

SUPREME COURT OF INDIA

Coal India Ltd.

Vs.

Mahatha Traders

(B.N. Kirpal and Brijesh Kumar JJ.)

02.11.2000

ORDER

1. After hearing the learned Counsel for the parties, we are of the view that there is no merit in this appeal. It appears that an agreement was entered into between the parties whereby the appellants were to supply sink coal/rejected coal to the respondents according to notice dated 9th February, 1987 which is on record. Despatches were to commence on and from 1st March, 1987 and in relation to the price, the clause was as under:

The price chargeable is that of Gr.F ROM coal i.e. Rs. 150.68 per tonne plus sales tax as applicable.

2. We are informed that subsequently a formal agreement was entered into between the parties. It seems that on 30th November, 1987 the price of certain categories of coal were increased. According to the Schedule annexed to the notice to increase coking coal having the calorific value exceeding 2400 but not exceeding 3360 per kilo was graded as 'F' and its price was increased. It is this increased price which the appellants sought to realise from the respondents.

3. The respondents challenged the same by filing a petition under Article 226, while the Single Judge dismissed the same, the Division Bench came to the conclusion that if what was supplied to the respondents had the calorific value between 2400 and 3360 then the increased price could be charged. The authorities were required to look into this and on the basis of the report of the Central Fuel Research Institute, to whom the samples of the sink/rejected coal were to be sent, the price payable was to be determined.

4. According to the report, the calorific value was only 630. The grievance of the appellant is that it was entitled to the increase in the price as what was agreed to be supplied was Grade 'F' coal rejects and in the notice dated 30th November, 1987, whereby the prices were increased, the prices of grade 'F' coking coal was higher than Rs. 150.68 per tonne which had been agreed to between the parties.

5. We are unable to grant any relief to the appellants firstly for the reason that the very agreement on which the appellants are trying to base their claim or their right to increase the prices is not before us. The same has not been filed in this Court and it is not possible for this Court to construe the terms of the contract in the absence of the document itself. It is furthermore doubtful whether the notice dated 30th November, 1987 whereby the price was increased would be of any assistance to the appellants. According to the document dated 9th February, 1987 what was to be supplied and what was available was "sink coal (rejected coal)". The increase was notified with effect from 23rd

December, 1987 by Bharat Coking Coal (Annexure-C to the SLP) but the same was with regard to "coking coal" and does not make any mention whatsoever with regard to "sink coal (rejected coal)", which was bought by the respondents.

6. In the absence of the agreement between the parties from the record in this Court and on the perusal of the document whereby the price of "coking coal" was increased with effect from 23rd December, 1987, we are of the opinion that no interference with the decision of the Division Bench of the High Court is called for. The appeal is dismissed with costs.