

(2009) 08 JH CK 0034

Jharkhand High Court

Case No: None

Smokeless Fuels
(India) Pvt. Ltd.

APPELLANT

Vs

Coal India Ltd. and
OthersRESPONDENT

Date of Decision: Aug. 21, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 14, 19, 21, 226

Hon'ble Judges: Narendra Nath Tiwari, J**Bench:** Single Bench

Judgement

Narendra Nath Tiwari, J.

The petitioner is a manufacturing unit of smokeless fuels at Rukani, Mahuda, District Purulia (West Bengal). It was granted coal linkage of 2153 MT of coal. By letter dated 30th November, 2004, the respondents issued notice for submission of detailed information (19 point) and documents for verifying the genuineness and working status of the unit.

2. The petitioner submitted its reply. The Committee scrutinized the petitioner's reply, but by the impugned letter, the Committee held that the units were not found established. By letter dated 2nd May, 2007 (Annexure-13), the second verification report was submitted. The petitioner's units has been found to be established. In spite of the same, the petitioner has been denied the benefits of coal linkage.

3. The respondents have contested the writ petition and stated, infer alio, that although the name at the Petitioner No. 1 is M/s. Gwalior Smokeless Fuels (P) Ltd., its name has been altered as M/s. Alok Fuels (P) Ltd. with effect from 31st May, 1999. Coal was, however, purchased in the name of M/s. Gwalior Smokeless Fuels (P) Ltd. There is great disparity between the unit claiming linkage and the name of the company registered by the Registrar of Companies. The petitioner's miserably failed to submit sales stocks,

details regarding raw materials, power bill and diesel consumed. Thus, working status of the unit could not be established. For the said reason, the coal supply to the petitioners' units has been denied.

4. It has been further stated that in earlier writ petition stand was taken by the petitioner that in compliance of the notice dated 13rd June, 2007, they shall hand over all the 13 required documents to the counsel for the respondents. The respondents had assured to examine the documents and take appropriate decision.

5. The deficiencies were pointed out in respect of Point Nos. 4, 6, 10 and 12. The petitioners could not meet the same. The working status of the petitioners' units have not been established under 13 point verification. The order has been passed after due consideration and giving opportunity of hearing to the petitioner and after verification of the documents on 19 point based upon the second verification report. There is, thus, no infirmity in the order and there is no violation of principle of natural justice as well.

6. It has been submitted that the question regarding the status of the petitioners' units has been examined on the basis of the several documents. The petitioners have sought for reappraisal of the documents and factual position, which is beyond the scope of writ jurisdiction under Article 226 of the Constitution of India. The writ petition, thus, is not maintainable and is liable to be dismissed.

7. I have heard learned Counsel for the parties and considered the facts and materials on record.

8. The respondents have contended that they have held the petitioners' units non-established on due scrutiny of the documents submitted by the petitioners and that they have got author by and jurisdiction to verify the working status in terms of Clause 7 of the terms and conditions of the linkage, there is sufficient compliance of principle of natural justice on the part of the respondents, the petitioners have failed to submit the details of coal stock, its receipt, consumption, sale/stock register, attendance register, electricity bills etc. and in absence of the same, it was not possible to arrive at the conclusion that the petitioners' units are established and are in running condition.

9. The petitioners, on the other hand, submitted that though the respondents have contended that the petitioners' documents (13 point) were verified, there has been no proper verification of the documents furnished by them. The contention that the show cause notice issued to the petitioner - M/s. Vikram Soft Coke Industries returned with the endorsement of the postman that none was available at the address to receive the registered letter clearly indicate that the establishment is not running. However, the postman has not reported that the unit was closed. On the same address earlier show cause notice was delivered. The notice was replied and prayer was made for dropping the proceeding. Had there been any communication on the address, the petitioner must have received the same. As a matter of fact, there was no communication to the petitioner

as claimed by the respondents. The documents submitted by the petitioners have not been considered on the ground that the verification of the documents was concluded on 2nd June, 2005 and the petitioners failed to submit the details in time. The electrical connection is in the name of the proprietor of the unit, but the same has not been accepted, as the electrical connection is in the name of proprietorship firm. The reasons explained for not accepting the documents regarding the alleged deficiency are arbitrary and unfounded. The petitioners' documents have been discarded on frivolous and baseless grounds. Petitioners' units are based on coal linkage granted to them. The impugned order holding the petitioners' units non-existent established on the said grounds is wholly arbitrary, unjust and violative of principle of natural justice.

10. I find much substance in the contentions of the petitioners. Though the respondents have claimed that the impugned orders have been properly passed after due consideration of the documents and explanation, the reasons assigned by the respondents do not meet the test of fairness to exclude arbitrariness. The reasons assigned in the impugned orders are not sufficient to satisfy the requirements of Article 19(1)(g) read with Articles 14 and 21 of the Constitution. The grounds shown in support of the impugned orders also fail to stand to the test prescribed in the decision of the Supreme Court in [S.L. Kapoor Vs. Jagmohan and Others](#) .

11. In the matter of supply of coal to the industries, the Coal Companies exercising monopolistic power has to assure equitable and fair distribution and reasonable consideration of the claims as has been also held by the Supreme Court in [Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India \(UOI\) and Others](#) .

12. On judicial survey of the facts and materials on record and in view of the elements of fundamental rights and principle of natural justice the consideration and conclusion made by the respondents cannot be said to be just and proper. As the fate of the petitioners' units depends on the coal, linkage, supply cannot be denied on assumptions and shaky conclusion.

13. In view of the above, this writ petition is disposed of, directing the respondents to reconsider the petitioners' claim by affording them reasonable opportunity to bring on record all the documents in support of their claim and reply made against the points. The respondents shall fix a date and communicate the petitioners in writing and after having satisfied that there was sufficient service of notice to the petitioners, shall permit them to explain their documents in support of their claims. In case of any confusion on any point, the respondents shall consider the same in the light of other related documents. In case of doubt about the existence of the units, the respondents shall make spot verification by fixing a date with prior notice to the petitioners and after taken into consideration of overall assessment of the explanation, documents and finding on the spot inspection/verification and shall take final decision on each point recording speaking reasons.

14. Since the petitioners' Units are said to be based on linkage of coal, the entire exercises must be completed within a period of three months from the date of receipt/production of a copy of this order.

15. There is no order as to costs.