

(2012) 09 JH CK 0102
Jharkhand High Court
Case No: L.P.A. No. 362 of 2012

M/s. Sterlite Energy
Ltd. and Another

APPELLANT

Vs

Union of India and
Another

RESPONDENT

Date of Decision: Sept. 4, 2012

Citation: (2013) 3 LJLR 143

Hon'ble Judges: Prakash Tatia, J; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: S.B. Gadodia, M/s. Sumeet Gadodia and A.K. Das, for the Appellant; Ram Nivas Roy, for the Respondent

Judgement

1. Heard learned counsel for the parties. The appellants are aggrieved against the judgment dated 13th August, 2012, by which, the appellants' writ petition was dismissed by learned Single Judge.

2. It appears from the facts of the case that petitioners applied for indent for transportation of coal from Barkakana Extension Siding to SEBD, Jharsuguda (Orissa) but finding difficulty to transport the coal from that place, the petitioners requested for issuance of a fresh indent for transportation of coal from Barkakana Goods Shed to SEBD, Jharsuguda (Orissa). Petitioners' request for fresh indent was denied by communication dated 09th March, 2012 on the ground that as per policy once the indent has been issued it cannot be changed.

3. Learned counsel for the petitioners submitted that it is clear from the indent (Annexure-4) dated 20th December, 2011 that it was issued on 20th December, 2011 and its validity was 30 days only. Therefore, this indent has already expired. In fact, the petitioner applied for a fresh indent, which appears from the appellants' letter dated 1st March, 2012, wherein in last line, the petitioners have requested the respondents to allow their indents from Barkakana Good-shed against original sale

order, on the basis of which, indent (Annexure-4) dated 20th December, 2011 was issued. According to learned counsel for the petitioners-appellants this request was misunderstood as request for amendment in already issued indent and, therefore, rejected.

4. Learned Single Judge was of the view that once an indent is issued, it cannot be changed in view of the policy decision. However, the appellants were directed to approach appropriate forum for redressal of their grievance.

5. Learned counsel for the appellants submitted that they have requested for the fresh indent but it was misunderstood. It is also submitted that even as per Clause 10 of the policy, it is clear that the any change of the indent is not totally prohibited and in the facts and circumstance of the case, the Director (Rail Movement), Railway Board, Kolkata has right to amend any approval. Learned counsel for the appellants-writ petitioners submitted that the application submitted by petitioners (Annexure-2) may be treated to be application for fresh indent.

6. Learned counsel for the Railway vehemently submitted that it is clear from Clause 6(f) of the policy that "no change in the approval is permitted". It is submitted that in fact application of the appellant was filed for change in the approval and it was not the application for fresh indent.

7. Be that as it may be, it is not in dispute that original indent period has already expired. It is also not in dispute that the petitioners have purchased the coal of good quantity and, therefore, wants to transport it by rakes to be provided by the railways.

8. In view of above, the petitioner is given liberty to apply for the fresh indent for transportation of the coal under the policy (Annexure-3). On submitting the said request the respondents may decide the petitioners' application within a period of three weeks.

9. Learned counsel for the appellants submitted that respondents may also be directed to look into the aspect of the matter that in case fresh indent is not issued in favour of the writ petitioner the allotment of the rakes may lapse, which will be dis-advantageous for the railway. That issue may be considered while considering the petitioners' request for the fresh indent.

The L.P.A is disposed of accordingly.