

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3820 of 2011

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1. M/S K.K.Coal Briquette, a proprietorship firm having its office At & P.O. Koilwar, Bhojpur through its proprietor Inayat Karim, Son Of Ata Karim, Resident Of At & P.O. Koilwar (Pathan Toli), District - Bhojpur
 2. M/S Neha Shree Coal Briquette, a proprietorship firm having its office At & P.O. Kasap, Bhojpur through its Proprietor Sanjay Kumar Sinha, Son Of Late K. Prasad, Resident of at & P.O. Kasap, District - Bhojpur
 3. M/S Ankur Fuel Industries, a proprietorship firm having its office at Gidha, Arrah, Bhojpur through its Proprietor Smt. Maya Prasad, Wife of Ramashankar Prasad, Resident of Village - Paschim Tola, Arrah, District - Bhojpur At Arrah
 4. M/S Shilpee Coal Briquette Plant, a proprietorship firm having its office At & P.O. Kasap, Bhojpur through its proprietor Sanjay Kumar Sinha Son Of Late K. Prasad Resident of at & P.O. Kasap, District - Bhojpur
 5. M/S Uma Food Products, a proprietorship firm having its office at Bhairauran - Khada, P.O. Pusa, Samastipur through its Proprietor A. P. Singh Son Of Late Bhibisan Singh Resident of at & P.O. Karpuri Gram, District - Samastipur (Bihar)
 6. M/S Bhagwan Gul Udyog, a proprietorship firm having its office at Buxar Road, Muradabad, Rohtas through its Proprietor Munni Rai Son Of Late Satya Narayan Rai Resident Of At & P.O. Panapur, P.S. Kargahar , District - Rohtas(Bihar)
 7. M/S Urmila Col Powder Industries, a proprietorship firm having its office at & P.O. Dumari, Samastipur through its Proprietor Chittranjan Kumar Singh Son Of Sri Anand Kishore Singh Resident Of At & P.O. Dumari, District - Samastipur(Bihar)
 8. M/S Anand Chemicals, a proprietorship firm having its office at & P.O. Dumari, Samastipur through its Proprietor Anand Kumar Singh Son Of Late Baldev Kumar Singh Resident Of At & P.O. Dumari, District - Samastipur (Bihar)
 9. M/S Ganesh Krishi Yantra Nirmal Kendra, a proprietorship firm having its office at & P.O. Prem Nagar, Sitamarhi through its Proprietor C.K. Singh Son Of Sri Anand Kishore Singh Resident Of At & P.O. Dumari, District - Samastipur (Bihar)
 10. M/S Mahesh Bakery Udyog, a proprietorship firm having its office at & P.O. Sakra, Muzaffarpur through its Proprietor C.K. Singh Son Of Sri Anand Kishore Singh Resident Of At & P.O. Dumari, District - Samastipur (Bihar)
 11. M/S Bhojpur Coal Briquette Industries, a proprietorship firm having its office at Jawahar Tola, Nawada, Bhojpur through its Proprietor Awadhesh Singh Son Of Sri Brij Nanadan Singh Resident Of Jawahar Tola, Nawadah-Arrah 9bhojpur), District - Bhojpur (Bihar)
 12. M/S Baby Coal Briquette Udyog, a proprietorship firm having its office at Mirganj, Arrah, Bhojpur through its Proprietor Sanjay Kumar Singh Son Of Sri Gopalji Singh Resident Of Mirganj, Arrah, District - Bhojpur (Bihar)
 13. M/S Bhushan Gul Udyog , a proprietorship firm having its office at Sripalpur, Koilwar, Bhojpur through its Proprietor Manoranjan Kumar Singh Son Of Sri Nagendra Singh Resident Of At & P.O. Sripalpur, Koilwar District -Bhojpur (Bihar)
 14. M/S Avinash Coal Briquette, a proprietorship firm having its office at Sarthua, Udwant Nagar, Buxar through its Proprietor Durga Prasad Singh Son Of Sri Nagendra Singh Resident Of Sarthua, Udwant Nagar Block,



District - Buxar (Bihar)

.... Petitioner/s

Versus

1. The Bharat Coking Coal Ltd., A Subsidiary Company Of Coal India Ltd., Koyala Bhawan, Dhanbad through its Chairman Cum Managing Director
2. The Coal India Ltd., Coal Bhawan, 10 Netaji Subhash Road, Kolkata through its Chairman
3. The General Manager (Sales and Marketing), Bharat Coking Coal Limited, Koyala Bhawan, Dhanbad
4. Deputy Chief Sales Manager (Legal), Bharat Coking Coal Limited, 6 Lyons Range, 5th Floor, Kolkata
5. Deputy Chief Sales Manager (Road Sales), Bharat Coking Coal Limited, Koyala Bhawan, Dhanbad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate

For the Respondent/s : Mr. Vishwa Mohan Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

3 20-05-2015

Heard the parties.

2. The petitioners, 14 in numbers, all proprietorship firms represented through their respective proprietors, have filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondent Bharat Coking Coal Ltd.(in short 'BCCL'), a subsidiary company of respondent Coal India Ltd., and its functionaries, to resume supply of coal to the petitioners, which has been stopped on account of deficiencies of the petitioners in submission of 13 point documents required for verification of the genuineness/existence of the units/industries of the petitioners.

3. Shorn of unnecessary details, all the petitioners claim to have established their respective coal based industries/units in the light of the advertisements/invitations issued by the respondent Coal India Ltd. in the year 1986-87, and on the basis of their applications filed in the year 1998-99, they were originally granted provisional coal linkages by the respondent Coal India Ltd. for supply of coal by the respondent BCCL. As per the case of the

petitioners, they fulfilled all the conditions for grant of permanent coal linkages by the respondent Coal India Ltd. It is also the case of the petitioners that after grant of permanent linkages, the respondent BCCL being satisfied about the functioning/existence of their industries/units, allocated permissible quantity of coal, which was being supplied to them.

4. The grievance of the petitioners is/was that merely on the basis of certain unverified reports received about the non-functioning/non-existence of the petitioners units/industries, the respondent BCCL arbitrarily stopped supply of coal to them. It is also the grievance of the petitioners that before taking such decision by the respondent BCCL for stopping the supply of coal to the petitioners' units reasonable opportunity of hearing was not given to them. Therefore, according to the petitioners, the action of the respondents was in teeth of the principles of natural justice.

5. At this place, it would be relevant to mention here that in view of certain concern raised by some of the members of the 14th Lok Sabha in the year 2004 about the transportation and black-marketing of coal by certain industries/units, the genuineness of the working/existence of the linked units was resolved to be examined and verified in a transparent manner, under the directives of the Ministry of Coal/Coal India Ltd. in terms of clause 7 of the condition of linkage. Accordingly, the petitioners' units, besides others, were originally directed to furnish 19 points documents, but subsequently reduced to 13 points documents, which were required to be verified by a Committee constituted by the respondent BCCL in order to find out whether the petitioners' units are in existence and operational. On verification of the documents furnished by the petitioners' units, it was found that the petitioners' units are/were not established and therefore coal supplied to them in the year 2002-

03 and 2003-04 under linkage system was not used in their factory/units and thereby it was concluded that the petitioners failed to substantiate that the units allegedly established by them are in working status. Therefore, under the terms and conditions of the linkage given to them supply of coal was stopped to them in April, 2007 and despite request made by the petitioners supply of coal was not restored to them.

6. It is admitted case of the parties that all these petitioners, besides others, being aggrieved by the action of the respondent BCCL stopping the supply of coal to them, filed CWJC No. 10653 of 2007 (M/S Sushila Chemicals Pvt. Ltd. Vs. Bharat Coking Coal Ltd. & Ors.). The aforesaid writ petition was filed by as many as 46 writ petitioners including all the present petitioners. The aforesaid writ petition was finally heard by a Bench of this Court (Coram:Navaniti Prasad Singh, J.) and was allowed by an order dated 10.01.2008 (Annexure-5). By the aforesaid order dated 10.01.2008, the learned Single Judge came to a conclusion that the action of the respondent BCCL and its functionaries stopping the supply of coal to the petitioners' units was in violation of the principles of natural justice. Therefore, decision of the respondent-Coal Company to stop supply of coal to the petitioners was held to be void ab initio, being in flagrant violation of the principles of natural justice. Consequently, the aforesaid writ petition was allowed and the respondent Coal Company and its functionaries were directed to resume supply of coal to the petitioners.

7. It is also admitted case of the parties that the respondent BCCL, being aggrieved by the aforesaid judgment and order dated 10.01.2008 passed in CWJC No.10653 of 2007 (Annexure-5), filed LPA No.174/08, which was finally heard and allowed by a Division Bench of this Court by an order dated



24.04.2008 (Annexure-7). The Division Bench of this Court by placing reliance yet on another previous Division Bench judgment in LPA No.701 of 2002 (M/s Central Coalfields Lts. & Ors. Vs. M/s Aman Line Works & Ors.) came to a conclusion that the decision of supplying authority for stopping the supply of coal to the petitioners cannot be termed as unreasonable or arbitrary. It was left open for the BCCL to resume or not to resume supply of coal to the writ petitioners till the proceeding was finally decided and deficiencies were removed by the petitioners.

8. It is further admitted case of the parties that the writ petitioners of that case namely M/s Sushila Chemicals Pvt. Ltd. and others, which included the present petitioners also, being aggrieved by the Division Bench judgment/order dated 24.04.2008 passed in LPA No.174 of 2008 (Annexure-7) reversing/modifying the order and judgment dated 10.01.2008 (Annexure-5) passed by the learned Single Judge, approached the Hon'ble Apex Court in Civil Appeal No.375 of 2009, which was finally disposed of by an order dated 22.01.2009 (Annexure-8 to the writ petition). The Hon'ble Apex Court by the aforesaid order dated 22.01.2009 did not interfere with the direction given by the Division Bench of this Court in LPA No.174 of 2008, but it was modified only to the extent that while considering the representations of the appellants of that case in the event they were unable to produce a particular document the authorities of BCCL would permit them to produce supporting documents in corroboration of the documents which they were unable to produce, so that effective decision could be taken that the units of the appellants i.e. petitioners herein was a running unit or not.

9. It is not in dispute that in the light of the observations and directions given by the Division Bench of this Court in LPA No.174 of 2008 vide its order dated 24.04.2008 (Annexure-7) and



duly affirmed, with some modification, by the Hon'ble Apex Court vide order dated 22.01.2009 (Annexure-8) passed in Civil Appeal No.375 of 2009, the representations/documents were filed by the petitioners to prove that the industries/units established by them are really in existence and functional, and accordingly their claims were considered, but finally rejected by the respondent BCCL in the year 2009 itself holding therein that the working status of the units of the petitioners in the year 2002-03 and 2003-04 were not found operational and as such the coal drawn during the period was not used for the purposes for which it was purchased from the respondent BCCL. The petitioners were held to have violated the clause 4 and 7 of the conditions of linkage and, therefore, by invoking clause 9 of the conditions of linkage, the prayer for resumption of supply of coal to them was rejected. Some of the orders passed by the respondent BCCL and communicated to the concerned petitioners have been brought on record as Annexure-10 series.

10. Evidently, the reliefs, which are sought in the present writ petition by the petitioners, were sought for and was subject matter of consideration in previous round of litigation at the behest of the petitioners, besides others, before this Court. The writ petition filed by the petitioners, besides others, vide CWJC No.10653 of 2007 was allowed by a learned Single Judge of this Court vide order dated 10.01.2008 (Annexure-5), but the order of the learned Single Judge was reversed by a Division Bench of this Court by an order dated 24.04.2008 passed in LPA No.174 of 2008 (Annexure-7). The order passed by the Division Bench of this Court was affirmed by the Hon'ble Apex Court by an order dated 22.01.2009 passed in Civil Appeal No.375 of 2009 (Annexure-8). In the light of the observations made by the Division Bench of this Court and affirmed by the Hon'ble Apex

Court, the final decisions were taken by the respondent BCCL refusing to resume supply of coal to the petitioners, but curiously enough the petitioners have not challenged the validity and correctness of those final decisions taken by the respondent BCCL way back in the year 2009 with respect to all these petitioners, which all were communicated to them by different letters, yet the present writ petition has been filed for the same and similar reliefs. Apparently, the present writ petition is barred by the principles of constructive res-Judicata.

11. In above view of the matter, this Court is of the opinion that the reliefs sought for on behalf of the petitioners in the present writ petition are completely misconceived and cannot be countenanced. If the petitioners were at all aggrieved they could have challenged the final decision taken by the respondent BCCL, but that has not been done by them.

12. For the reasons recorded above, the present writ petition has to fail and is, accordingly, dismissed. However, the parties are left to bear their own costs.

Arvind/-

(Birendra Prasad Verma, J)

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