

CASE NO.:
Appeal (civil) 1063 of 1999

PETITIONER:
Akash Coke Indus. P. Ltd. & Anr.

RESPONDENT:
Coal Controller & Others

DATE OF JUDGMENT: 26/03/2004

BENCH:
S. N. Variava & H. K. Sema.

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against the Judgment of the Calcutta High Court dated 5th May, 1998.

Briefly stated the facts are as follows:

The Appellants are engaged in the production of hard coke. For that purpose they had to purchase coal from various sources. The Appellants have been receiving allotment of coal at the rate of 4800 M.T. They however made a representation that they should be supplied 2400 M.T. from the North Tistra Colliery or Lodhana Colliery. The representations of the Appellants were not considered by the Bharat Coking Coal Ltd. They therefore lodged a protest with the Coal Controller. The Coal Controller passed an order dated 16th June, 1997, the relevant portion of which reads as follows:

"Since no action has been taken so far till date and the Unit is facing hardship and other problems in production, I am directed to inform you that the coal controller in exercise of the power under provisions of the Colliery Control Order, 1945, allows the prayer of M/s. Akash Coke Industries Pvt. Ltd. as per their representation dated 5.5.1997 for change of source of supply of 2400 MT New Coal as mentioned above with immediate effect".

It seems that in spite of this order delivery was not effected by Bharat Coking Coal Ltd. The Appellants were informed that the change of supply and grade of coal could not be acceded to. The Appellants therefore again complained to the Coal Controller. The Deputy Coal Controller by letter dated 8th August, 1997 directed Bharat Coking Coal Ltd. to comply with the earlier order dated 16th June, 1997. It appears that in spite of these directions, coal was not released to the Appellants from North Tistra Colliery or Lodhana Colliery. The Appellants therefore filed a Writ Petition which has been disposed of by the impugned Judgment.

In the impugned Judgment it has been held that the Coal Controller is bound to follow directions issued by the Central Government from time to time. Note has been taken of a Circular dated 5th January, 1995 wherein it is provided that it is only Coal India Ltd. which could give linkages to new applicants upto a quantity of 5000 tonnes and for more than 5000 tones the Ministry of Coal could consider the applications. This Circular also provides that no allocation of coal should be made to private collieries from any mine which is linked to a washery. Taking note of this Circular it has been held that the Coal Controller could not pass any directions contrary to the Circular. The orders of the Coal Controller have been set aside. The High Court has directed the Coal Controller to pass a fresh order taking

into consideration the Circular dated 5th January, 1995.

We have today in a Judgment delivered in Civil Appeal No. 6310 of 1998 [The Chief of Marketing (Marketing Division), Coal India Ltd. & Anr. Vs. Mewat Chemicals & Tiny S.S.I. Coal Pulverising Unit & Ors.] held that the Coal Controller is bound by the directions issued by the Central Government. We have also held that the Circular dated 5th January, 1995 would be binding on the Coal Controller and that he cannot pass any Order contrary thereto. In this view of the matter, we find no infirmity in the impugned Judgment. It must however be mentioned that after the Special Leave Petition was filed, this Court permitted the Coal Controller to proceed to consider the application of the Appellants. The Coal Controller has now passed an order dated 20th December, 1998 wherein it has been concluded as follows:

"Conclusion: It is therefore concluded that -

i) while allocating coal by transfer of source from North Tisra, W-III, IX/X (Local-X) seam, the then Coal-Controller had not violated the stipulations of Govt. of India, Ministry of Coal's Circular dated 5.1.95 prohibiting release of 'linked washery' coal to private cookeries. In fact, coal from this source was not at all linked to any washer.

ii) As explained above coal from Lodna, W-III, 4 Pit, IX/X(Local-X) is 'linked washery' source coal and also partially 'non-linked washery' to the extent coal from this source was also being supplied to Lodna Coke Plant (BCCL's own plant) concurrently. Since Clause-iv of the Central Govt.'s Circular dated 5.1.95 does not prohibit supply of coal from 'linked washery' source to any cookery belonging to the same coal producing company (it is prohibited only for private cookeries), this source can be treated as 'Linked washery' source and not 'Non-linked washery' source.

The order of the then Coal Controller allocating coal from Lodna, W-III, 4 Pit, IX/X(Local-X) seam thus can be considered to be in violation of the spirit of Central Government, Ministry of Coal's directive dated 5.1.95."

This Court directed that this Order of the Coal Controller shall operate as an interim order. Pursuant to this Order the Appellants have been receiving 1200 M.T. from Lodhana Colliery. They have also been receiving a further 300 M.T. of coal from Lodhana Colliery as per a subsequent Order. Neither party has challenged the Order dated 20th December, 1998.

Mr. Dholakia however submitted that even though the Appellants have been receiving 1500 M.T. from Lodhana Colliery and they had an allotment of 4800 M.T., they should have received the balance as per the original allotment. He submitted that the Respondents should be directed to deliver the backlog for all these years. In counter to this it is pointed out by Mr. Salve that the Appellants did not apply or approach the Coal Company for delivery from the original source. To this only answer given by Mr. Dholakia was that they could not apply as this Appeal was pending. In our view there is no substance in this contention. During the pendency of this Appeal the Appellants could have taken coal from their original source without prejudice to their rights and contentions. If they chose not to apply or to approach the Coal Company, they cannot make a grievance and ask that the entire backlog be now given to them. We therefore see no substance in the submission.

The Appeal stands dismissed. There shall be no order as to costs.

JUDIS