(2013) 07 CAL CK 0084

Calcutta High Court

Case No: W.P. No. 71 of 2010

M/s. Auroma Coke Ltd. and Another		APPELLANT
	Vs	
Coal India Ltd. and Others		RESPONDENT

Date of Decision: July 24, 2013

Citation: (2014) 2 WBLR 163

Hon'ble Judges: Indra Prasanna Mukerji, J

Bench: Single Bench

Judgement

Indra Prasanna Mukerji, J.
The writ petitioner company is engaged in the activity of washing of coking coal. This writ is filed by them against a demand for Rs. 56,49,836.03 made by the fourth respondent, Bharat Coking Coal Ltd.

2. The writ petitioner company was obtaining diverse quantities of coal from them. The coal was being lifted from their collieries. This respondent is a subsidiary of the first respondent, Coal India Ltd., a Central Government Company.

3. The transactions which are the subject matter of this writ application took place in this way. Sale of coking coal was made to the writ petitioner Company by sale orders dated 10th March, 2008, 28th March, 2008 and 22nd April, 2008.

4. Then, came the communication dated 13th June, 2008 by way of two wireless messages from the General Manager (S&M), B.C.C.L., Dhanbad. They, inter alia, announced that "washery charges" for coking coal would be recovered @ Rs. 1,670/- per metric tonne from 1st April, 2008. Selective loading charges for road despatches were also increased with effect from that date. It is, in this way, that the above demand for Rs. 56,49,836.03 was raised upon the writ petitioner company.

5. At the outset, the question of territorial jurisdiction was raised by Mr. Shaktinath Mukherjee, learned senior Advocate, appearing for the respondents. He argued that no part of the cause of action arose within the jurisdiction of this Court. The wireless

messages of 13th June, 2013, which were the foundation of this case were issued and received outside the jurisdiction of this Court. Lifting, loading, supply of coking coal and manufacture therefrom were all made outside the jurisdiction.

6. Mrs. Shukla Banerjee, learned Advocate for the petitioners, on the other hand showed me the pleadings in paragraphs 11, 12, 13 & 43 of the writ petition. She argued that the respondents were never keen to enter into a fuel supply agreement with the writ petitioner company "in respect of the linkage".

7. For these reasons, the writ petitioner company had to move a writ application in this Court earlier (WP No. 363 of 2002). This was allowed by a judgment and order of 9th October, 2007 delivered by Maharaj Sinha, J. His lordship opined that at that stage it was not necessary to direct the respondents to enter into a fuel supply agreement with the writ petitioner company. Long term linkage granted in favour of the petitioner company by the standing linkage committee would continue to remain operative. On that basis, they would continue to receive supply of coking coal as specified in the linkage or linkages. They would continue to receive coking coal in terms of the operative portion of a judgment and order of this Court dated 5th February, 2003. This arrangement would continue so long as the respondents were not in a position to enter into a fuel supply agreement with the petitioner company. The company would receive supply on the basis of the linkage or linkages which would remain valid and operative until such fuel supply agreement was entered into. As far as the allocation of supply of coking coal "governed by the said linkage and the additional linkages," the petitioner would be treated at par with the others who were holding identical and similar linkages as that of the petitioner company.

8. The respondents preferred an appeal from the judgment and order of Maharaj Sinha, J. dated 9th October, 2007. A Division Bench of this Court disposed of the stay application on 21st February, 2008 by passing the following order:--

Having heard Mr. Aninda Mitra, learned Senior Advocate for the appellant as well as Mr. S. Pal, learned Senior Advocate for the respondent, we are of the view that pending hearing of this appeal, the respondents-writ petitioners will not insist on the supply of the linkage coal from preferred sources but would be entitled to supply of coal in terms of linkage subject to availability and subject to the observation of the learned Single Judge to effect that the respondent shall be treated at par with other similar linkage holders. This interim order has been passed on agreement of parties and will continue till the appeal is finally heard and decided.

9. The fuel supply agreement was entered into between the petitioner and the respondents on 31st July, 2008.

10. Mrs. Banerjee''s submission was that till execution of the fuel supply agreement the petitioner company received coking coal in terms of the said orders of this Court. Their right stemmed from the above judgment and order, principally.

Therefore a part of the cause of action arose within the jurisdiction of this Court.

11. In Union of India and Others Vs. Adani Exports Ltd. and Another, , the Supreme Court was concerned whether any part of the cause of action arose within the jurisdiction of the Gujarat High Court. It held that no part of the cause of action arose within that Court. This case was cited by Mr. Shaktinath Mukherjee, learned Senior Advocate for the respondents. He also cited the case of Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, . The Supreme Court opined that location of the head office of the company at a particular place, by itself, did not confer jurisdiction on the High Court but that a part of the cause of action should also arise at that place, for its proper exercise. In that case, the Supreme Court also held that the principles of Section 20 of the CPC would, otherwise, decide the High Court which had jurisdiction. In Sonic Surgical Vs. National Insurance Company Ltd., , also cited by Mr. Mukherjee the Supreme Court said that the situation of a branch office within its jurisdiction did not clothe the High Court with jurisdiction over the case unless a part of the cause of action also arose within its jurisdiction. The case of Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, makes an interpretation of Article 226 of the Constitution. Article 226, inter alia, provides that the High Court within whose jurisdiction any government is situated will have jurisdiction to entertain an application under Article 226 of the Constitution of India irrespective of the fact whether the cause of action or part thereof arises within its jurisdiction. In fact, this was recognised in the case of Raichand and Co. Vs. Director General of Foreign Trade, decided by our Court, on a consideration of all the relevant authorities prevailing then. According to those authorities, if the seat of the government was within the jurisdiction of the High Court, that High Court had the natural jurisdiction to entertain a writ against the government. But the decision in Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, makes an exception in the case of head offices of companies which are amenable to the writ jurisdiction of the Court. The head office is not to be equated with the seat of a government. The importance of the existence of the cause of action within jurisdiction was emphasised by a Division Bench of our Court in M/s. S.J. Coke Industries (P) Ltd. & Anr. v. Coal India Ltd. & Ors., reported in (1997) 1 Cal HN 67 cited along with Navinchandra N. Majithia Vs. State of Maharashtra and Others, for the same proposition by Mrs. Banerjee for the petitioner.

12. To my mind, the most important case for the disposal of the issue of jurisdiction is Rajendran Chingaravelu Vs. Mr. R.K. Mishra, Addl. Commissioner of IT and Others, , cited by Mrs. Banerjee. In this case, an income tax investigation including search, seizure etc. spread over various states. The Supreme Court in paragraphs 9 & 10 of the decision was of the view that any place from where the cause of action triggered or part of it triggered would have jurisdiction to decide the case. It stated in paragraphs 9 & 10 as follows:--

The first question that arises for consideration is whether the Andhra Pradesh High Court was justified in holding that as the seizure took place at Chennai (Tamil Nadu), the appellant could not maintain the writ petition before it. The High Court did not examine whether any part of cause of action arose in Andhra Pradesh. Clause (2) of Article 226 makes it clear that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly or in part, will have jurisdiction. This would mean that even if a small fraction of the cause of action (that bundle of facts which gives a petitioner, a right to sue) accrued within the territories of Andhra Pradesh, the High Court of that State will have jurisdiction.

In this case, the genesis for the entire episode of search, seizure and detention was the action of the security/intelligence officials at Hyderabad Airport (in Andhra Pradesh) who having inspected the cash carried by him, alerted their counterparts at Chennai Airport that the appellant was carrying a huge sum of money, and required to be intercepted and questioned. A part of the cause of action therefore clearly arose in Hyderabad. It is also to be noticed that the consequential income tax proceedings against him, which he challenged in the writ petition, were also initiated at Hyderabad. Therefore, his writ petition ought not to have been rejected on the ground of want of jurisdiction.

13. I am quite convinced that the judgment and order of Maharaj Sinha, J. dated 9th October, 2007 gave rise to at least a part of the cause of action of the writ petitioner. The said judgment is the foundation on which the relationship of the parties for that particular period was based. Thereafter the fuel supply agreement dated 31st July, 2008 was entered into. Hence a part of the cause of action arose within the jurisdiction of this Court. Therefore, the objection regarding jurisdiction is rejected.

14. Now, I turn to the merits.

15. It appears in the affidavit in opposition that the respondents were also operating coking coal washeries. Since they had supplied coking coal to others, including the writ petitioner company, they could not supply their entire stock of coking coal to their washeries. They were recovering the estimated earnings from their perceived lost business by imposing, inter alia, the washery recovery charges.

16. Mr. Mukherjee relied on clause 7 of the agreement between the parties which is Annexure R1 at page 21 of the affidavit in opposition. Clause 7 stated as follows:--

The sale order will be governed by guidelines-circulars-office orders-notices-instructions, relevant law etc. issued from time to time by Coal India Ltd., Bharat Coking Coat Ltd., State Govts., Central Govt. and other statutory bodies. This is also subject to any future escalation in prices and or levies/or duties-taxes etc. which may be imposed from time to time.

17. He submitted that clause 7 empowered the respondents to levy charges retrospectively. It was always within the power of the respondents to add to alter or

modify the charges and that the writ petitioner company had no say in the matter. In fact, all the companies were paying these charges.

18. I am unable to accept this submission.

19. In my reading of clause 7, it only provides for prospective revision of charges and not retrospective revision. The use of the phrase future escalation in prices is an indicator of this. In any event, retrospective escalation of price or charges has many adverse effects. Both parties entered into the contract, (the above transactions surely were contractual between the parties), on the footing that it would be based on mutual rights and obligations. Now, if any obligations are unilaterally changed by one party, the other party is not bound. It causes great uncertainability in the performance of the contract. Furthermore a government or a government organisation should act fairly and reasonably. It can never stipulate in the contract that the obligations would be changed unilaterally without reference to the other party. This would make the action arbitrary. More arbitrary becomes the action when obligations are changed retrospectively. In this case the unilateral decision of the respondents to hike the washery charges with retrospective effect was arbitrary, in my opinion.

20. Mr. Mukherjee also argued that the petitioner company would be utilising the coking coal for its manufacturing purposes. They may have loaded the increase in the charges demanded by the respondents in their final product and realised the same from their customers. Therefore, they should not be allowed to realise the same from the respondents, as this would create unjust enrichment.

21. I am also unable to accept this contention.

22. The charges demanded by the respondents are not excise duty or customs duty These types of duties are easily added to the goods and recovered from the purchaser by the seller. Accounts can be kept of the transactions. Any manufacturer or seller is not allowed to enrich himself in an unjust manner by recovering the duty from customers as well as seeking its refund from the government.

23. Here the situation is absolutely different. The petitioner company has been made liable to pay the charges for the coking coal. The coking coal is utilised in the manufacturing process of the petitioner company to-make finished products. These additional charges which the petitioner company was made liable to pay cannot be so easily loaded on to the goods. In fact even if they are ultimately loaded on to the price of the goods, such reflection in the price, in my opinion, cannot be ascertained exactly. Therefore, the Court takes no cognizance of it.

24. Moreover, it is averred in page 10 of the affidavit in opposition under sub-paragraph 4(m) that the washery charges claimed were recoverable and were not already recovered. Furthermore, the respondents had admitted that the said amount was in the negative balance in their letter dated 19/20th September, 2008

which is annexure P7 at page 62 of the writ petition and had advised the petitioner company to pay off the same. So an amount which had not been adjusted or paid, could not have been recovered by the writ petitioner from its customers. In fact no case to this effect had been made out by the respondents, in their affidavit.

25. For all these reasons, this writ application succeeds.

26. Under those circumstances, I restrain the respondents from claiming Rs. 56,49,836.03 or any part thereof as claimed by them in paragraph 4(g) of their affidavit in opposition from the writ petitioner company. They are restrained from giving effect to the notices which are annexures P4 and P5 to the writ petition as far as they relate to the writ petitioner company in respect of the above amount.

27. This writ application is allowed to the above extent. All parties concerned to act on a signed photocopy of this order upon the usual undertakings.