

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

WRIT PETITION NO. 1502 /2016
WITH
WRIT PETITION NO.2043/2016

WRIT PETITION NO. 1502 /2016

- 1) Vidarbha Industries Association (VIA)
Nagpur Th: Its Honorary Secretary
Rohit M. Agrawal and 13 others.

..PETITIONERS

v e r s u s

- 1) The Union of India: Through Its Secretary
Ministry of Coal, New Delhi and others

...RESPONDENTS

.....
S/Shri F.T.Mirza/ S.N.Kumar, Advocates for petitioners
Smt. Mugdha Chandurkar, Advocate for Respondent no.1
Shri S.P Dharmadhikari, Senior Advocate with shri C.S.Samudra,
Advocates for Respondents Nos. 2 and 3
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WRIT PETITION NO. 2043/2016

Soyabean Processors Association of India
Indore Th: its Authorised Signatory
Shri D.N. Pathak and 24 others

..PETITIONERS

v e r s u s

- 1) The Union of India: Through Its Secretary
Ministry of Coal, New Delhi and others

...RESPONDENTS

.....
Shri D.V. Chauhan Advocate for petitioners
Smt. Mugdha Chandurkar, Advocate for Respondent no.1
Shri S.P.Dharmadhikari, Senior Advocate with shri C.S.Samudra,
Adv. for Respondent nos. 2 and 3
.....

CORAM: **SMT. VASANTI A. NAIK &**
MRS. SWAPNA JOSHI, JJ.

DATED : 21st July, 2016

PER COURT: (PER SMT.VASANTI A. NAIK, J.)

Since the issues involved in these Writ Petitions are similar and since by the prayers made in the petitions, the petitioner-industries have sought a direction against the respondent-Western Coalfields Limited, to renew the Fuel Supply Agreements in favour of the petitioners for a period of five years from 1.4.2013 to 31.3.2018, they are heard together and are decided by this common order.

2. The petitioners Industries had entered into Fuel Supply Agreements with the respondent-WCL, in the year 2007, for supply of coal to the petitioners, for a period of five years, from 2007 to 2013. According to the petitioners, Coal India Limited had permitted the renewal of the Fuel Supply Agreements for a period of five years on 6.6.2013 and the said decision was communicated by the General Manager of Coal India Limited to the subsidiaries of Coal India Limited, that includes the respondent-WCL. Coal India Limited had approved the renewal of Fuel Supply Agreements for a period of five years on certain conditions that were mentioned in the communication dated 6th June, 2013, one of them being, that the Fuel Supply Agreements could be renewed only after proper verification of the Fuel

Supply Agreement holders as *bona fide* users of coal. It is the case of the petitioners that after the Board had granted approval for renewal of the Fuel Supply Agreements for a period of five years from 2013 to 2018, the petitioners continuously represented to the WCL seeking the renewal of the Fuel Supply Agreements for a period of five years from 1.4.2013 till 31.3.2018. It is the case of the petitioners that the necessary documents, as sought by the WCL, were supplied by the petitioners to the WCL, but agreements were not renewed in the case of the petitioners for five years though they were renewed in favour of some other Industries that are named in the Petitions. It is stated that agreements were renewed from time to time only for short durations of 2-3 months in respect of the petitioners. According to the petitioners, there was a change in the policy in 2016 and as per the policy of the Government of India, dated 15.2.2016, the allocation of coal could be made only by linkage auction with effect from 15.2.2016. It is the case of the petitioners that as per the new policy dated 15.2.2016, the subsidiaries of Coal India Limited were restrained from renewing the existing Fuel Supply Agreements that were maturing in 2015-16 and onwards. It is stated that the extant arrangements in respect of supply of coal like in the case of the petitioners, were required to be continued till the commencement of coal supply under the linkage auction. It is the case of the petitioners that despite the policy of the year 2013 that required the WCL to extend the Fuel Supply Agreements by a period of five years, with effect from 1.4.2013 till 31.3.2018

the respondent-WCL had failed to renew the agreements for five years and had successively renewed them by short terms of 2-3 months. Since the Fuel Supply Agreements were not renewed for five years at one stroke in 2013, the petitioners have filed these Writ Petitions seeking the renewal of the agreements till 31.3.2018.

3. The learned counsel for the petitioners contended that it was necessary for the respondent-WCL to have renewed the Fuel Supply Agreements in the year 2013 or immediately thereafter as the petitioners were continuously making representations to the WCL for renewal of the agreements in terms of the policy of the year 2013. It is submitted that the petitioners had supplied the necessary documents to the respondent-WCL from time to time and there was no hurdle in the way of the respondent-WCL in not renewing the Fuel Supply Agreements till 31.3.2018. It is stated that whenever the WCL demanded the documents, as required, the petitioners had submitted the same to the respondent-WCL. It is stated that the action on the part of the respondent-WCL in extending the Fuel Supply Agreements in respect of some other industries while refusing to extend the agreements in the case of the petitioners is discriminatory and arbitrary and violative of the provisions of Article 14 of the Constitution of India. It is stated that the respondent-WCL, a public sector undertaking, could not have acted arbitrarily by renewing the agreements in favour of some of the industries, while refusing

to renew the same in favour of the petitioners. It is submitted that though some of the petitioners in these Writ Petitions had filed Writ Petition No. 1592/2013 challenging the action on the part of the respondent-WCL in asking them to produce the documents mentioned in the communications that were impugned in the said Writ Petition, the respondent-WCL could have renewed the agreements after the Writ Petition was dismissed on 2nd July 2015. It is stated that for the Industries that were not parties to the said Petition, the Fuel Supply Agreements could have been renewed even before the Writ Petition was decided. The learned counsel for the petitioners relied on the judgment reported in (1979) 3 SCC 489: Ramana Shetty vs. International Airport Authority of India and others, to submit that a Public Sector Undertaking like the respondent, cannot act arbitrarily. Also, reliance was placed on the judgment of the Hon'ble Supreme Court, reported in 1999 (4) SCC 727: (Punjab Communications Ltd. vs. Union of India and others, to canvass that the principle of substantive legitimate expectation, that was applied in the said decided case, would also apply in the case of the petitioners herein, and the policy of the year 2013 could be enforced in favour of the petitioners despite the coming into force of the new policy dated 15.2.2016, by which agreements could not have been renewed as coal was required to be distributed by linkage auction. It is stated that the right that had accrued in favour of the petitioners, in view of the policy of 2013, could not have been withdrawn by the policy dated 15.2.2016. It is stated that the documents as

sought by the respondent-WCL, were submitted by the petitioners and, therefore, it would be necessary to direct the respondent-WCL to renew the Fuel Supply Agreements in favour of the petitioners till 31.3.2018, as per the policy of the year 2013. It is stated that delay cannot be a ground for refusing the relief in favour of the petitioners, more so, when the WCL renewed the agreements in short spells by limited durations and the petitioners were therefore not in urgent need of getting the agreements renewed for five years.

4. *Per contra*, it is submitted on behalf of the respondent- WCL that as per the policy of 2013, that is reflected from the communication dated 6th June 2013, the Fuel Supply Agreements could have been renewed only after proper verification of the Fuel Supply Agreement holders, as *bona fide* users of coal. It is stated that the WCL decided to seek certain documents from the Industries like the petitioners, while considering the renewal of the Fuel Supply Agreements in their favour. It is submitted that no sooner did the respondent-WCL seek the documents and other information by a couple of communications, several industries including some of the industries that are the petitioners herein, filed Writ Petition No.1592/2013 challenging the communications of the WCL, by which certain information and documents were sought. An exception was taken by the petitioners in the earlier petition to the action of the WCL in seeking the documents for verification. It is stated that the said petition was pending, till it was dismissed on 2nd July 2015 by

upholding the action on the part of the respondent-WCL of seeking the necessary documents before considering the claims for renewal of the Fuel Supply Agreements. It is submitted that in respect of the erstwhile core sector consumers, only annual document verification was required; whereas for the erstwhile non-core sector consumers, like most of the petitioners herein, documents were required to be submitted monthly as well as annually. It is submitted that in view of the interim orders passed in Writ Petition No. 1592/2013, the respondent-WCL was restrained from seeking some of the documents that were sought by the communications that were impugned in the said Petition. It is submitted that since in respect of the erstwhile core sector consumers, only annual verification was required and since most of the erstwhile core sector consumers had tendered the necessary documents annually, the Fuel Supply Agreements were renewed in their favour. It is submitted that after the Writ Petition was dismissed on 2.7.2015, the respondent -WCL received the minutes of the seventh meeting of Inter Ministerial Committee, constituted for considering the policy pertaining to linkage auction, dated 24th September 2015 and the respondents were informed that the Fuel Supply Agreements that were expiring/maturing in 2015-16 and onwards, may not be renewed so that the coal quantities pertaining to such consumers could be made available for linkage auction. It is stated that before the Minutes of Coordination meet dated 24th September, 2015 were addressed to the WCL, the minutes of the Coordination meet dated

2.7.2015 were received by the respondent-WCL and as per the decision in the said meeting, *status quo* was directed to be continued in respect of the Fuel Supply Agreements that were expiring during the year 2015-16. It is submitted that after the Writ Petition challenging the communications of the WCL, seeking the specified documents was decided by this Court on 2.7.2015, the respondent-WCL has not renewed a single Fuel Supply Agreement. It is stated that the respondent-WCL took a conscious decision of not renewing the Fuel Supply Agreements on the basis of the policy of the year 2013, in view of the decision in the meetings dated 2nd July 2015 and 24th September 2015. It is submitted that after the new policy was brought into force on 15th February 2016, the petitioners have rushed to this Court seeking the renewal of the Fuel Supply Agreements till 31.03.2018. It is stated that after Coal India Limited has scrapped the policy of the year 2013 by its policy dated 15.2.2016, it would not be possible for the WCL to renew the Fuel Supply Agreements in favour of the petitioners. It is submitted that in the circumstances of the case, the Writ Petitions are liable to be dismissed, more so when the respondent-WCL has disputed that the petitioners have tendered the requisite documents to the WCL from time to time, as required by the policy of the year 2013.

5. On hearing the learned counsel for the parties and on a perusal of the documents annexed to the petitions and the reply filed on behalf of the

respondent-WCL, we find that the petitioners have not made out any case for renewal of the Fuel Supply Agreements in favour of the petitioners till 31st March 2018 after the new policy is brought into force on 15.2.2016. As per the policy of the year 2007, the verification of documents was necessary for the erstwhile non-core consumers as well as erstwhile core consumers. The respondent -WCL had executed the Fuel Supply Agreements for a period of five years in favour of the petitioners, in the year 2007. In the year 2013, Coal India Limited decided to permit the renewal of the Fuel Supply Agreements for a further period of five years from 1.4.2013 subject to certain conditions, including the condition pertaining to the verification of the documents to ensure that the Fuel Supply Agreements holders are *bona fide* users of coal. As soon as the policy of the year 2013 came into existence and the renewal of the Fuel Supply Agreements for a period of five years at one go, was made permissible, the WCL issued a couple of communications to the petitioners asking them to produce documents mentioned in the said communications, for verification. The Vidarbha Industries Association through its members and several other industries filed Writ Petition No.1592/2013 challenging the action on the part of the respondent-WCL in seeking the documents for verification, for the renewal of the Fuel Supply Agreements. It was contended in the said Writ Petition on behalf of the Vidarbha Industries Association and several other industries in this Court that it was not possible for the consumers like the petitioner-industries to produce some of the documents that were

sought and the other documents that were sought by the WCL were irrelevant and were not necessary for renewal of the Fuel Supply Agreements. It was canvassed before this Court that the respondent-WCL had issued the communications dated 26.2.2013 and 5.3.2013, that were impugned therein, only with a view to harass the industries like the petitioners. This Court, however, did not find favour with the case of the petitioners and the Writ Petition was dismissed vide judgment dated 2nd July, 2015 after holding that there was no merit in the submissions made on behalf of the petitioners. We can understand that the petitioners herein, that were parties to the said Writ Petition may not have filed a Writ Petition seeking a direction like the one sought in these Writ Petitions for renewal of the Fuel Supply Agreements till 31st March 2018 as per the policy of the year 2013, as they had challenged the very action on the part of the respondent WCL in asking them to produce the documents and they were not ready to submit them. It is apparent on a reading of Writ Petition No.1592/2013 as also the judgment rendered therein, that the petitioners therein were not ready to comply with the requirements that were sought by the respondent-WCL for extension of the Fuel Supply Agreements. We can understand that the petitioners herein, that were parties to the said Writ Petition could not have filed a Writ Petition in 2013 seeking the renewal of the Fuel Supply Agreements for a period of five years as the communications issued by the respondent-WCL, asking them to tender the documents for the renewal of the Fuel Supply Agreements were questioned by

them. However, we are surprised by the inaction on the part of the other industries including the petitioner-industries in these petitions that had not filed Writ Petition No.1592/2013, challenging the action on the part of the WCL to call the documents, as they could have filed a petition in 2013 seeking a direction against the WCL to renew the Fuel supply agreements till 2018. Time is whiled away by the industries that were not parties to the earlier petition by sitting on the fence and waiting for the decision of this Court in Writ Petition No.1592/2013, filed by the Vidarbha Industries Association and some other industries. If it is the case of the petitioners that they were supplying every document that was sought by the respondent-WCL and still the respondent-WCL was not renewing their Fuel Supply Agreements despite their representations from the year 2013, we fail to fathom as to what prevented the petitioners from approaching this Court for three long years till the new policy came into existence on 15.2.2016 and Coal India Limited decided that agreements expiring in 2015-16 and onwards could not be renewed as coal could be distributed only by linkage auction. We find that there is absolute inaction on the part of the petitioners in seeking the relief that is sought by the petitioners for the first time after the new policy came into existence on 15.2.2016. Not one industry had come forward during the past three years i.e. from 1st April,2013 till these Writ Petitions are filed three years later in February and March,2016, for a direction to the respondent-WCL to renew the Fuel Supply Agreements in their favour, in view of the policy of

the year 2013. If the petitioners were of the view that the Fuel Supply Agreements were renewed in favour of others while they were not renewed in their favour, despite the compliance of the conditions, we fail to follow as to why the petitioners waited till the new policy was brought into force on 15.2.2016. The inaction on the part of the petitioners makes us believe the case of the respondent WCL that the Fuel Supply Agreements were not renewed in favour of the petitioners as the petitioners had not tendered the documents as per the requirement of the respondent-WCL, as the very communications seeking the necessary documents were challenged in Writ Petition No.1592/2013. The submission made on behalf of the petitioners that they were regular in supplying the requisite documents to the respondent-WCL is seriously disputed by the WCL. We would not like to decide the factual dispute in exercise of the writ jurisdiction, more so, when the question in respect of supply of documents relates to three long years and the Writ Petition is filed after the new policy was brought into force on 15.2.2016. It is the case of the petitioners that some of the petitioners had supplied the documents monthly and some of them have not. It is the case of some of the petitioners in the rejoinder, that they had supplied the documents as and when they were demanded by the WCL and when they were not demanded, they were not supplied. We do not find anything in the policy of 2013 that permits the erstwhile non-core consumers like the petitioners to supply the documents only on demand. The petitioners seeking renewal of the Fuel

Supply Agreements in their favour had not adhered to the policy of 2013 by immediately supplying the documents, as sought by the respondent-WCL vide the communications that were impugned in Writ Petition No.1592/2013. Had the petitioners supplied the documents as per the requirement, the petitioners would have knocked the doors of this Court immediately, bringing it to the notice of this Court that despite the fact that they had supplied the necessary documents, to the WCL regularly, every month as per the policy for the non-core consumers, the respondent-WCL is not renewing the Fuel Supply Agreements in their favour, for five years. We find that there is total inaction on the part of the petitioners in seeking the relief that is claimed for the first time after three years, when the policy was changed on 15.2.2016. The minutes of the meeting of the concerned Committees were served on the respondent-WCL after the meetings were conducted on 2.7.2015 and 24.9.2015 and it was therefore not possible for the respondent-WCL to renew the Fuel Supply Agreements in favour of any of the consumers, like the petitioners, in view of the decision, not to renew the agreements expiring in 2015-16 and onwards. The decision in the said meetings for distribution of coal by linkage auction was conveyed to the respondent-WCL and hence not a single Fuel Supply Agreement is renewed after the Writ Petition was dismissed on 2.7.2015. We accept the submission made on behalf of the respondent-WCL, that anyways, they could not have renewed the Fuel Supply Agreements after they were informed about the decision of Coal India

Limited not to renew the agreements that expired in 2015-16 as per the decision in its meeting dated 2.7.2015. In the circumstances of the case, we find that the action on the part of the respondent WCL in not renewing the Fuel Supply Agreements in favour of the petitioners is neither discriminatory nor arbitrary. The WCL had renewed the agreements for five years mainly in the cases of the erstwhile core consumers, where only yearly verification was required. Since for the erstwhile non-core consumers like the petitioners monthly verification was necessary and since according to the WCL, the petitioners had not supplied all the documents and many of them had challenged the communications of the WCL asking for the documents by filing Writ Petition No.1592 of 2013, the Fuel Supply Agreements could not be renewed in their favour, till 31.3.2018. In the aforesaid set of facts, it cannot be said that the action on the part of the WCL in not renewing their agreements is discriminatory. Had the petitioners approached this Court in the year 2013 with a case that they had supplied everything that was required by the WCL, to the WCL, this Court may not have had an occasion to deny the relief. However, after coming into force of the new policy by which Coal India Limited has decided to save the coal for linkage auction by not renewing the agreements expiring on 2015-16 and onwards, it would not be possible for this Court to direct the respondent-WCL to enforce the policy of the year 2013 in favour of the petitioners and extend the Fuel Supply Agreements till 31.3.2018 in defiance of the policy of Coal India. We are

not inclined to apply the principle of substantive legitimate expectation to the facts of the case. It was actually expected of the petitioners to have approached this Court in the year 2013 to seek the relief that is sought by the petitioners for the first time after three years from the policy of 2013, when the policy was modified on 15.2.2016. The petitioners have awakened from their deep slumber after 15.2.2016, by filing the petitions within a fortnight from the date on which the new policy was brought into force. We do not find any *bona fides* in the action on the part of the petitioners, in doing so. It is well-settled that mere making of representations would not stop the running of the time. Extent of delay in this case would be referable to the expected diligence on the part of the petitioners to have approached this Court in the year 2013 seeking the renewal of the Fuel Supply Agreements. The judgment reported in 1999 (4) SCC 727 (supra) and relied on by the counsel for the petitioners cannot be applied to the case in hand. We cannot, in the circumstances of the case, direct the respondent-WCL to renew the Fuel Supply Agreements in favour of the petitioners for a period expiring on 31.3.2018, by applying the principle of substantive legitimate expectation. The submission that there was no delay on the part of the petitioners in approaching this Court as the Fuel Supply Agreements were renewed from time to time for a short duration and, therefore, the petitioners did not feel it necessary to file petitions seeking renewal of the agreement for a period of five years is not well founded and is liable to be rejected. We have already

recorded herein-above that some of the petitioners were parties to the earlier Writ Petition and the petitioners that were not parties to the same, could have immediately approached this Court seeking a direction to renew the Fuel Supply Agreements by five years. If a particular provision or policy provides for renewal of an agreement by a period of five years at once and if the Authority that is liable to renew the agreement for a period of five years does not renew the agreement by a period of five years and continues to renew it for short durations, from time to time, it is not expected of the party who is entitled to the renewal for a period of five years, to be content with the renewal of the agreements by a couple of months, from time to time. Such a conduct on the part of the party may make one believe that the party had given up the right to get the agreement renewed by five years, at one go. If a provision requires that an action be taken by the authority in a particular manner and if the authority does not perform the action in the manner so prescribed, it is not expected of the other party to sleep over the matter, take it lightly and wake up only after the policy is changed or the provision is scrapped and a new provision or policy is brought into force and then blame the authority for not performing the action in the manner prescribed.

6. On a query made by the Court to the counsel for the WCL, whether the arrangement of supplying coal to the petitioners would continue till the linkage auction is actually conducted, a statement is fairly made on

behalf of the WCL, on instructions that where the arrangement to supply coal to the Industries like the petitioners was expiring on 30.6.2016, they would be supplied coal till the linkage auction of that particular sub-sector is conducted. The said statement is based on the communication received from the General Manager of Coal India Limited, Marketing Division, dated 25.5.2016, and the petitioners would therefore continue to receive coal till the linkage auction for their respective sub-sector is conducted.

7. In the circumstances of the case, since the respondent-WCL cannot be directed to renew the Fuel Supply Agreements for a period of five years from 1.4.2013 till 31.3.2018, we dismiss the Writ Petitions, with no order as to costs.

JUDGE

JUDGE

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