

(2014) 03 JH CK 0027

Jharkhand High Court

Case No: Cont. Case (Civil) No. 270 of 2013

Kohinoor Steel Private Limited

APPELLANT

Vs

Gopal Singh

RESPONDENT

Date of Decision: March 14, 2014

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Jay Saha, Indrajit Sinha and Suchitra Pandey, Advocate for the Appellant;
Anoop Kumar Mehta, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties.

2. The operative part of the interim order dated 27th February, 2013, passed in WPC No. 8076/2012 in respect of which the present contempt petition has been filed, reads as under:

...In that view of the matter, the respondents-C.C.L. shall continue to make supplies of Fuel as per the Fuel Supply Agreements to the petitioner's Units in the meantime as per the terms and conditions made therein. In the meantime, Government of India, Ministry of Coal, which is also a party, shall file their response to the writ petition and also inform this Court about their decision in respect of the application of the tapering policy to the case of the petitioner in view of the fact that the Coal Block has not been granted.

List This case after four weeks.

Respondent-C.C.L. may also file their detail affidavit in the meantime.

3. At the relevant point of time, when the interim order was passed in the said writ petition two Fuel Supply Agreements between the respondent-Central Coalfields Ltd. and the petitioner dated 26th April, 2008 and 19th February, 2009 in respect of

their captive power plant and sponge iron plant, were subsisting. The F.S.A. dated 26th April, 2008 came to an end on 25th April, 2013. The second agreement relating to sponge iron plant dated 19th February, 2009 is said to have come to an end on 18th February, 2014. The opposite parties resumed coal supplies under the existing agreement for the Sponge Iron Plant horn August, 2013 after they failed in their challenge to the interim order before the learned Division Bench of this Court in L.P.A. No. 107 of 2013, which was dismissed on 30th July, 2013. Incidentally, the Special Leave to Appeal preferred by the opposite parties-Central Coal Field Ltd. also was dismissed on 1st November, 2013.

4. In the aforesaid circumstances, the opposite parties were asked to file their show cause and lastly by the order dated 21st February, 2014, the opposite parties were directed to file an affidavit showing the programme of supply of coal to the petitioner-company after the said supply was resumed till date and for future supply to be made, to the Railways-Authorities. In between on the directions made in the Special Leave Petition, the opposite parties also unsuccessfully sought a modification of the interim order before the learned Single Judge, which was once again refused on 17th December, 2013. The opposite parties went in appeal before Hon"ble Supreme Court against the said rejection of their modification application, which was also rejected vide order dated 11th February, 2014.

5. In the aforesaid background, it has been argued on behalf of the learned counsel for the petitioner that under the policy decision taken by the opposite parties as per letter dated 26th March, 2013 and subsequently vide letter dated 6th June, 2013, the F.S.As. which were about to lapse, were to be extended for a period of 3 months and subsequently for 5 years. The opposite parties are, therefore, not right in taking a stand that since F.S.As. having expired, they are not obliged to make any further supply under the interim order in question. It has also been submitted that even in the order rejecting the modification application in December, 2013, the respondents had submitted that the F.S.A. is existing. In the aforesaid background, the opposite parties have failed to supply the allotted quantity of coal from the date of interim order till date. Therefore, they are in breach of the order of this Court.

6. Learned counsel for the opposite parties submit that the terms of the interim order dated 27th February, 2013 required the respondents-CCL to continue to make supply of fuel as per the F.S.A. to the petitioner's Units as per the terms and conditions made therein. There were two subsisting F.S.As. on the date of the interim order as aforesaid, one of which, relating, to the captive power plant expired on 30th April 2013 before resumption of supply has been made. This second one relating to sponge iron plant has also expired during the pendency of the instant contempt petition on 18th February, 2014. The opposite parties are not automatically obliged to renew the F.S.As. which have expired as made out by the petitioner. They are to be mutually agreed as per the terms and conditions to be arrived at between the parties.

7. In the aforesaid background, according to the opposite parties, out of the allotted quantity of coal, 50% of the coal, is to be supplied from imported coal subject to the availability, for which the parties have entered into side agreement. For the rest 50% of the allotted coal quantity, the supplies have been resumed from August, 2013 and requisitions have been made to the Railway, which more or less have been honoured in individual months, except when the rakes could not be supplied by the Railway by the last date of the month in question. It is submitted that the F.S.As. of other parties, which have expired upon completion of the tenure of the agreement, have also not been renewed in an automatic manner, a list of which has been enclosed as Annexure-A to the last supplementary show cause filed on 12th March, 2014. By referring to the programme of supplies which have been undertaken prior to the issuance of the interim order under offence and subsequent to the resumption, it has been argued that the supplies have been consistent and in the same fashion as was being done when there was no dispute between the parties. It has, therefore, been submitted that if the subsisting fuel supply agreement has come to an end then the opposite parties cannot be alleged to have committed contempt in taking a stand that no future supplies could be made in the circumstances, indicated hereinabove.

8. Learned counsel for the petitioner has, however, submitted that the opposite parties have only been acting in a manner which tends to defeat the letter and spirit of the interim order in question. They have no explanation for the period of non-supply after the interim order till it resumed in August, 2013. It is further submitted that having failed on each occasion in their attempt till the Apex court the opposite parties are obliged to continue the supply till the main matter is decided.

9. Having heard learned counsel for the parties and having gone through the relevant materials on record, as has been indicated in the opening paragraph of the instant order, under the interim order dated 27th February, 2013, the respondents-C.C.L. were directed to continue supplies of fuel as per the Fuel Supply Agreement to the petitioner, in the meantime, as per the terms and conditions made therein. Meanwhile time was granted to the Government of India to file their response as also to the respondents-C.C.L. in the main writ application. It is not in dispute that the Fuel Supply Agreements have a definite tenure, which came to an end after 5 years respectively from the date of such agreement i.e. in the instant case by the end of April, 2013 and on 18th February, 2014.

10. The petitioner has tried to make out a case that in view of the letters dated 26th March, 2013 and 6th June, 2013, the opposite parties were obliged to automatically renew the fuel supply agreements for the further period of 3 months and 5 years respectively. However, if they have failed to do so, it is a separate cause of action for the petitioner to agitate before an appropriate forum. This Court, after hearing the parties on the earlier occasion, has taken into account that after the opposite parties had failed in their attempt to challenge the interim order in question on dismissal of

L.P.A. on 30th July 2013, resumed the fuel supply from August, 2013.

11. In such circumstances, by the last order, the opposite parties were directed to file a programme of supply that they have made after such resumption and for future supply to be made. The opposite parties in the last supplementary show cause have indicated the manner in which such supplies have been initiated since August, 2013. They have also indicated that after the end of the subsisting fuel supply agreement, no future supply of coal under the said agreement can be made. Since the order under offence is only interim in nature, therefore, it cannot be alleged that under the light of the said order the respondents-C.C.L./opposite parties are obliged to continue fuel supply for an indefinite period of time. The main writ petition is pending before the learned Single Judge of this Court where the substantive issues and contentions raised between the parties are subject matter of consideration.

12. It also appears that under the subsisting fuel supply agreement of sponge iron plant, 50% of the supplies were to be made from imported coal for which certain supplies of imported coal were necessary. On the part of the opposite parties they have resumed supplies of coal from August, 2013 onwards and have indicated the manner in which such supply has been made. In such circumstances, it has been proposed that no future supply could be made on the cessation of the subsisting fuel supply agreements relating to the sponge iron plant in February, 2014. It, therefore, cannot be said that the opposite parties are in willful and deliberate disobedience of the interim order under offence in the present contempt petition.

13. So far as the supply relating to February, 2013 to July, 2013 is concerned, it has been submitted by the learned counsel for the opposite parties that supplies for the period prior to August, 2013 is not conceivable, in the circumstances, as supplies are made only for the purpose of monthly consumption from time to time. Since the said supplies have been resumed from August, 2013, it cannot be alleged that the opposite parties are obliged to make the supplies for the said period. The stand of the opposite parties cannot be faulted on that account.

14. Therefore, the contempt petition is disposed of and the proceedings are discharged.