IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

APO 278 of 2016
With
WPO 1525 of 2003

TATA STEEL LIMITED
VS.
COAL INDIA LIMITED AND ORS.

WITH

APO 279 OF 2016
With
WPO 545 of 2002

TATA STEEL LIMITED
VS.
COAL INDIA LIMITED AND ORS.

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant	: Mr. Debashis Kundu, Sr. Adv. Ms. Vineeta Meharia, Adv. Mr. Jaydeb Ghorai, Adv. Mr. Diptesh Ghorai, Adv.
For the Union of India	: Mr. Sunil Kumar Singhania, Adv.
For the Respondents	: Mr. Shaunak Sengupta, Adv. Mr. Abir Debnath, Adv. Mr. Pradipta Bose, Adv.

Hearing concluded on	: August 22, 2024
Judgment on	: September 12, 2024

<u>DEBANGSU BASAK, J.</u> :-

1. Appellant has assailed the judgement and order dated September 6, 2016 passed in two writ petitions being WPO 545 of 2002 and WPO No. 1525 of 2003. The appellant had filed both the writ petitions.

2. By the impugned judgement and order the learned Single Judge has dismissed both the writ petitions of the appellant.

3. Learned Senior Advocate appearing for the appellant has contended that, the appellant is engaged in manufacture of sponge iron. Appellant has a requirement of a particular variety of coal to carry out such manufacturing activity.

4. Learned Senior Advocate appearing for the appellant has contended that, coal was clarified as an essential commodity falling within the terms of section 2 (a) (ii) of the Essential Commodities Act, 1955. Coal has been under control till sometime in 2001. Appellant has been receiving specific grade of coal from certain collieries of the subsidiary companies of Coal India Limited (CIL) since 1987 under the coal linkage granted by the Ministry of Coal/Ministry of Steel/CIL. Appellant has been receiving specified quantity and quality of coal from various subsidiaries of CIL being

Eastern Coalfields Ltd (ECL), Central Coalfields Ltd (CCL), and Mahanadi Coalfields Ltd (MCL).

5. Learned Senior Advocate appearing for the appellant has contended that, although, Government of India had evinced an intention of abolishing the linkage system of selling coal and adoptinig a more direct method of selling coal by entering into Fuel Supply Agreements, such agreements were never entered into. The claim that, policy of linkage had been given a go bye is incorrect as it would appear from the letter dated November 7, 2001 issued by the Joint Industrial Adviser.

6. Learned Senior Advocate appearing for the appellant has drawn the attention of the Court to the fact that, in 2000 the Colliery Control Order, 2000 came into force replacing the earlier Colliery Control Order, 1945. In terms of the Colliery Control Order, 2000, CIL had become entitled to determine the price of coal. CIL had consequently notified coal prices in terms of Colliery Control Order, 2000.

7. Learned Senior Advocate appearing for the appellant has contended that, the Coal Price Notification dated September 10, 2001 was issued by CIL to all subsidiaries of it including CCL revising the price of various grades of coal. He has referred to clause 10 thereof which permitted imposition of additional charges only for beneficiation/special sizing of coal over and above the notified price. He has contended that, there was no provision for imposition of add-on charge/source specific premium charges.

8. Learned Senior Advocate appearing for the appellant has contended that, CCL sought to impose add-on charges over the base price of the premium variety of coal and called upon the appellant to make payments of the same. Faced with the threat of non-supply of such specific variety of coal, the appellant had under protest made payment of the same and kept on paying the same under protest till August 18, 2002 when pursuant to directions of CIL such add-on charges/source specific premium charges were discontinued by CCL.

9. Learned senior advocate appearing for the appellant has pointed out that, in WPO No. 545 of 2002, the wrongful, arbitrary and illegal imposition of add-on charges/source specific premium charges on the coal supplied by CCL with effect from April 1, 2001 at the rate of 10% and with effect from September 1, 2001 till August 18, 2002 at the rate of 30% was challenged.

10. Learned senior advocate appearing for the appellant has submitted that, during the pendency of the first writ petition, several meetings were held and correspondences exchanged between the appellant and CCL wherein CCL proposed entering into a Memorandum of Understanding. Appellant had refused to execute such Memorandum of Understanding. CCL had proposed issuing supplementary bills for regularizing the add-on charges/source specific premium charges which were lying in the suspense account of CCL.

11. Learned Senior Advocate appearing for the appellant has contended that, CCL had no power under the provisions of the Coal Control Order, 2000 to realize any add-on sums over and above the base price of the coal as notified by CIL from the appellant. Appellant had challenged this wrongful action of CCL in the 2nd writ petition being WPO No. 1525 of 2003.

12. Learned Senior Advocate appearing for the appellant has contended that, the learned Single Judge failed to appreciate that apart from CCL no other subsidiary had charged over and above the price fixed by CIL and that, CCL had no power to do so.

13. Learned Senior Advocate appearing for the appellant has contended that, all and every payment of add-on charges/source specific premium were made under protest and laced with terms and conditions. In this regard, he has drawn the attention of the

Court to the letters dated April 10, 2001 and April 12, 2001 of the appellant where, the appellant paid 10% premium on supplies of coal on protest. He has pointed out that, the letter and the undertaking dated April 20, 2001 were on protest and on conditions. Similarly, by the letter dated October 10, 2001 appellant had paid 30% premium on protest. He has pointed out that, appellant had written letters dated October 20, 2001 and November 3, 2001 to the Ministry of Steel and CIL respectively complaining about imposition of 30% premium on coal supplies by CCL. He has referred to the letter dated October 23, 2001 written by the appellant to CCL requesting for refund of 30% premium if found not payable in future. Appellant had also offered to enter into a Memorandum of Understanding/Fuel Supply Agreement on mutually accepted terms and to pay 30% premium subject to adjustment based on final decision in the Memorandum of Understanding by a writing dated November 23, 2001. Appellant had reiterated its stand that 10% and 30% premium had been paid under protest and sought refund of the same by the letter dated April 23, 2003. A meeting had been held between the appellant and CCL on June 16, 2003 where the appellant had recorded detailed objection on imposition of 10% and 30% source specific charges.

This fact has been pointed out by the appellant by letter dated July 7, 2003. Appellant had repeated its stand by its letter dated July 20, 2003.

14. Learned Senior Advocate appearing for the appellant has contended that, payment of source specific premium were made under orders of Court and accepted by CCL as such. In this regard, he has referred to the order dated March 22, 2001 passed by the High Court in WPO 545 of 2002 permitting the appellant to accept supply of coal upon payment of 30% premium without prejudice to its rights and contentions. He has also pointed out that the Memorandum of Understanding/Fuel Supply Agreement were executed by the appellant under orders of Court and without prejudice to the rights and contentions of the appellant. In this regard, he has drawn the attention of the Court to the order dated July 30, 2003 passed in WPO 1525 of 2003 directing the appellant to sign the Memorandum of Understanding and Fuel Supply Agreement by August 4, 2003 without prejudice to the rights and contentions and that, payments made would be subject to the result of the writ petition.

15. Learned Senior Advocate appearing for the appellant has contended that the finding of the learned Single Judge that the old contract was superseded by a new contract and that there was a variation/novation of the old contract was erroneous. He has contended that, the coal linkage granted to the appellant by the letter dated March 5, 1997 was issued by CIL and not by CCL and as such there was no agreement between the appellant and CCL for a novation to occur. In any event, actions taken under protest and with conditions cannot be said to have resulted in a novation of a contract. He has contended that, the finding of the learned Single Judge that, appellant took supply of the coal at a premium from CCL after agreeing to pay the same unconditionally, is erroneous. He has contended that, a right granted in favour of the appellant cannot be superseded/varied/negated on the appellant accepting the supplies under protest and on various conditions and paying the illegally demanded add-on charges/source specific premium charges.

16. That apart, learned senior advocate appearing for the appellant has contended that, imposition of add-on charges/source specific premium charges is illegal as it is in violation of price notifications issued by CIL. CIL is the only authority both under the Colliery Control Order of 1945 as well as 2000 which has the authority to fix the price of coal. Price notifications that had been issued by CIL are binding on its subsidiaries including CCL.

17. Learned Senior Advocate appearing for the appellant has contended that, no reason has been disclosed for the imposition of add-on charges/source specific premium charges by CCL. He has contended that, any imposition which is aimed at profiteering is not permitted and in support of such contention, he has relied upon ***2007 volume 2 Supreme Court Cases 640 (Asoka Smokeless Coal India Private Ltd and others versus Union of India and others)***.

18. Learned Senior Advocate appearing for the appellant has submitted that, since the imposition was without any basis, it was discontinued after a period of 18 months. Parties had entered into a Fuel Supply Agreement under which, coal was supplied to the appellant by CCL at notified price without imposition of any additional source specific charge. Moreover, CCL had insisted on regularization of the illegal imposition by issuance of supplementary bill. In this regard, he has referred to the letters dated April 16, 2003 and July 18, 2003 issued by CCL to the appellant and meetings held on June 16, 2003 and June 17, 2003 where, settlement of past 10% ad hoc and 30% source specific charge already paid by the appellant were sought to be regularized before entering into the Fuel Supply Agreement. By letter dated February 18, 2002 appellant had complained to the Sponge Iron Manufacturers Association about discrimination between Sponge Iron Manufacturers and Cement/Power manufacturers.

19. In support of his contentions that, CCL is an Article 12 authority and actions taken by it have to pass the test of Article 14, learned senior advocate appearing for the appellant has relied upon ***1993 Volume 1 Supreme Court Cases 445 (Sterling Computers Ltd versus M/s. M & N Publications Ltd and Others)***, ***2004 Volume 3 Supreme Court Cases 553 (ABL International Ltd and Another versus Export Credit Guarantee Corporation of India Ltd and Others)***, ***2006 Volume 10 Supreme Court Cases 236 (Noble resources Ltd Versus State of Orissa And Another)***, ***2015 Volume 7 Supreme Court Cases 728 (Joshi Technologies International Inc Versus Union of India and Others)*** and ***2023 Volume 2 Supreme Court Cases 703 (MP Power Management Co Ltd versus Sky Power Southeast Solar India Private Ltd and Others)***.

20. Learned Senior Advocate appearing for the appellant has relied upon ***1964 SSC online SC 10 (State of Madhya Pradesh and***

Another versus Bhailal Bhai) and ***1998 Volume 8 Supreme Court Cases 208 (Gujarat Ambuja Cement Ltd and Another versus Union of India and others)*** for the proposition that money extracted arbitrarily can be directed to be refunded.

21. Learned advocate appearing for the respondents has referred to the sequence of events. He has pointed out that, coal linkage was applicable at the material point of time. On March 7, 1997, request for change of source made by the appellant was approved by the respondent. Respondent had approved of coal linkages with regard to the appellant on September 18, 1998. In April 2001, appellant had given an undertaking to pay additional 10% price hike under protest. A meeting had been held on September 22, 2001 between the parties where it was pointed out that if 30% premium was not paid by the appellant then the appellant can explore other sources for supply. Respondent had also pointed out that, 10% premium charged earlier was only an interim measure.

22. Learned advocate appearing for the respondents has submitted that, the appellant agreed to pay 30% premium subject to 3 conditions, on October 10, 2001. He has submitted that, all conditions of the appellant had been fulfilled. Appellant had furnished an undertaking for payment of 30% premium. By the letter dated October 23, 2001, appellant had stated that if the premium of 30% was found not payable at a future date, then such premium must be returned to the appellant. Appellant had paid 30% premium without any protest on December 6, 2001. Subsequently, parties had executed a Fuel Supply Agreement.

23. Learned advocate appearing for the respondents has submitted that, the writ petitions are not maintainable since, the subject matter thereof relate to contract which was purely commercial in nature as opposed to statutory contract and no public element was involved. He has relied upon ***Joshi Technologies (supra)*** and ***2000 Volume 6 Supreme Court Cases 293 (Kerala State Electricity Board and Another vs. Kurien E. Kalathil and Others)*** in this regard.

24. Relying upon ***Ashoka Smokeless (supra)*** learned advocate appearing for the respondents has contended that, Colliery Control Order provides no embargo on price fixation. Subsequent to the control of coal with effect from January 1, 2000 no embargo can be placed on price.

25. Learned advocate appearing for the respondents has submitted that, there are several advantages of source specific coal and the appellant had enjoyed all of the same. He has pointed out that, the cost of coal is taken into consideration to fix the cost of production by the buyer. Therefore, the appellant had suffered no prejudice. In any event, appellant had conceded the discretion to charge 30% premium to the respondents by the letter dated October 23, 2001. Appellant did not raise any further objection subsequent thereto and therefore cannot be allowed to contend to the contrary.

26. Appellant has a sponge iron manufacturing unit which requires specialized quality and grade of coal not found in all collieries in India. Central Government had treated coal to be an essential commodity within the meaning of Section 2(a)(ii) of the Essential Commodities Act, 1955 at the material point of time.

27. Coal is an essential commodity supply thereof had been regulated under the provisions of the Colliery Control Order, 1955 subsequently replaced by the Colliery Control Order, 2000.

28. Appellant had enjoyed supply of coal of specified grade and quality from various subsidiaries of CIL being ECL, CCL and MCL. Appellant had been receiving coal from Churi and Ray Bachara Coal mines of CCL in terms of linkage letters dated March 5, 1997, September 18, 1998, September 23, 1998, November 7, 2001 and April 27, 2002.

29. During the subsistence of the Colliery Control Order, 2000, Central Government had conceived of abolishing the linkage system of selling by adopting a more direct method of entering into Fuel Supply Agreements, to be executed between the coal companies and the coal consumers.

30. Under the Colliery Control Order, 2000, CIL had issued a coal price notification dated September 10, 2001 revising/fixing prices of various grades of coal. Such coal price notification order dated September 10, 2001 had permitted imposition of additional charges only for basification/special sizing of coal over the notified price in Clause 10 thereof.

31. Disputes and differences between the appellant and CIL, in particular CCL arose, when, CCL had imposed add on charges for the best price of the premium variety of coal dated April 1, 2001 and called upon the appellant to pay the same. Appellant had paid the price demanded, according to the appellant, on protest to CCL till August 8, 2002.

32. Appellant had filed WPO No. 545 of 2002 assailing the demand and realization of 10 % above the fixed price from April 1, 2001 and 30 % above fixed price from September 1, 2001 over the base price notified by CIL.

33. Parties had had several meetings on the issue of charging of additional amounts, during the pendency of the first writ petition being WPO No. 545 of 2002.

34. Parties had met on September 22, 2001 where, CCL informed the appellant, if the appellant did not pay 30 % premium then the appellant is at liberty to explore other sources. CCL had also informed the appellant that, 10 % premium paid by the appellant was an interim measure. Appellant had agreed to pay 30 % premium subject to three conditions being fulfilled namely, full quantity of 12000 metric tons being allotted to the appellant, such quantity being supplied for three years during the pendency of the FSA and that, in the future, should any purchaser receive lower rate from the same coal mine then the lower rate would be applicable to the appellant. By a writing dated October 10, 2001, appellant had placed on record such agreement.

35. The letter dated October 10, 2001 had referred to the discussion held between the parties in this regard on October 9, 2001. It had also called upon CCL for a letter confirming the acceptance so that, appellant could deposit the money and start taking coal.

36. Officials of appellant had called upon the officials of CCL on October 22, 2001. CCL had issued a letter dated October 22, 2001 to the appellant. In reference to the earlier letter dated October 10, 2001, CCL's letter dated October 22, 2001 and the meeting of the appellant with CCL on October 22, 2001, appellant had issued a letter dated October 23, 2001, where, appellant agreed to pay 30 % premium on the coal supply. Such letter had also placed on record the agreement between the parties that, CCL could stop the premium as and when decision is taken in this connection by CCL/CIL/Ministry. Such letter had also requested CCL to refund the premium in future if found not payable. Apart from the three conditions that had been specified in the letter dated October 10, 2001 for payment of 30 % premium, appellant had, specified that, in the event, any other purchaser received coal from CCL from Churi and Ray Bachara Collieries at a lesser price, then, the lower rate would be applicable.

37. Nothing has been placed on record to suggest, let alone establish that, any of the three conditions imposed by the appellant in the letter dated October 10, 2001 was violated by CCL. CCL had supplied the full quantity from coal mines identified. Appellant has not placed any material to establish that, coal of the same quality from the same coal mines had been supplied by CCL to any other purchaser at a lower rate.

38. Apart from the letter dated October 10, 2001, appellant had unconditionally agreed to pay 30 % premium by the letter dated October 23, 2001. The only request in the letter dated October 23, 2001 was that, in the event, there was any decision by CIL/CCL/Ministry to stop the premium then, such premium would be refunded.

39. Again nothing has been placed on record to suggest, let alone establish that, CCL/CIL/Ministry had stopped the premium at any point of time.

40. Maintainability of the writ petition has been questioned on the strength of the ratio of ***Joshi Technologies International Inc (supra)*** and ***Kerala State Electricity Board and Another (supra)***. Both authorities have held that, Writ Court is not the ordinary forum of resolution of disputes relating to terms of contract with statutory bodies. They have also held that the contract does not become statutory simply because it was awarded by a statutory body. They have observed that contractual or commercial activities of a statutory body need not necessarily raise issues of public law.

41. In ***Sterling Computers Ltd (supra)*** Supreme Court has held that, while exercising powers of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the decision making process or not. By way of judicial review the Court cannot examine the details of the terms of the contracts which have been entered into by the public body.

42. In ***ABL International Ltd and Another (supra)*** Supreme Court has observed that, a writ Court has jurisdiction to entertain a writ petition involving disputed questions of fact in appropriate cases.

43. ***Noble resources Ltd (supra)*** has held that, contractual matters of the State are not beyond the scope of judicial review although the ambit is limited. It has observed that, where state violates Article 14 or public law element is involved or mala fides or ulterior motives are admitted judicial review is permissible even in disputed questions of fact or available of alternative remedy.

44. ***MP Power Management Co Ltd (supra)*** has held that, a matter which allows entirely within a profit realm of affairs of a public body may not lend itself for judicial review under writ jurisdiction.

45. Issue as to charging of premium was violative Article 14 of the Constitution of India or not, had been remanded by the Supreme Court for reconsideration by the High Court in ***Gujarat Ambuja Cement Ltd and Another (supra)***. In ***Bhailal Bhai (supra)*** Supreme Court has observed that, a writ Court has observed that, a writ of mandamus can be issued where money paid to the Government was by mistake in order to give relief by commanding repayment of the same.

46. In the facts of the present case, the awards of the coal linkage were under the Colliery Control Order, 2000 which such orders were passed under the provisions of the Essential Commodities Act. Supply of coal had been regulated by the authorities. Price had been fixed by the authorities for the supply of coal. Appellant has alleged that it had choice in accepting the supply of coal in terms of the coal linkages orders.

47. Appellant had assailed the action of the authorities in seeking a price over and above the price fixed by CCL in respect of the supply. Exercise of powers of the authorities under the four corners of the statutes governing the coal supply has been questioned in the writ petition. Consequently, the writ petitions are maintainable.

48. While dealing with the power of price fixation under Colliery Control Order, 2000, Supreme Court in ***Asoka Smokeless Coal India Private Ltd and others (supra)*** has held that, object of price fixation under the Collieries Control Order is to see that the ultimate consumers obtained the essential commodity at a fair price. It has observed that, it cannot be the law that the public sector undertakings while selling essential commodities suffered or that public sector undertaking must distribute subsidy. It has noted that what is required in terms of the constitutional scheme is to make essential commodity available at a fair price. It has observed that, although reasonable profit may be permissible, profiteering would not be, on the garb of price fixation.

49. Appellants have not placed any material on record to suggest that, the demand for 30 % premium was made for profiteering.

50. In the facts and circumstances of the present case, learned Single Judge has found that, the appellant unconditionally agreed to pay the enhanced price. Consequently, learned Single Judge did not grant any relief to the appellant in both the writ petitions.

51. In view of the discussions above we have found no merit in the present appeals.

52. APO 278 of 2016 and APO 279 of 2016 are dismissed without any order as to costs.

[DEBANGSU BASAK, J.]

53. I agree.

[MD. SHABBAR RASHIDI, J.]

Later :-

Learned Senior Advocate appearing for the appellant submits that the appellant seeks to prefer a Special Leave Petition against the judgement and order delivered today. He points out that there subsists an interim order which appointed Joint Special Officers and that they are holding the money. He submits that a direction be issued upon the joint Special Officers not to part with the money till the disposal of the Special Leave Petition.

The Special Leave Petition is yet to be filed. Moreover, we disposed of both the appeals. Therefore, an indefinite direction upon the joint Special Officers as prayed for may not subserve the interest of justice.

In order to balance the equities, we request the Joint Special Officers not to disburse the money for a period of four weeks from date.

[DEBANGSU BASAK, J.]

I agree.

[MD. SHABBAR RASHIDI, J.]