

**(1991) 01 CAL CK 0003****Calcutta High Court****Case No:** In re. Industrial Fuel Co.

Industrial Fuel Co. Pvt. Ltd.

APPELLANT

Vs

Coal Controller

RESPONDENT

**Date of Decision:** Jan. 9, 1991**Citation:** (1992) 1 ILR (Cal) 104**Hon'ble Judges:** Susanta Chatterji, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Susanta Chatterji, J.

The present writ petition has been filed by the Petitioner company praying, inter alia, for an appropriate writ of Mandamus directing the Coal Controller, the Respondent No. 1 to fix the monthly quota of steel grade coal for the coke plant of the Petitioner No. 1 at the rate of 1000 metric tonne per month and to direct permanent linkage of the said coke plant of the Petitioner No. 1 with Bhagaband Colliery and for other consequential reliefs. There is a further prayer for mandatory injunction to make adhoc allotment of steel grade coal in favour of the said plant of the Petitioner No. 1 situated at Bhuli Dhanbad, Bihar, covering the quantity of backlog of 1850 metric tonne of steel grade coal. It is stated in detail that the Petitioner No. 1 has set up a small washery beside the coke plant and coal allotted by BCCL are washed to remove the impurities and thereafter washed coal mixed with steel grade coal is charged into the coke ovens. In addition to the washery the Petitioner No. 1 has also set up a coke-dryer to remove the moister of the coke and has installed crusher to manufacture coke of various sizes as per requirement of the customers. The Petitioner No. 1 accordingly applied to the Coal India Ltd. for a permanent linkage.

2. The Petitioner then approached the District Industries Centre, Dhanbad, Government of Bihar, who sent the representatives to inspect and assess the capacity and requirement of coal of the coke plant. The District Industries Centre,

Dhanbad, Government of Bihar, after inspection, assessed the requirement of coal for the said coke plant.

3. It is placed on record that the Minister for Energy, Government of India, upon being satisfied with the requirement of the said coke plant has approved and recommended allotment of steel grade coal to the said coke plant of the Petitioner. The Respondents have not acted properly due to the permanent linkage of the said coke plant as recommended by the Central Government and District Industries Centre, Dhanbad, Government of Bihar, as stated in the writ petition.

4. The writ petition is contested by the Respondents by filing an affidavit-in-opposition. It is placed on record that for production of IMAC for use in Graphite Industries, only prime coking coal and to some extent Assam/Meghalaya coal are necessary. The Petitioner's coke plant has been registered under Small Scale Industries Department, Government of Bihar, under the directive given by the Division Bench of this Court, they are receiving coking coal from M/s. Bharat Coking Coal by way of bulk quantity released. The capacity has not been fixed by the office. It is as per records available from BCCL which has been perhaps done in the consultation with District Industries Centre, Dhanbad. It is placed on record that the reserves of the Steel Grade Coal is meagre and there cannot be any claim of any permanent linkage in any manner as prayed by the Petitioner. The recommendation of the Minister for Energy of India is all erroneous and without any merits.

5. Having heard Mr. Anindya Mitra for the writ Petitioners at length and Mr. Debnath for the contesting Respondent authority, the Court finds that the Petitioner had asked for permanent linkage of supply of steel grade coal to the Petitioner's coke plant as detailed in the petition.

6. Attention of this Court has been drawn to the decision in Jagadamba Coke Mfg. Enterprises and Ors. v. Bharat Coking Ltd. 93 C.W.N. 673 The Division Bench held that the Court should refrain from embarking upon unchartered ocean of public policy. But the said principle is not unqualified. There is no doubt that the State authority can frame public policy and such right to frame public policy cannot be challenged. But if in framing such public policy or implementing them, the statutory right of any party is violated or the fundamental rights guaranteed by the Constitution of India are infringed, the Court is certainly within its jurisdiction to scrutinizes such public policy framed by the executive authority and strike down such policy or a part thereof which infringe any statutory right or comes in conflict with any provision of the Constitution of India.

7. The State and/or public bodies in discharging duties and functions of a public nature must not act arbitrary or capriciously arid in framing such a policy or implementing it, there should not be any hostile discrimination against anyone similarly circumstanced, unless for a very good and cogent reason any deviation from general principle or norm is justified. In an appropriate case, if the Court is

satisfied that a particular policy framed in discharging of public duties and function has infringed a statutory or constitutional right of a person affected by such policy and/or the policy though otherwise unexceptional has been implemented in any manner that it has resulted the hostile discrimination to others similarly circumstanced, it cannot only strike down such policy and/or the unjust state of action in implementing the policy, but may also give guidelines and may even frame a scheme as to how such policy should, be framed and/or implemented so that it does not infringe any statutory or constitutional rights of others likely to be affected by such policy and/or implemented thereof.

8. By applying the ratio of the aforesaid decision of the Division Bench, this Court has to examine the instant case as to whether the Petitioner has any contractual or statutory right to obtain the supply of steel grade coal or any scheme has been framed by the State authorities to deny the supply to the Petitioner only and steps have been taken to supply to the Petitioner only and steps have been taken to supply steel grade coal to others with the similar position that the Petitioner enjoys and/or there is any arbitrary action on the part of the authority.

9. With great anxiety this Court has gone through the pleadings of the parties and considered the submissions made on behalf of the respective parties also. The Petitioner, as a matter of fact, cannot ask for any permanent linkage for supply of steel grade coal to the Petitioner's steel plant or coke plant and/or any ancillary establishment in the manner as stated. No case has been made out that on arbitrary policy has been framed by which others have been favoured and the Petitioner has been deprived of. Admittedly, there is limited production of steel grade coal. The Petitioner, *ipso facto* cannot ask for any preference. The averment regard to the recommendation of the Minister has not been properly substantiated. There are certain communications as per directions of the Minister by way of interim measure.

10. The State is always free to take effective steps without infringing the fundamental rights of any party by the Constitution of India, but while the Petitioner has come to this Court the Court has to examine whether there is any fundamental right of the Petitioner to obtain supply of steel grade coal. The aforesaid decision of the Division Bench has made it clear that the State can frame a policy, but the said policy is not subject to judicial scrutiny unless a case is made out against framing a policy in an arbitrary way to take steps an attempt to deprive a section of persons and by giving unnecessary benefit to the others similarly circumstanced. Unfortunately, in the present case, nothing has been made to convince this Court that any arbitrary step has been taken to supply steel grade coal to others with similar position that of the Petitioner, and the Petitioner has suffered any damage for the same. The Petitioner cannot ask for an omnibus declaration of this Court that there should be a permanent linkage for supply of steel grade coal as sought for.

11. By considering the merit of the writ petition and finding that the ratio of the reported decision being not applicable to the facts of the present case this Court

rejects the writ petition.

12. There will be no order as to costs.

13. All parties to act on a signed copy of the operative parts of this judgment on the usual undertaking.