

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 375 OF 2009
[Arising out of SLP(C) No.21863 of 2008]

M/S SUSHILA CHEMICALS P.LTD.& ORS.

... Appellant(s)

Versus

BHARAT COKING COAL LIMITED & ORS.

... Respondent(s)

ORDER

1 Delay condoned.

2 Leave granted.

3 There are as many as 45 appellants before us. At the very outset it has been pointed out that out of the said 45 appellants, 27 appellants, namely, appellants Nos. 1,2,5,6,14,15,17,18, 19 to 27,30,31,32, 33, 35,36,37,41,42 & 44 have filed two separate applications, being I.A No. 3 of 2008, for deletion of their names from the array of parties. Such prayer is allowed and that leaves us with 18 appellants. This order will, accordingly, govern the said 18 appellants.

4 The appellants claim to be Units, which have been enjoying linkage for supply of coal vis-a-vis Bharat Coking Coal Limited (hereinafter referred to as "BCCL"). On 30th November, 2004, BCCL issued a notice No.BCCL/S&M/Link/04/5089,

requiring the linked consumers to submit detailed data/information in terms of the details mentioned in the notice along with an affidavit and the photographs of owners on or before 31st December, 2004, to enable it to cross check the genuineness of the working units regarding continuance of supply of coal for the year 2005. The said notice refers to 18 specific documents and item 19 refers to any other relevant documents. It appears that subsequently the said number of documents were reduced to 13 as will appear from clause 10 of paragraph 12 of the counter affidavit filed on behalf of BCCL. The notice will, therefore, be confined to the said 12/13 documents and also any other relevant documents.

5 The stoppage of supply, pursuant to the aforesaid notice, was questioned by the appellants herein before the learned Single Judge of the Patna High Court, who by his judgment and order dated 10th January, 2008 held that the decision to stop supply of coal on the failure of the appellants to produce all the documents in question could not be supported, particularly, in view of the fact that no hearing had been given to them before such stoppage. On the ground of violation of the principles of natural justice the learned Single Judge declared the decision to stop supply of coal to the appellants to be void ab initio and unenforceable. Consequently, the writ petition was allowed and the decision of the appellants herein to stop supply of coal to the appellants was set aside and BCCL was directed to forthwith resume supply of coal to the appellants. As against the decision of the learned Single Judge, BCCL filed a Letters Patent Appeal, being LPA No.174 of

2008, which was disposed of on 24th April, 2008 relying on an earlier decision of the Patna High Court in M/s. Central Coalfields Ltd. & Ors. Vs. M/s. Aman Line Works & Ors. Having regard to the said decision, the Division Bench allowed the Letters Patent Appeal to the extent that it was left open to BCCL to resume or not to resume supply of coal to the appellants till the proceedings were finally determined and after considering the explanation of the respondents in respect of the alleged deficiency. The Division Bench also observed that it would be open to the appellants to make up the alleged deficiency and to supply the required particulars, if they had necessary materials for the same along with the submission of their explanation.

6 The appellants are before us on a very narrow ground, namely, that in addition to a hearing been given to them, a direction should also be given to BCCL, if it was not satisfied with the documents produced, to conduct a spot inquiry/inspection, as had been directed by the Allahabad High Court in another similar matter.

7 Having heard learned counsel for the respective parties, and also having regard to the fact that stoppage of supply of coal to the Units in question, if they are genuine, will cause a great deal of hardship and would amount to closure of the industry, at least for the time being, we are of the view that the directions given by the Division Bench need not be interfered with, but we modify the same to the extent that while considering the representations made by the appellants, in the event the

appellants are unable to produce a particular document, the authorities of BCCL would permit the appellants to produce supporting documents in corroboration of the documents which they are unable to produce, in order to effectively decide as to whether the unit of the appellant in question, was a running unit or not.

8 This will not preclude BCCL from holding any inspection, if it so deems fit.

9 We also request BCCL to dispose of the representations at an early date and preferably within two months from date.

10 The appeal is disposed of.

11 There will, however, be no order as to costs.

(ALTAMAS KABIR)

.....J.

.....J.
(CYRIAC JOSEPH)

New Delhi,
January 22, 2009.