

## Hind Iron and Steel Corpn. Vs Bokaro Steel Plant and Others

**Court:** Jharkhand High Court

**Date of Decision:** Nov. 14, 2002

**Citation:** (2003) 1 JCR 330

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

**Bench:** Single Bench

**Advocate:** K.N. Prasad, D. Roshan and S. Kumar, for the Appellant; M.M. Banerjee and A. Sen, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

Heard learned counsel for parties.

2. In this writ application, the petitioner has prayed for quashing the order dated 27th September, 2001, whereby respondent No. 5, namely,

Senior Executive (Marketing) Steel Authority of India, Bokaro Steel Plant has cancelled the order for further lifting of balance quantity of coil ends

scrap from S.P.M.I.

3. The facts of the case lie in a very narrow compass.

4. Respondent Bokaro Steel Plant advertised for sale of scraps either by auction or on fixed price. List of the items of scrap for sale was also

Issued. Petitioner offered to purchase 50,000 M.T. of scraps and after his offer was accepted, the required amount was deposited by the

petitioner. Consequently sale order was issued in favour of the petitioner on 5.6.2002. It is stated that petitioner lifted total quantity of 17.680

M.Ts. of scraps. In the meantime, the impugned order of cancellation was issued. Respondents' case on the other hand is that petitioner was

stopped from lifting balance quantity of materials in view of the adverse vigilance report which states that there is a case pending before the CBI

Court being R.C. Case No. 5(S) of 1994 against the proprietor of the firm. It is further stated that as the petitioner was stopped from lifting the

balance materials, he applied before the concerned respondent and claimed for refund of the amount which is the value of the balance quantity of

the materials. Respondents accordingly refunded the amount by sending a cheque dated 12.9.2002 for Rs. 4,13,553/- vide speed post on

14.9.2002.

5. In reply to the said averments, it is stated by the petitioner in rejoinder that he did not make any demand for refund of the money. When the

employee of the petitioner's firm went to collect the materials, he was asked to sign a printed form and the said employee put his signature without

understanding the contents of the format.

6. It has not been disputed by the learned counsel appearing for the parties that their rights and liabilities are governed by terms of the sale order

and in accordance with the provisions of Contract Act and also Sales of Goods Act. It is also not disputed that the contract of sale is not a

statutory contract. However, the question emerged for consideration is whether application for refund of the value of the unlifted materials was filed

by the petitioner or it was procured by the respondents illegally by obtaining signature of the employee of the petitioner. This question needs

adjudication before granting relief to the petitioner. In my opinion if the terms of sale is governed by the provisions of the Sale of Goods Act and

the Contract Act and also under the terms of the sale order and further that the sale order was not issued under any statutory power, merely

because respondents is a state within the meaning of Article 12 of the Constitution, the said order of cancellation of sale is not amenable to the writ

jurisdiction.

7. Besides the above, if the contract of sale was illegally terminated, the appropriate remedy provided under the law is by way of damages because

such agreement cannot be specifically enforced in the Court of law under the provisions of specific relief Act. I am, further of the view that

petitioner is not only entitled to refund of the money for the unlifted scraps but he shall also be entitled to damages and compensation, in the event it

is proved that cancellation of sale order was illegal and unjustified. The only remedy therefore for the petitioner is to move before the civil Court of

competent jurisdiction. This Court, in view of the reasons stated hereinabove, can not entertain the writ petition and interfere with the impugned

cancellation order. This writ application is accordingly dismissed.

It is made clear that if the petitioner moves the appropriate Court against the order of cancellation then the concerned Court shall not be prejudiced

by the order of dismissal of the writ petition.