

CASE NO.:
Appeal (civil) 816 of 2001

PETITIONER:
Coal India Limited & Ors

RESPONDENT:
Domco Smokeless Fuels (P) Ltd

DATE OF JUDGMENT: 15/05/2007

BENCH:
S.B. SINHA & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO. 817 OF 2001
AND
CONTEMPT PETITION (C) NO. 547-548 OF 2002
IN
CIVIL APPEAL NO. 816-817 OF 2001

S.B. Sinha, J.

1. These appeals are directed against the Order of a learned Single Judge of the Jharkhand High Court dated 9.7.1999, an Order dated 9.8.1999, Order dated September, 1999, an Order dated 23.9.1999 as also Order of a Division Bench 14.10.1999 passed in LPA No. 415 of 1999 (R) refusing to interfere with the order impugned in the writ petition passed by the learned Single Judge of the said Court allowing the writ petition filed by the respondent. The basic fact of the matter is not in dispute. Respondent herein has set up a unit for production of smokeless fuel. The said Industry was set up by the respondent allegedly on a representation made by the appellant herein by way of an advertisement inviting new entrepreneurs to set up new smokeless fuel units wherefor supply of coal to them was assured, which is to the following effect:

"Say "no" to Smoke
Do you know? The smoke emitting from your chullahs
is causing serious air Pollution endangering the air that
your child breaths.

SPECIAL SMOKELESS FUELS (SSF) \026

an economic substitute for the smokey soft coke and firewood, generates consistent heat thus economizing fuel consumption. Its uniform size also ensures convenient storage. Use of SSF will reduce widespread chopping of tree for firewood and present deforestation. Coal India now on a mission to minimize environmental pollution and encourage afforestation, invites entrepreneurs to set up new SSF units and expand existing ones. 8 SSF units are already on stream. CIL has already cleared linkages for 80 units CIL will soon be finalizing linkages for 25 more units.

CIL will provide additional coal requirements for expansion of SSF units and coal linkages for the new

entrepreneurs. Write to us through State Sponsored Authorities.

For further details contact : CMPDIL, Ranchi/Technical Cell, Coal India Ltd. 10 Netaji Subhash Road, Calcutta-700001, Tel: 206312, 207817

Western Coalfields Ltd.

Bharat Coking Coal Ltd.

Central Coalfields Ltd.

Eastern Coalfields Ltd.

South Eastern Coalfields Ltd.

North Eastern Coalfields"

2. Respondent applied for grant of linkage facility for obtaining supply of coal in its industrial unit situated in the District of Aurangabad in the State of Bihar. It was given coal linkage with the collieries belonging to Bharat Coking Coal Ltd, (BCCL) a subsidiary of Coal India Ltd.

3. On or about 17.11.1993 in a meeting wherein the authorities of the Coal India Ltd., a subsidiary of BICICO and the Secretary of the Assessing Manufactures Association participated, it was decided.

"(a) SOURCE OF COAL LINKAGE

It was decided that the linkage of the SSF plants will be reviewed by CIL keeping in view the present availability of coal suitable for SSF production and rationalization of linkage would be considered to the extent possible so that the units get their supplies from the nearest suitable sources containing SSF grade coal.

In this connection, BICICO would submit a statement to CIL giving their suggestions for linkage of coal to the new SSF units in Bihar."

4. Respondent applied for transfer of his linkage from BCCL to Central Coalfields Ltd.(CCL) in terms of the said decision taken in the aforementioned meeting dated 17.11.1993, pointing out that construction of the factory was taken up only on the basis of the assurances made by the Coal India Ltd. in that behalf. Although, some industries allegedly similarly situated, were given the benefit of transfer of their linkage from BCCL to Central Coalfields Ltd., by the appellant, the request of the respondent was not acceded to despite a "No objection" to the change given by the CCL. Coal India Ltd. referred to the purported policy decision in regard to linkage to the effect that, once it is accorded, the same would be permanent in nature. However, temporary transfer of linkage to the extent of 50% of the quantity were given both to the respondent as also one M/s. Pushpanjali Coal and Coke.

5. Coal India Ltd., however, issued a direction on or about 9.10.1999 that the respondent would be given 50% of its supply for three months from BCCL and 50% from CCL. The legality of the said decision was questioned by the respondent in a Writ Petition filed before the High Court of Jharkhand praying therein that the appellant be directed to release full quota of coal by grant of change of linkage from BCCL to CCL. Pending Writ Petition, however, CIL granted permanent change of linkage in favour of M/s. Pushpanjali Coal and Coke but not to the respondent, despite the fact that CCL had given "No Objection" to both the units by a common letter dated 17.7.1998.

6. The said Writ Petition was allowed by a learned Single Judge of the

High Court inter-alia directing;

"..Now the respondent \026 CIL came out with a case in the counter affidavit that the officers of the CIL in its meeting held on 3.9.98 took a policy decision that linkage once granted, cannot be transferred from one subsidiary to another subsidiary of CIL.

9. After going through the entire facts of the case and the documents referred to hereinabove, it is manifest that non-acceptance of the request of the petitioner by CIL is arbitrary and not reasonable particularly when no valid reason has been assigned for not accepting the request of the petitioner, more so, when the case of M/s Pushpanjali Coal & Coke Pvt. Ltd. was considered and his linkage was transferred from BCCL to CCL. Nowhere in the counter affidavit the respondent-CIL has denied the difficulty that the petitioner-unit is facing and will have to face and the loss which the petitioner-unit will sustain in procuring coal from BCCL which is far away from the place where the Plant has been established. Moreover, after considering the recommendation from the State Government and the BICICO and after obtaining no objection from the C.C.L., there is no reason for the respondents to ignore the request of the petitioner. It is well settled that when the industries are established the Central Government or the State Government and its instrumentalities while framing industrial policies and taking policy decisions in the matter in the matter supply of raw materials or granting different incentives, the objective must be to encourage the unit."

7. It was directed;

"11. Having regard to the facts and circumstances of the case and the discussions made hereinabove, this writ application is disposed of with a direction to the authority of the respondent-C.I.L. to take a liberal and positive decision in the case of the petitioner also in the light of the direction and observation made above. Such decision must be taken within a period of two weeks from the date of receipt/production of a copy of this order."

8. An application for clarification was filed by the respondent inter alia praying for issuance of a writ of or in the nature of mandamus upon giving a positive direction to the appellant to supply coal to its unit only from the collieries belonging to Central Coalfields Ltd. The said application was disposed of by an Order dated 9.8.1999 observing;
"In my opinion, the application filed by the petitioner is misconceived inasmuch as there is sufficient indication in the order that the respondent shall take a positive decision in the light of the fact that in similar circumstances the prayer for transfer of linkage made by M/s Pushpanjali Coal and Coke Pvt. Ltd. has been allowed. It is also clear from para. 5 of the judgment that this Court has held that non-acceptance of the request of the petitioner by C.I.L. is arbitrary and not reasonable.

In view of the sufficient indication in the order directing the respondents to take positive decision in favour of the petitioner, I am of the view that no further clarification is needed in this order. The submission of Mr. Sinha that if the order is not clarified, the respondents \026 C.I.L. may not take decision in favour of the petitioner,

cannot be accepted for the reason that this Court virtually, in the order dated 9.7.99, directed respondents to transfer the linkage as prayed for by the petitioner.

This application is accordingly, disposed of with the aforesaid observation."

9. Application of the respondent, was thus, rejected. On the aforementioned premise, a review application was filed by the appellant which was also rejected opining:

"From reading of the entire facts it appears that there are many other considerations for granting linkage of coal to various suppliers which can be brought into light if the entire documents are called for from the C.I.L. But, at this stage, I do not want to make a roving enquiry into the matter. Suffice it to say that Mr. S.M. Sharma should act fairly so that if anything is brought to the notice of this court in any other case, then he may not be put in trouble.

Curiously enough the Director of Industries Govt. of Bihar, by its letter dated 20.8.99 addressed to the Sales Manager, CIL, informed that temporary registration granted to certain firms have been cancelled but inspite of that respondents have granted linkage to those firms from CCL vide their order dated 25.8.99, a copy of which has been annexed as Annexure 1/A to the rejoinder.

It is also surprising that the respondents have taken a negative decision and thereby refused to comply the direction of this court merely on the ground that many other consumers will come for such relief. In my opinion, that cannot be a ground for disobeying the order and direction passed by this court.

However, in view of very fair stand taken by Mr. Banerjee appearing for the respondents that the respondents shall re-consider the case of the petitioner in the light of the judgment dated 9.7.99 and the subsequent order dated 9.8.99 and will take a positive decision, I am disposing of the instant application and its rejoinder by observing that the respondents must comply the order and direction of this court within ten days from the date of receipt of a copy of this order."

10. A Letters Patent Appeal was filed thereagainst by the appellant which by reason of the impugned judgment dated 14.10.1999 has been summarily dismissed. As no Letters Patent Appeal was filed as against the original order of the learned Single Judge dated 9.7.1999, an application under Article 136 of the Constitution has directly been filed in this Court thereagainst which has been marked as SLP(C) No. 17145/2000.

11. A Division Bench of this Court while staying the operation of the impugned judgment, directed the appellant to consider the case of the respondent in terms of the letter dated 14.2.2000.

12. Grievances were raised by the respondent from time to time before the Court that the appellant had not been supplying the requisite quantity of coal to its unit whereupon various orders have been passed whereto we need not refer at this stage. Suffice, however, it to notice that some contempt petitions were also filed. Another Division Bench of this Court by an Order

dated 29.1.2004 observed;

"We have heard the learned counsel for the parties for sometime. After some discussion, the learned counsel for the appellants submitted that he may be allowed a reasonable time for having instructions and making a proposal on two points:

- (i) Clearing the arrears of supply of coal to; and
- (ii) Rationalising policy as to linkage for future.

Let a statement in that regard be made on an affidavit under copy to the counsel opposite on or before 24th February, 2004.

Response, if any and if needs to be filed in writing may be done on or before 16th March, 2004.

The above said statement and response shall be treated without prejudice to the rights of either parties.

List for hearing on 23rd March, 2004."

13. When the matter came up for hearing before another Bench of this Court on 17.8.2006, it was directed;

" The respondent (s) herein shall furnish within four weeks from date, bank guarantee and security in regard to the difference in the prices, if any, of coal which had already been supplied to them by the Coal India Ltd. in terms of the directions of this Court in M/s. Ashoka Smokeless Coal Industries Pvt. Ltd & Ors. vs. Union of India & Ors. (SLP(C) No. 20471/2005). The appellant shall issue necessary directions to the Central Coalfields Ltd. for supply of coal to the respondent's factory from any of the collieries situated within its jurisdiction subject, of course, to the availability as also the guidelines and the circulars issued by the Central Government, if any. Only in the event, it is not possible for the CCL to supply coal, offer to supply coal may be made from the collieries belonging to the BCCL.

Keeping in view the facts and circumstances of this case, we are of the opinion that Union of India should be impleaded as party. On an oral prayer made by the learned counsel Mr. Sachthey, Union of India is made a party through the Ministry of Coal. Mr. Sachthey assures us that a copy of the paper book of this case shall be handed over to the Central Agency.

Counter affidavit by the Central Government may be filed within four weeks from date. Liberty to mention, if any occasion arises therefor.

We would also direct that an officer of the Coal India Ltd. shall visit the factory of the respondent so as to assess the actual present need of coal by it whereupon the difficulties, if any, in making supply thereof from any of the collieries belonging to the Central Coalfields Ltd. may be deliberated upon in a meeting which may be convened by Coal India Ltd. with officer(s) of the Bharat Coking Coal Ltd., Cental Coalfields Ltd. and a representative of the respondent (s).

Put up on 10th October, 2006.

On the next date of hearing, an officer of the Coal India Ltd. having full instructions in the matter, and a representative of the respondent shall remain present in Court."

14. Pursuant to the said Order, the unit of the respondent had been inspected and a report has been filed with an affidavit affirmed by the General Managers of Coal India Ltd. on 18.10.2006.

15. Respondent filed an objection to the said report. A rejoinder thereto has also been filed by the appellant herein. In the meantime, the question of linkage vis-à-vis, the changed policy decision of Coal India Ltd. to sell coal on e-auction was considered by a Bench of this Court in M/s. Ashoka Smokeless Coal Ind. P. Ltd. & Ors. v Union of India & Ors [2006 (13) SCALE 102], wherein inter-alia it was observed:

" 190. Coal being a scarce commodity, its utility for the purpose for which it is needed is essential. Although, technically, in view of the fact that no price is fixed for coal, there may not be any black marketing in the technical sense of the terms; but this Court cannot also encourage black marketing in general sense. Nobody should be allowed to take undue advantage while dealing with a scarce commodity. The very fact that despite best efforts of the Central Government, the coal companies failed to curb the menace of a section of people and to deal in coal excluding other general people therefrom or the linked consumers misusing their position of obtaining allotment of coal either wholly or in part, it is absolutely necessary that some mechanism should be found out for plugging the loopholes. The Union of India or the coal companies appear to have lost confidence in the State Governments. They had carried out joint inspection and in that process they must have arrived at a satisfaction about the genuineness of the claims of industrial units for which the linkage system was meant for.

191. Before us most of the consumers, with a view to obtain supply of coal had filed documents to prove their genuineness. The said documents must be scrutinized by the authorities of the coal companies. In the event, they have an suspicion, inspection should be carried out by officers appointed by the Chairman-cum-Managing Director of the concerned company within whose jurisdiction the unit is situated.

192. With a view to evolve a viable policy, a committee should be constituted by the Union of India with the Secretary of Coal being the Chairman. In such a committee, a technical expert in coal should also be associated as most of the projects involve consumers of coal, particularly manufacturers of hard coke and smokeless fuel. In our opinion, it may not be difficult to find out, having regard to the technologies used therein as regards the ratio of the input vis-à-vis the output, with a balance and 10% margin. On the basis of such finding alone, apart from the requirements of five years, supply should form the basis of MPQ. We may, however, hasten to add that the Central Government in collaboration with the coal companies would be at liberty to evolve a policy which would

meet the requirements of public interest vis-à-vis the interest of consumers of coal. They would be entitled to lay down such norms as may be found fit and proper. They would be entitled to fix appropriate norms therefor. In the event, any industrial unit is found to violate the norms, it should be stringently dealt with."

16. It is stated by the learned Additional Solicitor General appearing on behalf of the Union of India that pursuant to the said direction, a Committee has been constituted and it is expected that a report would be submitted within a few weeks. It is, however, not necessary for us to consider that aspect of the matter. Mr. Anip Sachthey, learned counsel appearing on behalf of the appellant inter-alia would submit that the High Court committed a manifest error in issuing a Writ of Mandamus directing the appellant to transfer the linkage of coal from BCCL to the CCL. Drawing our attention to the report of the Committee, it was submitted that keeping in view the shortage of coal faced by Central Coalfields Ltd., such a direction would cause enormous difficulties in working out of the linkage system itself. It was further submitted that even on fact, the respondent cannot be said to have a good case as from Bahri, the distance of the collieries belonging to Central Coalfields Ltd. and Bharat Coking Coal Ltd. are almost same.

17. Mr. P.P. Rao, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted;

- (i) In view of the 'No Objection' granted by CCL, it is not now permissible for the appellant to suggest that supply of coal from Central Coalfields Ltd. would cause enormous difficulty to it.
- (ii) Having regard to the clear representation made by the Coal India Ltd., in its advertisement of 1987 as also the minutes of meeting held on 17.11.1993 pursuant where to and in furtherance where of, the appellant altered its position by investing a huge amount by setting up its industry of smokeless fuel, the doctrine of promissory estoppel shall apply in the instant case.
- (iii) In the light of the provisional decision taken by CIL in the matter of grant of supply of coal i.e. 50% from BCCL and 50% from CLL, the High Court cannot be said to have exceeded its jurisdiction in directing the appellant to take a final decision in the matter having regard to the immense difficulties which are being faced by the respondent as also the financial implication attaching thereto.
- (iv) Appellant being a 'State' within the meaning of Article 12 of the Constitution of India was enjoined with a duty to exercise its jurisdiction in a reasonable manner
- (v) When an opportunity had been granted to a State to correct an error in the matter of exercise of its discretionary jurisdiction, the High Court in a given case may issue a Writ of Mandamus also.

18. In M/s. Ashoka Smokeless (supra), this Court has in details discussed the validity or otherwise of the linkage scheme vis-à-vis the changed policy decision of the Coal India Ltd. for selling coal on e-Auction. While arriving at the said decision, this Court has also taken into consideration various aspects of the matter including applicability of the doctrine of promissory estoppel in a case of this nature.

19. The question, however, is whether in a case of this nature and particularly having regard to the subsequent materials which have been brought on records, the respondent was entitled to the reliefs prayed for by it or not.

20. We have noticed hereinbefore the orders passed by the learned Single Judge from time to time. Whereas The entitlement of the entrepreneur must be traced to the policy decision of the Coal India Ltd. and the directions issued by the Central Government from time to time in exercise of its power under Clause 6 of the Coal Control Order, 2000, the respondent also was required to make necessary averments therefore in its writ petition as to how it had derived a legal right in regard to transfer of linkage. The pleadings of the parties are not before us. We have noticed hereinbefore that certain subsequent events have also taken place. Even if the respondent becomes

entitled to the reliefs prayed for herein, an opportunity in that behalf is required to be given to the appellant also. Respondent has raised before us questions of discrimination which is also required to be gone into. One of the questions which would thus, arise for consideration would be as to whether the CIL's policy decision would be covered by the earlier policy decision having regard to the doctrine promissory estoppel.

21. Several other factors as noticed hereinbefore have been brought on record in the light of the inspection report submitted before this Court. It is not possible for us to go into the said question particularly in view of the fact that the pleadings of the parties are not before us.

22. We, therefore, are of the opinion that interest of justice shall be subserved if the High Court is directed to consider the matter afresh. The parties shall be entitled to file additional affidavits in the writ proceeding. Respondent may in view of the subsequent events amend its writ petition. In such an event, the High Court would not only consider the matter from the perspective of the original prayer made in the writ petition, but also the reliefs which may be found to be available to the respondent in view of the subsequent events including the Report of the Inspection Committee. Till an appropriate order is passed by the High Court, status quo as obtaining today in regard to supply of coal shall continue. As the matters are being remitted to the High Court, we do not intend to pass any separate order in the contempt petition. The appeals, are therefore, allowed and the matter is remitted to the High Court upon setting aside the impugned judgment for consideration of the matter afresh. However, in the facts and circumstances of this case, there shall be no order as to costs.