

12.02.2025
Item No.10
RP/SM
Ct. No.01

FMA 165 of 2023
Industries and Commerce Association & Ors.
Vs.
Coal India Limited & Ors.

Ms. Vineeta Meharia, Sr. Adv.
Mr. Kanishk Kejriwal, Adv.
Mr. Amit Meharia, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Subika Paul, Adv.
Ms. Sonali Pal, Adv.

....For Appellants

Mr. Saikat Roy Chowdhury, Adv.
Mr. Aritra Ghosh, Adv.

....For the Respondent
No.5/BCCL

Mr. Saptangshu Basu, Sr. Adv.
Miss. Akanhsha Mukerjee, Adv.
Mr. Nilankan Banerjee, Adv.
Mr. Pradipta Basu, Adv.

....For the Respondent No.1/CIL

1. This intra-court appeal filed by the writ petitioners in WPA No.30381 of 2014 is directed against the judgment dated 16th December, 2022, by which the writ petition was dismissed on the ground that the court does not have territorial jurisdiction. As could be seen from the impugned order, the learned writ court did not go into the merits of the matters but chose to decide the maintainability of writ petition before the High Court at Calcutta as a preliminary objection was raised regarding its maintainability by the respondents. In this appeal we have also adopted the same course and restrict our consideration as to whether the learned Single Bench was right in dismissing the writ petition on the ground that the

High Court at Calcutta has no territorial jurisdiction over the subject matter.

2. We have elaborately heard the learned advocates for the parties. Firstly, we shall refer to relevant portions of pleadings made in the writ petition concerning as to how the writ petitioners seek to maintain this writ petition before the High Court at Calcutta. It has been stated in paragraph 64 of the writ petition that this court has jurisdiction in the matter inasmuch as the respondent, namely, Bharat Coking Coal Ltd. (in short 'BCCL'), a wholly owned subsidiary and under control of Coal India Ltd. (in short 'CIL'). CIL is the apex body and the decision making authority regarding the matters within its domain including mode, manner and conduct of business by its subsidiaries and such decisions are binding on all its subsidiaries including BCCL. The CIL has its seat within the jurisdiction of this court. It is not in dispute that CIL has its registered office in the State of West Bengal, namely, at Kolkata. The prayer sought for in the writ petition was to issue a writ of declaration declaring the levy of washery recovery charge on NLW coking coal and the wireless message dated 13th June, 2008; the petitioners also sought for issuance of a writ of mandamus to revoke, rescind, recall, cancel and set aside the decision to levy of washery recovery charge on NLW Coking Coal and

the wireless message dated 13th June, 2008. Further the petitioners sought for issuance of a writ of mandamus to restrain the respondents from giving effect to the decision to levy of washery recovery charge on NLW Coking Coal and the wireless message dated 13th June, 2008. There is also a prayer for refund of the amount collected from the writ petitioners on account of levy of washery recovery charge on NLW Coking Coal on the basis of the wireless message. Though it has not been specifically mentioned as to who has issued the wireless message dated 13th June, 2008 but in the prayer column of the writ petition it is an admitted and undisputed fact that such wireless message was issued by BCCL and not CIL. The case of the petitioners itself is that BCCL has no jurisdiction to levy washery recovery charges on this particular category of coal as the price notification issued by CIL dated 15th October, 2008, does not contemplate levy of such washery charges.

3. The learned senior advocate appearing for the appellants/writ petitioners has elaborately taken us through the price notification issued by CIL dated 15th October, 2008, and submitted that if a comparison is made with the notification issued by BCCL dated 16th October, 2009, will clearly demonstrate that such price variation could have not

been done. Whether CIL directives are wholly binding on its subsidiaries is an issue that touches upon the merits of the matter which the learned Single Bench did not go into and we also do not propose to go into. However, we require to take note of the submission of learned advocate appearing for the BCCL who has referred to certain clauses in the Fuel Supply Agreement (in short 'FSA') and submitted that the agreement is between two parties who are defined as seller and purchaser and as could be seen from the sample agreement which has been annexed in the paperbook at the page No.271, the agreement was admittedly entered into in the State of Jharkhand and the stamp paper was also purchased in the State of Jharkhand and the seller is BCCL and the purchaser is one of the writ petitioners which is a Company having its registered office in Kolkata. Further the learned advocate referred to the definition of 'base price' as defined in Clause 1(e), 'declared grade' as defined in Clause 1(i) and other conditions in the agreement and Clause 1(b) which defines delivered price of coal to mean as prescribed in Clause 10.1. It is submitted by the learned advocate appearing for the BCCL that reading of Clause 10.1 would clearly show that the delivered price of the coal shall be determined on the basis of the rates/criteria duly notified by CIL or the seller of

the statutory authority from time to time. In this regard, the sub-clauses under clause 10 namely the Clauses 10.1. and 10.2 were also referred to. It is true that the agreement used the expression 'or' in several places. Therefore, the question would be as to whether the BCCL has independent right with regard to price fixation or price variation in terms of the condition of the agreement, is also an issue which will be touching upon the merits of the matter which we do not propose to trade into. Essentially the issue relates to price variation. It is the contention of the appellants/writ petitioners that the price variation cannot be done or in other words, the washery recovery charges cannot be levied because the subsidiary, namely, BCCL is bound over by the terms and conditions and the price notification issued by CIL. Therefore, it is evidently clear that what is being challenged by the writ petitioners is on variation in the price of coal and the issue to be decided on merits, would be whether BCCL was empowered to do so. Therefore, essentially the matter revolves around the rights of the parties pursuant to the FSA entered into between the Companies who are the petitioners Nos.2 to 91 and the seller, namely, BCCL. Therefore, as rightly observed by the learned Single Bench that CIL is at best to be termed as proforma party.

4. The contention of the appellants that BCCL by levying washery charges on NLW Coking Coal has violated the grade/price notification of CIL is an issue arising out of an agreement between the parties. Therefore, if a challenge is made before the appropriate forum having jurisdiction over BCCL, this issue could be decided and not by this court only because CIL has its registered office in the State of West Bengal within the territorial jurisdiction of High Court at Calcutta. Though we are tempted to make certain observations on the merits of the matter but we refrain from doing so as it would impinge upon the right of the writ petitioners.
5. One more issue which was pointed out by the learned advocate appearing for BCCL that the first appellant/writ petitioner cannot be said to be an aggrieved party since the first appellant/writ petitioner is an association and there is no agreement between the association and the seller BCCL. This issue also requires to be agitated before the appropriate forum having jurisdiction over the subject-matter and the same is left open.
6. The learned Single Bench had also noted the admitted facts, namely, 91 Fuel Supply Agreements were signed and executed at Dhanbad and stamp papers used also belonged to the State of Jharkhand; address/registered office of BCCL was at Dhanbad

and CIL was not the party to the agreement entered into between the seller/BCCL and the writ petitioners Nos.2 to 91. Further the learned Single Bench noted that in terms of the clauses in the agreement the governing law stipulates that the court at Dhanbad shall have exclusive jurisdiction in all matters under the agreement. On this issue the learned Single Bench has held in favour of the writ petitioners as against which no appeal has been preferred by the respondents and therefore, the same attains finality. Furthermore, the learned Single Bench noted that CIL was not a party to FSA and as no specific prayer has been made challenging the policy decision of CIL, CIL can at best be treated as a proforma respondent. Merely because CIL has address within the jurisdiction of this court it would not be just and proper for this court to entertain a litigation as the writ petitioners do not have a subsisting jural relationship with the CIL. That apart, the learned Single Bench noted that other writ petitions on connected issues have already been entertained by the High Court at Jharkhand and one writ petition filed by one Kala Coke was dismissed on the ground of lack of jurisdiction.

7. Learned senior advocate appearing for the appellant would contend that the writ petitions which were filed in the High Court at Jharkhand relate to orders

passed by BCCL suspending the Fuel Supply Agreement and in all the issues which have been canvassed by the appellants in the appeal.

8. Be that as it may, we are satisfied that no part of the cause of action qua the relief sought for by the appellants in the writ petition arose within the jurisdiction of this court to entertain the prayers sought for.
9. For the aforesaid reasons we find no ground to interfere with the judgment passed by the learned Single Bench. In the result, the appeal is dismissed.
10. We make it clear that the merits of the matter have not been gone into and even assuming there are certain observations in the preceding paragraphs of this order that should not be taken to be expressing opinion on the merits of the matter. It will be well-open to the appellants to canvass all grounds in the event they will be advised to approach the jurisdictional forum.
11. Urgent Photostat copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)