

(2013) 08 CAL CK 0017

Calcutta High Court

Case No: Writ Petition No. 72 of 2010

Auroma Coke Ltd. and
Another

APPELLANT

Vs

Coal India Ltd. and
Others

RESPONDENT

Date of Decision: Aug. 27, 2013

Citation: (2013) 4 CALLT 211

Hon'ble Judges: I.P. Mukerji, J

Bench: Single Bench

Advocate: Saptangshu Basu and Mrs. Shukla Banerjee, for the Appellant; Shaktinath Mukherjee and Mr. Kalimuddin Mondal, for the Respondent

Final Decision: Allowed

Judgement

I.P. Mukerji, J.

The writ petitioner company ("writ petitioner") is a manufacturer of "washed coal". It obtains its raw material of coke from the fourth respondent, Bharat Coking Coal Ltd. ("respondent"). The dispute in this case spans a limited period of time between May 2008 and July of that year. Thereafter, with effect from 1st August, 2008 the parties entered into a fuel supply agreement dated 31st July, 2008.

2. The quantity of coal supplied by the respondent to the writ petitioner, in May, 2008 was 3,000 metric tonnes whereas in June and July of that year it was 5,000 metric tonnes.

3. The dispute between the parties is this. According to the writ petitioner, the respondent has over-charged them about Rs. 1.32 crores on account of price.

4. Before adjudication of the matter on merits, the objection regarding territorial jurisdiction has to be met.

5. It was submitted by Mr. Shaktinath Mukherjee, learned Senior Advocate for the respondent, that the entire cause of action, namely, the supply order, supply of coal, raising of invoice etc. had arisen outside the jurisdiction of this Court. There is no dispute that the head office of the respondent is at 6, Lyons Range, Kolkata, within the aforesaid jurisdiction.

6. He cited [Union of India and Others Vs. Adani Exports Ltd. and Another](#), to submit that a part of the cause of action must arise within the jurisdiction of the High Court, to enable it to entertain the writ. Even the situation of the head office of a corporate body within the jurisdiction did not confer jurisdiction, without a part of the cause of action within it [Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee](#), . The same rule applied with regard to the branch being situated within the Jurisdiction of the Court, but no cause of action having arisen there [Sonic Surgical Vs. National Insurance Company Ltd.](#),

7. There is no doubt that none of the usual elements constituting a part of the cause of action were present within the jurisdiction of this Court. Mr. Mukherjee was right when he submitted that the execution of the contract, the place of its performance, the colliery, the place for issuing invoices were all outside jurisdiction. But his argument would have been sustainable if the dispute arose out of the fuel supply agreement dated 31st July, 2008. It did not arise out of the fuel supply agreement, in my opinion. Maharaj Sinha, J. by a judgment and order of 9th October, 2007 in W.P. No. 363 of 2002 had, inter alia, directed that the writ petitioner would continue to receive coking coal as specified in the linkage or linkages as if a fuel supply agreement existed between the parties. As there was no fuel supply agreement, the relationship between the parties prior to 31st July, 2008 was governed by the said judgment and order of this Court. The claim of excess payment having been realized by the respondent, necessarily has a substantial connection with the coking coal supply relationship between the parties, fostered by the said judgment and order of this Court. For this particular reason and for no other reason this Court can be said to have natural jurisdiction over the disputes of the parties.

8. Therefore, the objection regarding territorial jurisdiction is rejected.

9. Now, I come to the merits of the disputes between the parties. The question is whether the said respondent had supplied any grade of coking coal as listed in Annexure - VIII of pages 60-64 of the petition. A Pit Head Price List for all grades of coal, published by the respondent effective from 13th December 2007 is at page 57 of the petition. The price per metric ton of Annexure-VIII coal was Rs. 1720/- per metric ton where the price for other types of coking coal was Rs. 1460/- per metric ton.

10. There is no dispute that the petitioner was supplied Grade - IX, which is not included Annexure - VIII from May, 2008 to July, 2008.

11. On this basis, it was submitted by Mr. Basu, learned Senior Advocate and Mrs. Banerjee, for the petitioner that the charge for any type of coking coal, other than Annexure - VIII coal was Rs. 1460/- per metric ton. In paragraph 7 at page 12 of the affidavit-in-opposition, there was an admission on the part of the respondent that the non-linkage variety of coal had been supplied, it was submitted.

12. Learned counsel also relied on a note sheet of the respondent being part of Annexure - P8 at page 73 of the petitioner where their officers made some reflection about the possible overcharging that may have been made.

13. Hence, the writ petitioners' claim for the excess (Rs. 1720 - Rs. 1460) per metric ton that had been charged from them by the respondent.

14. To this, learned counsel for the respondent came up with many arguments.

15. The first and foremost argument was that the Court was being invited in a writ application to adjudicate a private dispute between the parties arising out of a contract. Moreover, highly disputed questions of fact were involved which the Court, in the exercise of this jurisdiction should not adjudicate. Mr. Mukherjee cited [Godavari Sugar Mills Ltd. Vs. The State of Maharashtra and Others](#), paragraph 8. A claim for refund simpliciter should not be decided by the writ Court.

16. It was also submitted on behalf of the said respondent that although Grade - IX coal had been supplied, at the time of supply it was found that the quantity supplied had quality variations. There was also price revision. On assessment of the quality, it was decided to charge at the rate of Rs. 2064/- per metric ton as reflected in the invoice.

17. Thereafter, a passage from page 12 of the affidavit-in-opposition was shown which stated that Rs. 505/- per metric ton was charged in the bill raised upon the writ petitioners as washery recovery charges.

18. Furthermore, Mr. Mukherjee while arguing that uncommunicated note sheets were of no evidentiary value cited [Bachhittar Singh Vs. The State of Punjab](#), and [Kedar Nath Bahl Vs. The State of Punjab and Others](#),

Now, my findings:

19. The revised price list is nowhere on record. If one goes by the above price list at page 57 of the writ petition, price of coking coal derived from collieries other than listed collieries (i.e. non Annexure - VIII coal) could not be charged at more than Rs. 1460/- per metric ton (pit head price). There is only reference to Annexure - VIII coking coal which is priced at Rs. 1720/- per metric ton (pit head price) and non Annexure - VIII coking coal which is priced at Rs. 1460/- per metric ton (pit head price). No intermediate grade or gradation of coal is mentioned. Admittedly, Grade - IX coke was supplied. If one examines Annexure -VIII one will find that Grade - IX is excluded. Therefore, Grade - IX coking coal is non Annexure - VIII coking coal.

Therefore, going by the above analogy, it could only be priced at Rs. 1460/- per metric ton.

20. In fact, it has been admitted in page 12 of the affidavit-in-opposition that NLW coal had been supplied.

21. Then there is reference to Rs. 505/- per metric ton as washery recovery charges in the affidavit-in-opposition in the invoice.

22. In the invoice/sale order dated 8th August 2008 for 3000 metric tons, raised on the writ petitioner, which is annexed to the affidavit-in-reply at page 23, coking coal has been charged at the rate of Rs. 2064/- per metric ton(Basic). There is no reference to any washery charges.

23. Yet, Mr. Mukherjee and Mr. Mondal argued that the coking coal which was actually supplied was of a different grade. The price list was something else. As I have said earlier there is no foundation for this in the record.

24. In fact, [Godavari Sugar Mills Ltd. Vs. The State of Maharashtra and Others](#), para. 8 and the decision cited by Mr. Basu, [ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others](#), support the writ petitioner's case. This is so, because there is a very large area where there is no dispute at all between the parties, in view of my analysis above. Declaring Rs. 2,064/- as the basic price per metric ton when the declared price list says Rs. 1,460/- per metric ton (pit head price), without any reason or justification was an arbitrary act on the part of the respondent. The ratio of these two cases justifies filing of a writ.

25. The pithead price of coking coal supplied to the writ petitioner by the respondent between May and July. 2008 should have been Rs. 1,460/- per metric ton whereas it has been shown as Rs. 2,064/- per metric ton basic price without showing any further calculation.

26. As far as the other components of price are concerned this court is making no finding because on the existing records it cannot be called upon to adjudicate whether any washery recovery charges etc. should have been included or should not have been included in the bill.

27. Therefore, I direct the respondent to prepare a fresh invoice/sale order in relation to the supply made by them to the writ petitioner between May and July. 2008 taking Rs. 1460/- as the pit head price in terms of page 57 of the writ petition. They will at liberty to add other components/factors/charges etc., based on the above foundation in accordance with the contract and in accordance with law and raise a new invoice/invoices on the writ petitioner, within three months of communication of this order. The writ petitioner be given a hearing while finalizing the invoices. Payments already made by the writ petitioner will be adjusted against the final invoice accordingly raised. This writ application is accordingly disposed of.

All parties are to act on a signed photocopy of this order on the usual undertakings.