This Court called for the original records/files, but no original record or file produced on behalf of the BCCL, except certain photostat copies. The records which have been produced on behalf of the CCL or BCCL are separate documents, not part of any relevant file. They are not paginated nor any file number has been shown.

The document of BCCL which was produced is a parawise comments with regard to WP (C) No. 530 of 2003 and photostat copies of one report; counter affidavit; T.A. Bills etc.

One document filed on behalf of CCL is of two pages, which seems to be an office note, but not paginated nor any file number has been Indicated thereon. The other document filed by the CCL; one of four pages and the other of single page which appear to be office note, but without any page or file number. The enclosure to these notes are photostat copies/computerized sheets.

The original copies of the Status Report or the orders by which the Officers were asked to proceed for inspection or notice,*if any, issued by the authorities to the petitioners relating to inspection and report have not been produced.

Non-production of original files inspite of direction of the Court raises some doubt of their statement as made in the counter affidavit wherein they have taken plea that Vigilance Teams or some other team made inspections and submitted report in presence of one or other representative of petitioner.

8. The so called copies of reports as have been enclosed with the counter affidavit are discussed hereunder.

From the counter affidavit filed in WP (C) No. 530 of 2003 M/s. Western U.P. Coal and Fuel System, it appears that a report was prepared by the some Officers of the BCCL on 10th October, 2002. One 27th September, 2002, inspections have been shown to have been made in four units, including the unit of petitioner M/s. Western U.P. Coal and Fuel System of WP (C) No. 530 of 2003. It reads, as follows :

"Some equipments are installed and some not installed. Found not in working conditions. Reported that production was stopped due to rain and shortage of coal."

The aforesaid report is completely vague. It is not clear as to which equipment has not been installed. If the Unit is not working because of rain or shortage of coal then why the authority will refuse to supply coal to M/s. Western U.P, Coal and Fuel System has not been made clear.

The Inspection report of a three member team of CCL in respect to M/s. Ganpati Fuels has been enclosed with counter affidavit filed in WP (C) No. 529 of 2003, but not such-inspection report has been filed in respect to other petitioners, such as M/s. Sri Ram Food Products; M/s. Modern Fuels; M/s. Anand Fuels; and Mujala Dyeing Industries of the said case.

In the report of M/s. Ganpathi Fuels, it is stated that the area was smelling badly and utilized for animals" shelter. Two goats were found tagged with the pillar. The equipments were reported to be dismantled, kept idle in disorderly manner, no boundary wall or electricity reported. But from the report itself, it is clear that there was no person available when the Team supposed to have visited the unit of M/s. Ganpati Fuels. But it is not clear as to who allowed them to enter in the premises of the unit.

In the Inspection report filed with respect to M/s. Babul Smokeless Fuel Industries (P) Ltd., petitioner of WP (C) No. 536 of 2003, it is stated that the plant was not in operation. Further suggestion has been made that the plant is to be assessed by the CMPDI only, there being technical fault. Though the report talks of the representative of petitioner M/s. Babul Smokeless Fuel Industries (P) Ltd., but neither the name nor designation of person has been shown therein.

It is also not clear that why unit was not functioning i.e. because of shortage of coal or because of holiday or because of inaction on the part of the petitioner. What is the technical fault has not been mentioned in the report.

In WP (C) No. 853 of 2003, a report of physical inspection to unit of M/s. F.G. Engeecom & Industries has been submitted. It is a favourable report in the sense that physical stock of coal (ten metric tonnes) was found, stock of finished products, such as glass balls, paper clips, glass bits etc. were found. Five to six persons found working in loading fire bricks from trucks. Still in Clause (24), the "Status on date" was shown--"N on-working".

The respondents CCL have also not made it clear as to why they refused to

supply coal to M/s. F.G. Engeecom & Industries, vide Wireless Message dated 7th September, 2002, if in the report dated 17th April, 2002, there is not adverse decision given against M/s. F.G. Engeecom & Industries. The counsel for the CCL also could not lay hand on any ground to suggest as to how the respondents can suspend supply of coal even if a unit remains non-working on a particular date (17th April, 2002).

The respondents have not enclosed any status report with respect to M/s. Shivam Sodium Silicate Industries of WP (C) No. 854 of 2003, or M/s. Shivam Lime Works of WP (C) No. 853 of 2003 nor filed any affidavit with respect to M/s. P.S. Glass Industries and others of WP (C) No. 1607 of 2003.

9. At this stage, it is desirable to refer some rejection letters, as attached with one or other writ petition, as referred hereunder:

Letter Nos. CCL/HQ/Status Report/ 1665; CCL/HQ/Status Report/1666; CCL/ HQ/ Status Report/1667 and CCL/HQ/ Status Report/1669. All such letters have been shown to have been issued on 30th December, 2002, as enclosed with WP (C) Nos. 530 of 2003 and 854 of 2003, It has not been made clear as to how the subsequent letter No. CCL/HQ/Status Report/1670 was issued two days earlier on 28th December, 2002, as attached with WP (C) No. 853 of 2003.

From the Wireless Message dated 7th September 2002 as enclosed with WP (C) No. 753 of 2003 and WP (C) No. 1607 of 2003, it appears that the respondent took all action hurriedly. The Vigilance Team's report was communicated vide No. CMD/ CCL/1806-C dated 7th September, 2002, on the same date i.e. 7th September, 2002, the Wireless Message was issued from Ranchi.

The respondent CCL also could not justify some of their action. For example, by Wireless Message communicated vide Memo No. 320, dated 30th July, 2002, supply of coal/washery products to all linked industrial consumers, of Bihar were kept in abeyance with immediate effect.

On the next date, vide another Wireless Message contained in Memo No. CCL/ HQ/C-4/RESUM/1165, dated 31st July, 2002, it was ordered to resume coal supply in favour of 58 units of Bihar, on the condition, "if otherwise in order".

The aforesaid condition "if otherwise in order" shows that the CCL authorities were not even knowing on the next date whether those 58 units of Bihar were "in order or not", but resumed supply in favour of such 58 units for the reasons best known to them.

10. There is nothing on the record to suggest that the petitioners were informed of any inspection of their respective units. The Inspection reports as submitted show no signature of any representative of any of the petitioner nor name or designation of any representative has been mentioned therein. The reports are vague, as already discussed. Non-application of mind on the part of the respondents is also evident from the report dated 17th April, 2002 submitted in the case of M/s. F.G. Engeecom & Industries, where in though the finished

products were found in unit; five to six persons were found working; stock of coal was in existence, but the Team shown the unit "not working". It is not the case of the respondents that the unit of petitioner M/s. F.G. Engeecom & Industries is otherwise non-functional.

11. This apart, the manner in which one or other report has been submitted; wireless message; rejection order passed; letters have been numbered, date of issue of rejection letters has been shown; and deliberate non-production of the original files of the petitioners in spite of the direction of the Court raise complete doubt in respect to the reports enclosed with the counter affidavit and the action of the authorities.

12. In the facts and circumstances, on the admitted facts and law that the reports were, submitted in violation of rules of natural justice, they are vague and some of them show non-application of mind of respondents, the following orders is passed.

(i) Wireless Message dated 26th October, 2002 enclosed in WP (C) No. 530 of 2003; Wireless Message dated 30th July, 2002 enclosed with WP (C) No. 536 of 2003; Wireless Message dated 7th September, 2002 enclosed with WPs (C) No. 757 and 1607; rejection letter No. 1665; 1666; 1667; and 1668, all dated 30th December, 2002; and rejection letter No. 1668 dated 28th December, 2002; status reports with regard to petitioners as enclosed with the writ petitions or counter affidavits, are set aside;

(ii) The petitioners are given liberty to set their units in position to facilitate fresh inspection by the team of respondents;

(iii) The competent authority of both BCCL and CCL, are directed to constitute their respective special team for inspection of petitioners' units or any other unit, if the authorities so choose, within a period of six weeks from the date of receipt/production of a copy of this order;

(iv) The competent authority will inform the individual petitioners or any other unit if its team intends to inspect any such unit, the date of inspection;

(v) The team as may be constituted by the competent authority of BCCL and CCL with inspect one or other unit of respective linked petitioner or any other unit, as may be directed by their competent authorities on the date so fixed for inspection and submit report(s) within fifteen days from the date of such inspection; and

(vi) The competent authority of the respective linked Companies of petitioners, such as, General Manager (S & M) etc. will determine the question of supply of coal/restoration of supply of coal/or review of coal linkage for supply of coal, within a period of three months from the date of receipt/production of a copy of this order and pass appropriate order within the said period.

In case of any adverse decision, it will communicate the ground(s) to the unit

concerned.

13. All the writ petition are allowed with aforesaid observations and directions.