

(SUPREME COURT OF INDIA)

Chief of Marketing (Marketing Division), Coal India Limited and Another

Vs

Mewat Chemicals and Tiny Ssi Coal Pulverising Unit and Others

HON'BLE JUSTICE H. K. SEMA AND HON'BLE JUSTICE S. N. VARIAVA

26/03/2004

Civil Appeal No. 6310 of 1998

JUDGMENT

: S. N. VARIAVA, J.

This appeal is against the judgment of the Calcutta High Court dated 20-3-1998.

Briefly stated, the facts are as follows :

In pursuance of the power under Section 3 of the Essential Commodities Act, 1955 the Colliery Control Order was framed. Under clause 12-A of the Colliery Control Order the Central Government could by notification specify the authorities competent to allot quota of coal to any person or class of persons. Clause 12-A further provides that every such authority shall allot coal subject to such instructions as the Central Government may issue from time to time.

On 25-6-1992 the Central Government issued a notification specifying the Coal Controller as the competent authority to allot coal. On 5-1-1995 a circular was issued by the Central Government specifying that Coal India Ltd. would give coal clearances/linkages to the new applicants up to 5000 tonnes per month and applications for more than 5000 tonnes per month were to be decided by the Ministry of Coal. This circular also specified that no allocation of coal could be made to private cookerries from any mines that are linked to washeries.

It appears that the respondents had made applications for allotment of coal and had also applied for linkages. As their applications were not decided, they filed writ petitions which were disposed of by

an order dated 25-9-1995. The Coal Controller was directed to consider the representations of the respondents within 6 weeks. On 8-1-1996 the Joint Secretary (Coal), New Delhi sent a fax message to the Coal Controller setting out that the order of the High Court had not been complied with. It was pointed out that the Coal Controller was not vested with the power to give linkages, but that he could allot quota of coal. The Coal Controller was requested to intimate the latest position.

Thereafter, on 23-4-1996 a circular was issued by the then Director, Ministry of Coal, wherein it was specified that all grades of coal which were governed by notified prices should only be allotted to the power sector. It was specified that other consumers of coal had to be given coals of grades for which the prices have been decontrolled. This circular also withdrew allotment of coal of D grade and below to small-scale industries and briquetting units.

On 21-6-1996 the Coal Controller passed the following order :

"Having heard at length all the present parties and gone through this office order dated 17-10-1995 and 27-11-1995 as well as Ministry of Coal, Government of India's directive vide Ministry of Coal Letter No. 23028/18/95-CPD dated 9-11-1995 in the matter in pursuance of the order of the Hon'ble High Court at Calcutta and the inspection report submitted by Coal India Ltd., vide their Letter No. CIL/C4B/48912/599-601 dated 30-3-1996/3-4-1996 in respect of all the petitioner units, I, in exercise of the power under clause 12-A of the Colliery Control Order, 1945, do hereby grant linkage/quota of coal in quantities of 500 MT D, E and F grade steam/ROM coal per month (6000 MT per annum) from the sources of Northern Coalfields Limited and 480 MT D, E and F grade steam/ROM coal per month (5760 MT per annum) from the sources of Eastern Coalfields Limited by road/rail from the date of issuance of this order with the details noted below :

2. Soni Coal

Chemicals

3. Anand Coal Plaster

Industries

4. Jain Chemicals

5. Jawala Coal

Chemicals

6. Harneja Coal

Chemicals

7. Hariyana

Chemicals

8. Mewat Chemicals

9. Goel Chemicals

Quota of the coal shall be dispatched by Northern Coalfields Ltd./Eastern Coalfields Ltd. to the abovenoted Tiny/SSI Unit either by road/rail as per the convenience of the Unit." *

On 30-7-1996 the Joint Secretary, Ministry of Coal issued an order that the Coal Controller was not authorized to grant any long-term linkages and that allotment of coal by the Coal Controller had to be subject to such instructions that the Central Government may issue from time to time. It was held that the abovementioned order of the Coal Controller being contrary to the instructions issued by the Central Government no action was to be taken to supply coal as per that order till a final decision was taken by the Central Government.

The respondents then filed a writ petition challenging the validity of the order dated 30-7-1996. That writ petition came to be allowed by an order dated 11-9-1997. The appeal of the appellants has been dismissed by the impugned judgment dated 20-3-1998. It has been held that the Coal Controller was competent to grant linkages and that in any case he being a competent authority the Central Government could not sit in review over the order passed by the Coal Controller. It has also been held that the allotment to the respondents has to be governed by the position prevailing on the date they made their applications. It was held that as they had made their applications prior to the issuance of circular dated 23-4-1996, the restrictions laid down in that circular could not be applied whilst considering the applications of the respondents.

On behalf of the appellants the submission has been that under the Colliery Control Order the control of the Central Government is all-pervasive. It was submitted that the Coal Controller was bound to comply with the instructions of the Central Government. It was submitted that the Coal Controller had no power to grant linkages contrary to the instructions issued by the Central Government.

On the other hand, on behalf of the respondents, the submission has been that the Coal Controller is an independent authority under the Colliery Control Order. It was submitted that he has powers equal to those of the Central Government. It was submitted that the Coal Controller had power to make allotment, not only by virtue of order of the Central Government dated 25-6-1992, but also under the provisions of the Colliery Control Order. It was submitted that the Coal Controller being an authority equal to the Central Government, the Central Government could not sit in appeal or review over the order of the Coal Controller. It was submitted that the Coal Controller could grant linkage.

In order to consider the rival submissions one must look at the relevant provisions of the Colliery Control Order. It must be remembered that the Colliery Control Order is passed under the Essential Commodities Act, the purpose being that the production, sale and distribution of certain commodities, which are considered to be essential, should be controlled by the Central Government.

The relevant provisions of the Colliery Control Order read as follows :

"2. In this Order, unless there is anything repugnant in the subject or context -

(1) 'coal' includes anthracite, bituminous coal, lignite, peat and any other form of carbonaceous matter sold or marketed as coal and also coke.

(1-A) 'Coal Controller' means the person appointed by the Central Government to hold the post of Coal Controller and includes the Joint Coal Controller and Deputy Coal Controller.

3. The Central Government may for the purposes of this Order prescribe the classes, grades or sizes into which coal may be categorized and the specifications for each such class, grade or size of coal.

3-A. (1) The coal of any seam or section of a seam occurring in a colliery shall be categorized into grades or sizes under this Order by the owner, agent or manager of the colliery, in accordance with the standards laid down by the Coal Controller. Initially, a provisional grade on the basis of seam sample shall be fixed. As soon as may be thereafter, such owner, agent or manager shall cause wagon samples to be drawn. On the basis of the wagon samples drawn on at least three different days, the final grade of seam or seams of a particular colliery shall be fixed by such owner, agent or manager.

(2) The final grade fixed for a seam or section of a seam may be altered by the owner, agent or manager from time to time on the basis of analysis of wagon samples if such owner, agent or manager is satisfied that the grade so fixed could not be maintained.

(2-A) The Coal Controller may draw the samples from underground stock, wagons, trucks, conveyor or any other mode of transport at any reasonable time for the purpose of checking the grade as declared by the owner, agent or manager of the colliery.

(2-B) The owner, agent or manager of the colliery will provide all reasonable facilities for drawing samples as mentioned in sub-clause (2-A).

(2-C) If on physical verification, the grade does not conform to the grade as declared by the owner, agent or manager of the colliery or if the Coal Controller has reasons to believe that the grade of coal, as declared by the owner, agent or manager of the colliery, is not correct or the grades declared by the owner, agent or manager of the colliery are not sustainable, he may determine the grade as obtained by physical verification and direct the owner, agent or manager of the colliery to revise the grade to be effective from a date as directed by the Coal Controller.

(2-D) The grade, so determined by the Coal Controller either as a settlement of a dispute or as a result of such verification, shall be final and binding.

(2-E) Coal Controller may issue such directives as deemed fit for the purpose of declaration and maintenance of grades of seam(s) or sections of a seam mined in a colliery.

(2-F) If it comes to the knowledge of the Coal Controller that any colliery declares the grade of any seam of which there is no valid permission for opening under clause 14, the Coal Controller may withdraw the grade of the seam.

(3) If the production or dispatch of coal from a seam or section of a seam has stopped for a continuous period of 6 months for any reason whatsoever, the grade fixed for the seam or section of the seam shall stand withdrawn. The owner, agent or manager of the colliery shall notify such withdrawal of grades in the manner as prescribed by the Coal Controller.

(4) The Coal Controller shall lay down the standards and methods of sampling and analysis of coal which alone shall be used in declaration of grades or sizes of coal.

(5) If any dispute arises out of the declaration of grades and sizes of coal, the same shall be referred to the Coal Controller whose decision shall be binding on the owner, agent or manager of the colliery. A memorandum of reference to the Coal Controller regarding such dispute shall be accompanied by such fees not exceeding Rs. 100 and in such manner as may be notified by the Coal Controller from time to time in the Official Gazette.

4. (1) The Central Government may, by notification in the Official Gazette, fix the sale price at which, or the maximum or the minimum sale price or both, subject to which coal may be sold by colliery-owners and any such notification may fix different prices -

(i) for different classes, grades and sizes of coal; and

(ii) for different collieries.

(2) Nothing contained in sub-clause (1) shall affect the sale of coking coal and such grades of non-coking coal for which no price has been fixed by the Central Government under this Order.

4-A. (1) The Central Government may, having regard to all the relevant factors, including the geological and mining conditions of and the mining technology employed in the collieries by the colliery-owner, as well as the estimated cost of production of coal and coke produced by such colliery-owner, fix, by notification in the Official Gazette, the retention price in respect of each class, grade or size of coal and coke produced and sold by such colliery-owner.

(2) Nothing contained in sub-clause (1) shall affect the retention price of coking coal and such grades of non-coking coal for which no retention price has been fixed by the Central Government under this Order.

4-B. (1) The Central Government may specify any person or authority including a government company who shall maintain an account to be called the 'Coal Price Regulation Account'.

8. The Central Government may from time to time, issue such direction as it thinks fit to any colliery-owner regulating the disposal of his stocks of coal or of the expected output of coal in the colliery during any period including directions as to the class, grade, size and quantity of coal which may be disposed of and any person or class or description of persons to whom coal shall or shall not be disposed of, the order of priority to be observed in such disposal and the stacking of coal on government account.

9. Notwithstanding any contract to the contrary, every colliery-owner to whom a direction is given under clause 8

- (i) shall dispose of coal in accordance therewith;
- (ii) shall not dispose of coal in contravention thereof.

10. (1) Where a colliery-owner has coal available for disposal not covered by the directions issued under clause 8 or where wagons are not available for dispatch in accordance with those directions, the colliery-owner may, with the general or special permission of the Central Government stack such coal on government account.

(2) Where any coal is stacked on government account under sub-clause (1) or otherwise, there shall be paid to the colliery-owner, in addition to the price payable for the coal, a sum for stacking at such rates as may be determined by general or special order of the Central Government.

10-A. (1) The Coal Controller with the Government of India may, by order in writing, direct, that any coal dispatched by any colliery-owner, or a person acting on behalf of a colliery-owner, to any person, which is in transit, shall subject to such terms and conditions, if any, as the said Coal Controller deems fit, be diverted and delivered to another person specified in the order.

11. The Central Government may issue such directions as it thinks fit to any colliery-owner prohibiting or limiting the mining or production of any grade of coal and the colliery-owner shall comply with the directions.

12. No colliery or group of collieries which is or may hereafter be worked as a single mining concern shall be subdivided and worked in separate parts except with the previous permission of the Central Government and in accordance with such directions as the Central Government, may, at the time of granting the permission or subsequently, give to the owner or owners concerned.

12-A. The Central Government may, by notification in the Official Gazette, specify the authorities competent to allot quotas of coal to any person or class of persons, and every such authority shall allot such quotas subject to such instructions as the Central Government may issue from time to time.

12-F. The Central Government may, for the purpose of securing compliance with the provisions of clause 12-E, specify from time to time the officers to whom applications for permission to transport coal may be made by colliery-owners, middlemen or persons to whom coal is allotted, the periods within which, and the forms in which, such applications may be made, the particulars to be entered therein and any other matters incidental thereto. The functions of the Central Government under clause 12-E shall also be exercisable by the officers so specified.

15. The functions of the Central Government under clauses 8, 8-A, 10, 11, 12, 12-A, 12-B, 12-C, 12-D, 12-E, 12-F, 13 and 14 shall be exercisable also by the Coal Controller with the Government of India, the Deputy Coal Controller (Distribution), the Deputy Coal Controller (Production) and the Joint Deputy Coal Controller (Distribution).

17. Every colliery-owner, every person to whom coal is allotted under this Order and every other person engaged in the business of production, supply and distribution of, or trade and commerce in coal, to whom any order or direction is issued under any powers conferred by or under this Order

shall comply with such order or direction." *

The above provisions show that certain functions have been specifically given to the Coal Controller. However, the control of the Central Government is all-pervasive. Clause 12-A also makes it clear that it is the Central Government which has to specify who is the authority authorized to allot coal. That authority is subject to the instructions issued by the Central Government from time to time. Undoubtedly, under clause 15 the Coal Controller may also exercise the powers which could be exercised by the Central Government under the clauses mentioned therein. However, such a power is merely a delegated power. The Coal Controller is not an authority equal to the Central Government. Only the Central Government can decide policy matters in respect of questions of production, distribution and sale of coal.

Both sides relied upon the authority of this Court in the case of Coal India Ltd. v. Continental Transport and Construction Corpn. (5) In this case, the Coal Controller had issued a direction under clause 8, to transfer an allotment of coal from one colliery to another. The direction of the Coal Controller was challenged. No question arose whether the Coal Controller was bound by directions of the Central Government. The question whether the Coal Controller would give linkage was not considered at all. This Court considered the powers of the Coal Controller, under the Coal Control Order, to give directions. It was held that the Colliery Control Order assigned an important role to the Coal Controller. It was held that it was open to the Coal Controller, under clause 8, to give directions regulating disposal of stocks of coal by any colliery-owner and that such directions may be as to class, grade, size and quantity of coal which may be disposed of. It was held that certain powers conferred on the Central Government could also be exercised by the Coal Controller. We are unable to accept the submission on behalf of the respondents that this authority lays down that the Coal Controller is an authority equal to the Central Government. In our view, this authority merely states that the Coal Controller also has various powers vested in him under the Colliery Control Order and that he could also exercise certain powers given to the Central Government. But this authority nowhere lays down that the Coal Controller can ignore instructions issued by the Central Government. On the contrary, in para 11 of this judgment it has been held that a perusal of the provisions of the Colliery Control Order shows that the control of the Central Government over the various activities involving production, supply and distribution of coal is all-pervasive.

It could not be denied that the Government had set up a Linkages Committee which looked into the question of linkages and gave linkages. It could not be denied that the Coal Controller was aware that there was a Linkages Committee. The circular dated 5-1-1995 specified that linkages could only be given by Coal India Ltd. (up to 5000 tonnes per month) and/or by the Ministry. This circular was binding on the Coal Controller.

The order of the Coal Controller dated 21-6-1996 shows that it has been passed in pursuance of the powers given to him by the Central Government under clause 12-A of the Colliery Control Order. Clause 12-A clearly stipulates that such an authority is bound by the instructions issued by the Central Government from time to time. The circular dated 5-1-1995 is an instruction which is binding on the Coal Controller under clause 12-A. The Coal Controller being bound by such a circular could not have given linkages in the manner he purported to do by his order dated 21-6-1996.

Even otherwise, we see no substance in the submission that the order dated 30-7-1996 passed by the Joint Secretary, Ministry of Coal amounted to review of the order of the Coal Controller. Under clause 12-A, any order passed by the Coal Controller is subject to instructions issued by the Central Government from time to time. These instructions may be prior instructions or they may be subsequent instructions. Thus, for example, the Coal Controller may make an allotment which is within his power. Subsequently the Central Government takes a policy decision that that coal is required for some other purpose. The Central Government can always issue subsequent instructions overriding the order of the Coal Controller. Such a subsequent order would not be a review. It is the Central Government exercising power to issue instructions from time to time. Such a power is categorically provided for in clause 12-A of the Colliery Control Order. The High Court was therefore clearly in error in holding that the order dated 30-7-1996 amounted to a review.

In our view, the High Court was also in error in concluding that the position prevailing on the date of the application must apply. It is settled law that there is no vested right when a person makes an application. The position prevailing at the time of the allotment is to apply. Before the allotment was made the circular dated 5-1-1995 had already been issued. The Coal Controller whilst allotting was bound to take note of that circular. The Joint Secretary by his fax dated 8-1-1996 had brought it to the notice of the Coal Controller. Thereafter, guidelines had also been issued on 23-4-1996. The Coal Controller was bound to take note of those guidelines also. We are unable to understand the reasoning given by the High Court that those guidelines had been issued by a Director and thus could not be said to be guidelines issued by the Central Government. These guidelines have been issued by the Ministry of Coal. Merely because they are forwarded not by a Joint Secretary but by a Director would not mean that they are not binding on the Coal Controller. If there was any doubt as to whether they had been issued by the Central Government, the Coal Controller should have asked for clarification from the Central Government.

In the above view, we find ourselves unable to sustain the order of the Single Judge or the Division Bench. They are accordingly set aside. The writ petitions filed by the respondents stand dismissed.

It is submitted that the appellants had deposited monies with ECL in June 1998. It is submitted that those monies are still lying with ECL. It is submitted that ECL should now deliver the coal. It was very fairly stated by Mr. Salve that ECL would deliver D grade coal subject to the requirements of the power sector and subject to availability of D grade coal.

It was further submitted that monies have also been deposited with NCL and against those monies coal should be supplied. However, those monies were deposited pending this appeal. They were deposited knowing fully well that if the appeal is decided against the respondents, they would not be allotted coal from NCL. As the order of the Coal Controller has been set aside the respondents have no right to receive coal from NCL. Therefore, they are not entitled to any coal from NCL. Thus NCL is directed to return the monies to the respondents within 15 days from today.

The appeal stands disposed of accordingly. There will be no order as to costs.