

(2005) 11 JH CK 0008

Jharkhand High Court

Case No: Writ Petition (S) No. 1630 of 2005

Swarnrekha Coal and Coke Pvt.
Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Nov. 21, 2005

Citation: (2006) 1 JCR 348

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: R. Krishna, Ajit Kumar and Mukesh Kr, for the Appellant; A.K. Mehta and Sudhir Kumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

Heard Mr. R. Krishna, Mr. Ajit Kumar and Mr. Mukesh Kumar, Learned Counsels appearing on behalf of the petitioners and Mr. Anoop Kumar Mehta appearing on behalf of the respondents on the interlocutory application filed by the petitioners for modification of the order dated 13.9.2005 in the light of the interim order passed by Supreme Court in SLP No. 20471/2005 in which the order dated 13.9.2005 passed by this Court in these writ petitions, has been challenged.

2. In all these writ petitions the petitioners have challenged the scheme framed by the respondent-BCCL for sale of coal to non-core sector/consumers through a system known as "E-Auction." On 8.4.2005 this Court passed the following order :

Petitioners have prayed for quashing the scheme framed by the respondents for sale of coal to non-core sector [consumer] through the system known as E-Auction. Petitioners are small scale Industries and were granted coal linkage after making complete assessment of the units about the requirements of coal/raw materials for the purpose of doing its manufacturing activities.

I have heard Mr. R. Krishna, learned Counsel for the petitioners and Mr. A. Mehta, learned Counsel for the respondents. Learned Counsel produced before me the orders passed by the Supreme Court and different High Courts in similar matters.

As prayed for by Mr. Mehta, put up this case after six weeks to enable the respondents to file counter affidavit.

In the meantime, petitioners shall be entitled to purchase coal as per their linkage subject to the conditions that they shall file indemnity bond giving under taking to pay difference of amount in the value of coal if they fail to substantiate the claim before this Court.

3. The respondents-BCCL, thereafter, filed an interlocutory application for modification of the aforesaid order dated 8.4.2005 by directing the petitioners to deposit the difference of amount in cash in stead of furnishing indemnity bond on the basis of price notified in terms of the Government order dated 8th April, 2005. The said interlocutory application was heard at length and this Court by order dated 13.9.2005, modified the earlier order dated 8.4.2005 to the extent that the petitioners shall be entitled to purchase coal as per linkage subject to the condition that they shall furnish bank guarantee of the difference of amount in the value of coal.

4. The petitioners challenged the order dated 13.9.2005, before the Supreme Court by filing different special leave petitions. In one of the SLPs i.e. SLP No. 20471/ 2005 the Supreme Court pending hearing of the matter, passed interim order directing the petitioners, apart from furnishing indemnity bonds, to file an undertaking to refund the difference of amount in case the writ petitions fail.

5. Again on 28.10.2005 the matter was taken up by the Supreme Court and the following order was passed :

Upon hearing the counsel the Court made the following :

ORDER

Let this matter come up on 14th November, 2005.

In the meantime, latest by the 7th November, 2005, all the 17 petitioners before us will file certificate/statement/ chart showing the net worth of their respective undertaking/firm/company as on 30th October, 2005, and also work out the difference in the amount involved by working out the difference between the "E" Auction price and the notified price. It is further clarified that the interim order of this Court is confined to the cases of the petitioners before this Court and should not be treated as precedent.

6. Again the matter was taken up on 14.11.2005 and the Supreme Court passed the following order in the aforesaid SLP :

Upon hearing counsel the Court made the following

ORDER

Issue notice.

Mr. Ajit Kumar Sinha accepts notice on behalf of the respondents.

List the matters along with SLP (C) No. 20471 and other connected matters on the 5th December, 2005. Pleadings, if any, may be completed until then.

In the meantime, there shall be interim order directing that apart from the indemnity bond, the petitioners herein shall also file an undertaking by the Managing Director or Managing Partner of the Company/firm, as the case may be, undertaking to refund the difference, in case the writ petitions fall, within a period of four weeks for the date of the judgment.

It is stated that requisite certificates/statement of discharge showing the net worth of the respective undertaking/firm/company of the petitioners as on 30.10.2005, have already been filed. The petitioners shall also work out the difference in amounts involved between the E auction price and the notified price. However, if such certificates/statement of discharge have not already been filed, they shall be filed within two weeks,

The interim order of this Court shall not be treated as a precedent in the High Court.

7. Similar order dated 14.11.2005 was passed in nine other special leave petitions arising out of the same order challenged before the Supreme Court.

8. Taking into consideration the fact that the Supreme Court has confined the interim order only to the petitioners appearing before the Supreme Court and also made it clear that the said interim order shall not be treated as precedent in the High Court, I do not find any reason to pass any interim order modifying the order dated 13.9.2005. However, it is necessary to clarify that the order dated 13.9.2005 passed by this Court shall be binding only upon the writ petitioners whose names figure in the cause title of the order. In other words, in those cases where order for furnishing indemnity bond was passed and the said order has not been modified by the Supreme Court, the respondents are bound to deliver coal to those consumers who produce indemnity bonds in terms of the said order. It has been brought to the notice of this Court that in some cases where the consumers have been directed to furnish bank guarantee on the basis of average auction price, the respondents are not disclosing the actual amount for which bank grantee is to be furnished. The respondents are, therefore, directed to inform those petitioners/consumers in writing or by displaying in the notice board the actual amount on the basis of average actual price for which each consumer is required to furnish bank guarantee,

9. Let all these cases be listed on 9th December, 2005 to enable the parties to produce the order of the Supreme Court that may be passed on 5th December,

2005.