

(2002) 08 JH CK 0037

Jharkhand High Court

Case No: Writ Petition (Civil) No. 4790 of 2001

Maya Fuel Pvt. Ltd.

APPELLANT

Vs

Bharat Coking Coal Ltd. and
Others

RESPONDENT

Date of Decision: Aug. 14, 2002

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

Bench: Single Bench

Advocate: A.K. Mehta, for BCCL, J.K. Pasari, M.M. Banerjee, for CIL, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

The writ petition has been preferred by petitioner. M/s. Maya Fuel Pvt. Ltd. for an appropriate writ or a writ in the nature of mandamus directing the Respondents to immediately allocate and supply 2139 M.T. coal to the petitioner from October, 2001 onwards as per its coal linkage contained in letter No. CIL/CAA/48912/ENHANCEMENT/23-27 dated 21st September, 1998 issued by the office of M/s. Coal India Limited (CIL for short) and balance quantity of coal from March, 2000 to September, 2001 in view of the fact that similarly situated persons are being allocated and supplied such coal pursuant to their coal linkage.

2. The Respondent, M/s. Bharat Coking Coal Limited (BCCL for short) have not denied the petitioner's claim for supply of coal, but opposed the quantity of supply as prayed for. According to it, the linked consumers are entitled to lift coal as per "Maxim Permissible Quantity" (MPQ for short) as introduced by subsidiary companies of M/s. CIL.

3. The stand of CIL is similar. According to it, the policy of sale and distribution of coal to non-core sector was deliberated in great details in the 5th CMD's meet, held on 2nd of June, 2001 which was approved. It was decided that if applications

received for more than available quantity of coal, certain norms like MPQ or pro-rata may have to be applied by the coal companies.

4. The main question raised for determination is :

(a) whether a coal company is bound to supply coal to a non-core linked consumer as per quantity mentioned in the linkage?

and

(b) Whether a coal company has jurisdiction to redetermine the quantum of supply of coal as the Maxim Permissible Quota (MPQ) in respect to a non-core linked consumer or not.

5. The case of the petitioner is that it was granted a linkage by M/s. CIL to lift coal from linked coal company. The quantum of supply of coal was enhanced on revision of linkage vide letter dated 21st September, 1998 and the linkage quantity was revised and enhanced by M/s. CIL to 2139 (Two thousand one hundred thirty nine) M.T. per month. The petitioner was allowed to lift coal as per linkage from September, 1998 to February, 2000 i.e. 2139 M.T. per month without any interruption. From March, 2000, less quantity of coal than the quantity mentioned in linkage was supplied. For example, from March, 2000 to January, 2001, respondents supplied 335 M.T. and from July, 2001 to September, 2001 supplied 681 M.T. coal only.

Further case of petitioner is that in spite of repeated representation and legal notice dated 2nd May, 2001 the respondents did not resume supply of full quantity of coal as per linkage dated 21st September, 1998. On the other hand, eight companies named at para 15 have been allocated and supplied full quantity of coal as per their linkage without any hindrance for the period from May to August, 2001.

6. The case of the respondent, M/s. BCCL is that the system of MPQ has been introduced in all subsidiary companies and the linkage quota of consumers has been refixed on the basis of best booking made by them during any of the three calendar years i.e, 1998, 1999 and 2000. After arriving at MPQ quantity, the respondents are releasing coal uniformly based upon such figure subject to availability of coal.

Further, according to M/s. BCCL, the availability of coal for non-core sector consumers is considerably low inasmuch as against the linked demand of 47 millions tonnes annually. Coal available is around 4-5 million tonnes annually for non-core sector consumers after meeting the demand of core sector consumers. In this background, the subsidiary companies were compelled to release coal on the basis of MPQ pro-rata basis.

7. Mr. M.M. Banerjee, counsel of M/s. CIL placed reliance on enclosure attached to the counter-affidavit of M/s. CIL.

By letter No. CIL : XI(D): 04008 : 1845/ 2001 dated 15th June, 2001, the Company Secretary of M/s. CIL forwarded a copy of minutes of 196th meeting of the Board of Directors of M/s. CIL held on 6th June, 2001, at New Delhi. In the said meeting, against Item No. 196 : 4(D), the Board of Directors of M/s. CIL took the following decision.

"ITEM No. 196 : 4(D)

Sub : Sale of Coal to Non-core Sector.

4.4 The Board, after a very lengthy deliberation and in consideration of the facts highlighted in the agenda note, authorised Subsidiary Companies to sell their entire quantity of coal and coal products, as will be available with them after meeting quantitative and qualitative requirement of core sector, to the consumers by introducing a suitable system, to be evolved by them each keeping in view the demand and availability of particular grade of coal, the market forces actually in operation etc. with the objective of maximising return to their companies. The residual quantity, if any, would be sold to intending buyers separately. When evolving above they should also take into consideration the recommendations of the CMDs on the new coal sale policy for non-core sector consumers, made at their 5th meet held on 2nd June, 2001 at CIL. When authorising above, the Board also made it clear that the respective subsidiaries when evolving their system for above must ensure that, (a) the prices at which the coal will be sold by them to non-core sector consumers are not less than the CIL notified prices, (b) supply of coal to core sector must not suffer; and (c) endeavours are made to enter into agreement for the sale of coal with the customers in the non-core sector keeping in view the best financial interest of the companies.

4.5 This new system of sale of coal to non-core sector consumers which will be evolved and activated by the subsidiary companies should be reviewed periodically at CIL and corrective measures as deemed necessary will be initiated."

As M/s. CIL authorised the subsidiary companies to sell their entire quantity of coal and coal products, as may be available after meeting quantitative and qualitative requirement of core sector by introducing a suitable system, on the basis of demand and availability of particular grade of coal, the Chairman-cum-Managing Directors of all the subsidiary companies, such as M/s. BCCL, CCL, ECL, NCL, WCL, MCL, CMPDI, SECL in its meeting held on 2nd June, 2001 took a common policy decision, as quoted hereunder :

"3. Policy for sale and distribution of coal to non-core sector :--The proposed policy on sale and distribution of coal to non-core sector was deliberated in great details and the drafts minutes of the deliberation was circulated to all the CMDs and was approved as below :

(i) The present system of linkage and sponsorship is to be done away with.

(ii) Sufficient notice for a minimum period of 3 months in print media will be given by CIL indicating that appropriate alternative arrangements for supply of coal will be made by concerned coal companies. Individual intimation to this effect would be sent by the Coal Companies to the linked consumers, where they are linked for drawing their coal supplies.

(iii) Where additional availability of coal exists after meeting such requirement of the past linked parties. Coal Companies will invite applications from intending buyers separately.

(iv) While allotting the quantity to the earlier linked consumers, certain details would be required to be submitted by them to ascertain their past consumption.

(v) If applications are received for more than available quantity of coal, certain norms like MPQ or pro-rata may have to be applied by the Coal Companies.

(vi) Coal Companies would make certain quantity of coal available for other customers like BRK/small customers etc. This coal will be sold by adopting suitable norms. Individual coal company, while formulating such sale schemes, will get it vetted by Coal India, before implementing the scheme.

(vii) All such coal would be made available for selling only after ensuring by the Coal Company that such sale will not affect supplies to the core-sector.

(viii) Coal to be offered by each coal company will be decided by the individual producing subsidiary company. NCL will not accept any fresh customers from the non-core sector.

(ix) The price of coal including terms and conditions for sale to the non-core sector will be decided by the Board of individual coal companies which in turn would require vetting by CIL.

(x) This policy will be reviewed again after one year."

8. Counsel for M/s. BCCL explained the procedure for determination of MPQ in respect of individual linked consumer. It was submitted that average of best booking of a linked consumer during any of the three calendar years i.e. 1998, 1999 and 2000 is taken as MPQ quantity of such linked consumer.

Reliance was also placed on a draft format letter, Ref. No. CIL/C4A/48912 dated Nil issued by the office of M/s. CIL for intimation to consumer the formula worked out for determination of Maximum Permissible Quantity (MPQ) which a consumer can consume in a month for its unit/plant. Such MPQ is shown to be the quantity of linkage of such unit.

Counsel for M/s. BCCL also relied on dates as mentioned in Annexure E and F to the supplementary counter affidavit to suggest that in spite of offer to lift large quantity of coal from one or other colliery, the consumer failed to lift such quantity and lifted

lesser quantity of coal than the offer.

9. Previously the regulatory provision in respect of sale, purchase, storage or consumption coal was ineffect in whole of the State of Bihar, including the present State of Jharkhand, in view of Bihar Trade Articles (Licences) Unification Order, 1984. Subsequently, "Coal" was deleted from the said 1984 order on 29th April, 1992 and since then there is no regulatory provision in respect of coal.

During the period regulatory order was ineffect the State authorities such as District Industries Centre, SISI etc. used to assess the requirement i.e. the Maximum Permissible Quantity (MPQ). Such quantity used to be shown as the linked quantity. The company with which such consumer used to be attached by M/s. CIL, used to be known as Linked Consumer of the company.

In the case of "Maa Chhinmastika Coke Industries Pvt. Ltd. v. State of Bihar", reported in 2001 (1) JCR 63 (Jhr), this Court held that the coal having deregulated, the State authorities have divested of any authority to monitor the operation of supply or suspension of coal. However, the Coal Company was allowed to determine the question of supply of coal as per linkage.

10. From the petitioner's linkage dated 21st September, 1998, it will be evident that the revised linkage was issued on the basis of information furnished by petitioner in the data-sheet and in the light of assessment made by G.M., District Industry Centre and SISI, Dhanbad, the matter was considered and it was decided to revise/enhance the linkage quantity to 2139 M.T. per month which was "Maximum Permissible Quantity" (MPQ) fixed for the petitioner's plant.

The draft letter Ref. No. CIL/C4A/ 48912 of M/s. CIL and enclosure Annexure-D also show that the "Linkage Quantity" is nothing but the Maximum Permissible Quantity (MPQ) of coal assessed for determination of consumption of a consumer's unit/plant.

Therefore, it is evident that "linkage quantity" is nothing else but the "Maximum Permissible Quantity" (MPQ) of coal assessed in respect to a consumer linked with a coal company. The only issue is as to how the "Maximum Permissible Quantity" (MPQ) is to be assessed and the authority who can assess it?

11. It has already been pointed out that the State authorities have now no jurisdiction to determine the question of supply of coal or its suspension. The assessment for determination of linkage quantity i.e. Maximum Permissible Quantity (MPQ) cannot be made by State authorities such as District Industry Centre, SISI who used to do so. Now it is to be done by the coal companies. The supply of coal is dependent of various factors. While one of the factor is the requirement of coal (linkage quantity) of a linked consumer, the other factor is availability of coal with a coal company. In this background, on the basis of requirement, while it is open for a consumer to ask for revision of "linkage quantity"

i.e. Maximum Permissible Quantity (MPQ), it is always open to the coal company to review and refix such "linkage quantity" i.e. Maximum Permissible Quantity (MPQ), in case of availability of lesser quantity of coal.

The question as to how the "linkage quantity" i.e. Maximum Permissible Quantity (MPQ) is to be determined is a question to be determined by the Coal Companies, having direct knowledge of availability of coal. The only thing to be ensure is that the determination/assessment is reasonable and not arbitrary.

If the determination is made taking into consideration the average of the best booking made by a consumer out of three calendar year, it cannot be held to be unreasonable or arbitrary, being based on assessment of consumption of a consumer. For a good reason, it is also open to a consumer to ask for revision of linkage quantity i.e. Maximum Permissible Quantity (MPQ), as made in the case of petitioner vide linkage dated 21 September, 1998.

12. In view of discussions and reasons, as made and given above, I come to the conclusion and hold :

(i) The "Linkage Quantity" and "Maximum Permissible Quota" (MPQ) are not different but same.

(ii) It can be revised on the request of a linked consumer for god ground and similarly the coal company can also revise the linkage quantity/MPQ, in cases such as less availability of coal than the demand, lifting of less quantity than the linkage quantity for years together by the linked consumer etc.

(iii) The assessment of linkage quantity/MPQ can be made by a subsidiary coal company with whom a consumer is linked.

(iv) The assessment based on the best booking of consumer during any of the three calendar year is reasonable and not arbitrary having nexus with the consumption of a consumer and availability of coal.

(v) In case of wrong assessment of linkage quantity/MPQ based on incorrect data etc., the linked consumer can request the coal company for reassessment of linkage quota/MPQ. The issues are determined, accordingly, in favour of the respondents and against the petitioner.

13. There being no merit, the writ petition is dismissed.