

(2002) 09 JH CK 0034

Jharkhand High Court

Case No: Writ Petition (Civil) No"s. 5251 and 5252 of 2002

Shivam Lime Works and Shivam
Sodium Silicate Industries

APPELLANT

Vs

Central Coal Field Ltd. and
Others

RESPONDENT

Date of Decision: Sept. 30, 2002

Citation: (2003) 1 JCR 484

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

Bench: Single Bench

Advocate: Ajit Kumar, for the Appellant; M.M. Banerjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

In both the cases, petitioners have challenged the common wireless message dated 30th July, 2002 issued under the signature of the Chief General Manager (Sales & Marketing), Central Coal Field Limited, Dhanbad (CCL for short) whereby and whereunder it has been ordered to keep in abeyance supply of coal/washery products to all linked industrial units of Bihar with immediate effect.

2. According to petitioners, it has affected their units situated in the State of Bihar. The wireless message dated 14th July, 2002 has been issued without notice and hearing the petitioners on the direction of the District Industries Centre, Bihar (DIC for short) without application of mind.

3. Counsel for the petitioners submitted that in view of the decision of the Court dated 14th July, 2002 in the case of Maya Fuel Private Limited v. B.C.C.L. in WP (C) No. 4790 of 2001; see 2002 (3) JCR 196 (Jhr) the District Industries Centre having no jurisdiction to determine the question of supply of coal or its suspension, the impugned wireless message dated 30th July, 2002 cannot be upheld. It was brought to the notice of the Court that in the case of Sushila Chemicals Pvt. Ltd. v. B.C.C.L.,

WP (C) No. 4493/02; see 2002 (3) JCR 185 (Jhr) this Court vide order dated 19th August, 2002 set aside the wireless message dated 30th July, 2002.

4. Mr. M.M. Banerjee, counsel for M/s. Bharat Coking Coal Limited (B.C.C.L. for short) submitted that the wireless message has been issued on the decision of M/s. C.C.L. in view of status report sent by the D.I.C., Bihar. In fact, a meeting was held on 23rd August, 2001 under the Chairmanship of Minister of State (Coal) in respect of supply of coal to non-core sector. In the said meeting, it was agreed that there was a general consensus on the need for re-verification of linked consumers by State Governments so that the genuine consumers get the benefits and distortions in the marketing of coal of non-core sector is adequately addressed. Pursuant to the aforesaid decision, Minister for Coal & Mines had written letters to all Chief Ministers including the letter dated 9th October, 2001 written to the Chief Minister of Bihar to see that the status report in respect of non-core sector consumers are re-verified and sent to the Coal India Limited so that the genuine consumers get the benefits. M/s. C.C.L. having no infrastructure to obtain status reports in respect of non-core sector consumers situated throughout India. It depends on the status report set by the concerned D.I.C. where the units are situated and on the basis of such report, appropriate decision will be taken.

Mr. Banerjee, counsel for M/s. C.C.L. relied on Annexure-C, stated to be a status report in respect to the petitioners.

5. The non-application of mind of respondent-General Manager (S & M) of M/s. C.C.L. will be evident from the language of the wireless message dated 30th July, 2002, which reads as follows :

"Supply of coal/washery products to all linked industrial units of Bihar may kindly be kept in abeyance with immediate effect till further communication from this office(.) Action taken in this regard may also be confirmed to this office personally/wireless(.) Matter most urgent(.)."

6. Without ascertaining the fact whether a particular unit- linked industry of Bihar is mis-utilising the coal or not, a general direction has been given to keep in abeyance supply of coal/washery products to all linked industrial units of the State of Bihar. The wireless message gives a colour as if all linked industrial units situated in the State of Bihar are not functioning and all of them are mis-utilising the coal lifted by them.

The Annexure-C to the counter affidavit in WP (C) No. 5251/02 cannot be stated to a report as it does not contain any cover letter, nor bears any memo number, date or signature of any individual. It is not the case of respondent, M/s. C.C.L. that the D.I.C. made any enquiry after notice to the petitioner. On the other hand, from Annexure-C, it appears that the coal company having not supplied the details of coal lifted by petitioners, the D.I.C. at column-12 has raised suspicion on the utilization of coal by the petitioners.

7. Counsel for the respondents was not in a position to reply as to how the D.I.C. can raise any suspicion relating to utilization of coal by an unit, if the coal company failed to give details of coal lifted by the unit.

8. In the facts and circumstances, the wireless message dated 30th July, 2002 having been issued in general, without ascertaining the question of utilization of coal by one or other unit situated in the State of Bihar and without making any verification relating to genuine consumer-linked unit and being based on incomplete and ambiguous so-called report of the D.I.C. as contained in Annexure-C, the wireless message dated 30th July, 2002 is set aside.

The case is remitted to the competent authority of M/s. C.C.L. for determination of issue relating to supply of coal in favour of petitioner within one month from the date of receipt/production of a copy of this order.

It will be open to the competent authority of M/s. C.C.L. to redetermine/ 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.

In case of favourable decision, the coal company will allow the petitioner to lift coal as per linkage/MPQ or the MPQ as may be re-determined.

Both the writ petitions stands disposed of, with the aforesaid observations.