

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.288 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 565 of 2012**

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1. Coal India Limited, through its Chairman, having its office at 10, Netaji Subhash Road, Calcuta
 2. The Bharat Coking Coal Limited through its Chairman cum Managing Director, Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand
 3. The Chief General Manager (S&M), Bharat Coking Coal Limited, Koyla Bhawan, Koyla Nagar, Dhanbad, Jharkhand

.... Appellant/s

Versus

M/s Bandana Fuel Industries, a proprietorship concern having its factory at Shankapur, Sikariyan, Dehri-on-Sone, District- Rohtas (Sasaram), Bihar through its Manager Sri Binod Singh, son of Sri Jai Mangal Singh, resident of New Delian, P.O. Dehri-on-Sone, P.S. Dehri, District- Rohtas, Sasaram, Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anupam Lal Das, Advocate
Mr. Vishwa Mohan Kumar Sinha, Advocate
For the Respondent/s : Mr. Arbind Kumar Jha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 25-04-2017

Seeking exception to an order dated 10.12.2015 passed by the learned Writ Court in C.W.J.C. No. 565 of 2012 this appeal has been filed by the appellants under Clause 10 of the Letters Patent.

2. Aggrieved by an order passed on 01.10.2011 by the authorities of Bharat Coking Coal Limited, whereby a Fuel Supply Agreement entered into between the appellants and the respondent on



30th of June, 2008 was cancelled, the writ petition was filed and the writ petition having been allowed on account of the fact that before passing the impugned order principles of natural justice have not been followed, this appeal has been filed by the appellants.

3. From the detailed facts that have come on record, we find that initially the Fuel Supply Agreement not only of the respondent herein M/s Bandana Fuel Industries but of two other contractors namely, M/s Bihar Fuel Industries and M/s Swarnrekha Coke and Coal Pvt. Ltd. were cancelled by an order originally passed on 09.11.2010. Challenging the order dated 09.11.2010 all the three contractors named hereinabove including the present respondent approached this Court by filing three writ petitions. Respondent M/s Bandana Fuel Industries filed C.W.J.C. No. 4460 of 2011, the contractor M/s Bihar Fuel Industries and M/s Swarnrekha Coke & Coals (P) Ltd. filed C.W.J.C. Nos. 6754 of 2011 and 7436 of 2011 and a Bench of this Court by a common order passed in all the three writ petitions on 12.07.2011 quashed the order dated 09.11.2010 and in Paragraph 5 of the order issued the following directions:-

“5. Considering the entire facts and circumstances of these cases as well as the materials on record and the documents of the parties, these writ petitions are allowed. The impugned order of the Bharat Cooking Coal Limited dated 09.11.2010 is



quashed. However, the respondents Bharat Cooking Coal Limited and its authorities will be at liberty to pass fresh orders in accordance with law as well as in accordance with the decision of the Supreme Court after giving liberty to the petitioners to place their cases and documents. Petitioners are directed to submit their reply before the Chief General Manager (S&M) Bharat Coking Coal Limited, Dhanbad (respondent no. 3) within fifteen days from today. If the respondents-authorities require the petitioners to supply any additional paper/reply, they shall intimate the petitioners with respect to the same in writing within two weeks thereafter in response to which the petitioners may submit such additional documents/reply within fifteen days thereafter. The respondent concern, namely respondent no. 3, the Chief General Manager (S & M), Bharat Coking Coal Limited, Dhanbad shall pass a reasoned and speaking order in accordance with law especially the law settled by the Supreme Court after considering the replies and materials produced by the petitioners within ten weeks of the completion of pleadings.”

4. Based on the aforesaid direction, the appellants herein reconsidered the matter and vide order passed on 01.10.2011 again terminated the agreement of all these three contractors. Challenging this order passed on 01.10.2011, both the respondent M/s Bandana Fuel Industries and the other contractor M/s Bihar Fuel



Industries filed writ petitions. The writ petition filed by the present respondent was registered as C.W.J.C. No. 565 of 2012 and the writ petition filed by Bihar Fuel Industries was registered as C.W.J.C. No. 20039 of 2011. In the case of Bihar Fuel Industries (supra) submissions were made and it was again pointed out that after remand made in the earlier writ petitions again the impugned action has been taken without following the principles of natural justice, without granting proper opportunity of hearing and in violation to the principles of granting a fair and reasonable opportunity to the petitioners. The learned Writ Court considered this aspect of the matter in the case of Bihar Fuel Industries (supra) and by a detailed order passed on 24.04.2012 running to more than 18 pages came to the conclusion that on the grounds canvassed the writ petition cannot be entertained, did not interfere with the impugned order dated 01.10.2011, recorded a finding to hold that various disputed questions of facts are involved and relegated the petitioner therein M/s Bihar Fuel Industries to take recourse to the alternate remedy available under the common law. Before doing so, various aspects of the matter with regard to propriety of the action taken by the coal company was taken note of by the Writ Court. However, the writ petition filed by the present respondent M/s Bandana Fuel Ltd. being C.W.J.C. No. 565 of 2012 after notices were issued in that case the appellant herein



filed a detailed reply and in the counter affidavit brought on record the order dated 24.04.2012 passed in the case of Bihar Fuel Industries vide Annexure-R/7 and sought for disposal of the matter in identical terms.

5. We find that when the writ petition of the present respondent M/s Bandana Fuel Industries was considered by the Writ Court on 10.12.2015, only on the ground that reasonable opportunity of hearing has not been granted and the directions issued in the earlier writ petitions have not been properly complied with, the writ petition has been allowed and it was also indicated that the action has been taken on the basis of a non-existent document which was quashed. Be that as it may, the fact remains that when C.W.J.C. No. 565 of 2012 was heard by the learned Writ Court the order passed in the case of Bihar Fuel Industries (supra) on 24.04.2012 challenging the same order identical in terms of 01.10.2011 passed by the Coal company was available on record and we find that the learned Writ Court has not adverted to consider the aforesaid order at all in the impugned order. In fact when it was the case of the coal company that the matter stands concluded vide order passed on 24.04.2012 in C.W.J.C. No. 20039 of 2011, in our considered view, it was incumbent upon the learned Writ Court to advert to consider this objection of the coal company, may be the Writ Court for reasons to be recorded to



disagree with the order, follow it or make certain observation but once a coordinate Bench with regard to the same issue has already rendered a judgment, judicial discipline, judicial propriety and the requirement of law is that the said judgment has to be taken note of and a decision taken after adverting to consider the said judgment. This having not been done, on this ground alone, this appeal has to be allowed and the matter remanded back to the Writ Court for reconsideration.

6. In the light of the observations made hereinabove, we are of the considered view that once the coordinate Bench and a coordinate Bench of identical strength has decided an issue, the subsequent Bench dealing with the issue is under law obliged to consider the order and thereafter take a decision. That being so, it is a fit case where the appeal should be allowed, order passed by the Writ Court quashed and the matter remanded back to the Writ Court for reconsideration.

7. We are of the considered view that the Writ Court after taking note of the order passed on 24.04.2012 in C.W.J.C. No. 20039 of 2011 should proceed in the matter and take a decision as early as possible.

8. With the aforesaid, the appeal is allowed. All other questions canvassed before us at the time of hearing are kept open.



We have not adverted to these and it would be for the parties to advance these questions when the writ petition on remand is taken up for hearing by the learned Writ Court.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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