

SUPREME COURT OF INDIA

Coal India Limited

Vs.

Coal Consumers Association

S.L.P.(C) No.21959 of 2010

(Altamas Kabir and A. K. Patnaik JJ.)

15.09.2010

ORDER

A.K.Patnaik, J.

1. These Special Leave Petitions are directed against the interim orders dated 26.07.2010 passed by a Division Bench of the Allahabad High Court in Writ Petition C-Nos.42231, 42760, 42229 and 42708 of 2010 by which the orders dated 01.07.2010 of Bharat Coking Coal Limited (BCCL), the petitioner No.2, suspending supply of coal to 45 industrial consumers for their industrial units had been stayed till the matters were to be taken up for admission/orders by the High Court.

2. The relevant facts very briefly are that prior to 2007 industrial consumers were granted coal linkages for utilization in their small scale industries. On 18.10.2007, the Government of India, Ministry of Coal, formulated a New Coal Distribution Policy by which coal linkages were discontinued and instead coal was to be supplied to various consumers including small scale industries under the terms and conditions of Fuel Supply Agreement (for short 'FSA'). Accordingly, petitioner No.2 entered into FSA with different industrial consumers of coal. Clause 4.4 of FSA stipulated that the total quantity of coal supplied pursuant to the agreement is meant for use in the industry of the purchaser and the purchaser shall not sell/divert and/or transfer the coal for any purpose whatsoever and the same shall be treated as material breach of the agreement and in the event that the purchaser engages or plans to engage into any such resale or trade, the seller shall terminate the agreement forthwith without any liabilities or damages whatsoever payable to the purchaser. Clause 15.1.5 of FSA further provided that in the event that the purchaser resells or diverts the coal purchased pursuant to the agreement, the seller shall have the right to terminate the agreement forthwith. On 07.06.2009, however, the Central Bureau of Investigation (for short 'CBI'), on receipt of credible information, registered an FIR under Section 120B read with 420, 467 and 471 of the Indian Penal Code together with Section 3(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 against Shri Udayan Bhattacharya, the then General Manager (S&M), BCCL, Dhanbad, and ten industrial consumers alleging that the coal sold by BCCL

to the ten industrial consumers have been sold in the open market and not utilized in their respective plants. On the basis of the allegations in the FIR, supplies of coal to the ten industrial consumers were suspended on 13.06.2009, some of whom challenged the suspension of supply of coal in writ petitions before the different High Courts. After investigation, the CBI filed charge sheet on 28.06.2008 against Shri Bhattacharya and the ten industrial consumers in respect of whom the FIR had been lodged. Soon thereafter, on 01.07.2010 the petitioner No.2 issued orders suspending supply of coal to 45 industrial consumers against whom no FIR had been lodged by the CBI.

3. Aggrieved, the respondents filed the Writ Petitions in the Allahabad High Court in July, 2010 praying inter alia for quashing the order dated 01.07.2010 suspending supplies of the coal to the members of the respondent- association in Special Leave Petition [C] Nos.21972 of 2010 and to the respondents in Special Leave Petitions (C) Nos. 21973 and 21974 of 2010 and by the interim orders dated 26.07.2010 the Division Bench of the High Court stayed the operation of the order dated 01.07.2010 suspending supplies of coal.

4. Mr. Anupam Lal Das, learned counsel for the petitioners, submitted that it will be clear from Clause 4.4 of FSA that the coal supplied to the industrial consumers is meant for use in their industries and, therefore, the petitioner No.2 issued notice dated 03.02.2010 to all the 45 industrial consumers to show the end-use of the coal lifted during the financial year 2009-2010 duly supported by documentary proof and the industrial consumers submitted some documents in support of end-use of coal, but the documents were not sufficient to prove the end- use of the coal. He submitted that petitioner No.2 issued another notice dated 08.06.2010 to the industrial consumers to submit documents and details as per proforma enclosed along with the notice and yet the industrial consumers could not prove the end-use of the coal lifted by them from the petitioner No.2 under FSA and in the circumstances the petitioner No.2 had no option but to pass the order dated 01.07.2010 suspending the supply of coal to the 45 industrial consumers. He submitted that by the order dated 01.07.2010 the petitioner No.2 also gave notice to the 45 industrial consumers to prove by documents that the coal supplied to them were utilized in accordance with Clause 4.4 of FSA. He submitted that on these facts the High Court was not at all justified in staying the suspension-cum-show cause notice dated 01.07.2010 issued by the petitioner No.2 to the 45 industrial consumers.

5. Mr. Ranjit Kumar, learned counsel appearing for the respondents in Special Leave Petition [C] No.21959 of 2010, on the other hand, submitted that Clause 13.1 of FSA is the only provision conferring a right on the petitioner No.2 to suspend supplies of coal in the event the purchaser fails to pay any amount including any interest due to the petitioner No.2 under the agreement and, therefore, the petitioner No.2 had no right to suspend the supplies of coal on the ground that the industrial consumers have not been able to produce proof of the end-use of the coal in their industrial units.

“He further submitted that Clause 4.4 of FSA, on which the petitioners rely, itself confers a right on the petitioner No. 2 to physically verify the end-use of coal and it was always open to the petitioners to physically verify the industrial units of the

industrial consumers to find out whether the industrial unit was genuine and whether the industrial unit was consuming the coal supplied by the petitioners. He submitted that surprisingly in the letter dated 01.07.2010 (Annexure R1/9), the Chairman/Managing Director of the petitioner No.2 has proposed to the Chairman of petitioner No.1 that physical inspection of the industrial units by the coal companies should be withdrawn from FSA to safeguard the interest of the officials of the coal companies. He vehemently submitted that all this would show that supplies of coal to the 45 industrial consumers have been suspended by the order dated 01.07.2010 only to protect the officers of petitioner No.2. He further submitted that Para 3.1 of the New Coal Distribution Policy in the Office Memorandum dated 18.10.2007 of the Government of India, Ministry of Coal, makes it clear that the State Governments are to take appropriate steps to evaluate the genuine consumption and to monitor the use of coal.

He submitted that accordingly the General Managers of the District Industries Centres of the State Government have furnished reports about the end-use of coal for the year 2009-2010 to petitioner No.2 in respect of different industrial consumers by various communications, copies of which were annexed to the Writ Petitions filed in the High Court and the High Court was, therefore, justified in passing the impugned interim orders staying the order dated 01.07.2010 of the petitioner No.2 suspending supplies of coal to the 45 industrial consumers.”

6. Mr. Jaideep Gupta, learned counsel appearing for the respondents in Special Leave Petition (C) 21973 of 2010, submitted that by the notice dated 03.02.2010 the respondents were called upon to show the end-use of coal lifted during the financial year 2009-2010 duly supported by documentary proof and also to get corroborative documents authenticated by the concerned District/State officials along with a certificate from the officers certifying the working status of the units of the respondents and by the notice dated 08.06.2010 the respondents were required to submit documents and details as per proforma enclosed along with the notice to show the end-use of coal in their industrial units on monthly basis. He submitted that in response to the two notices dated 03.02.2010 and 08.06.2010 the respondents had furnished the required documents including the certificates furnished by the District Industries Centre, as would be evident from the letter dated 13.02.2010 of the respondents and its enclosures annexed to the counter of the respondents as Annexure R1/1(Colly) and letter dated 06.03.2010 of the respondents annexed to the counter of the respondents as Annexure R1/2(Colly). He submitted that despite the fact that the respondents produced all the required documents before the petitioner No.2 as called for in the notices dated 03.02.2010 and 08.06.2010, the petitioner No.2 suspended supplies of coal to the respondents by the impugned order dated 01.07.2010. He submitted that all these documents were filed by the respondents along with the Writ Petition and, therefore, the High Court was justified in staying the order of suspension.

7. The submissions made by Mr. Ranjit Kumar and Mr. Jaideep Gupta were adopted by Mr. Manish Kumar Saran appearing for the respondents in Special Leave Petition (C) Nos. 21972 and 21974 of 2010.

8. We have today delivered judgments in M/s Coal India Limited & Ors. v. Alok Fuels (P) Ltd. & Ors. and also in M/s Sushila Chemicals Pvt. Ltd. & Anr. v. Bharat Coking Coal Ltd. & Ors. in which we have held that the petitioner No.2 has the right to suspend supplies of coal to the purchaser of coal where it has doubts that the purchaser may mis-utilize the allotted coal and divert or sell in open market because, as it was clear from Clause 4.4 of FSA and the New Coal Distribution Policy dated 18.10.2007, the very object of FSA as well as policy decision of the Government is to allot coal to the purchasers for utilization in their plants and not for any other purpose.

“In two judgments delivered today, we have also held that the FIR lodged by the CBI, which is a premier investigation agency of the Central Government, created serious doubts that the allotted coal may have been diverted or sold in the open market instead of being utilized in the plants of the purchasers and hence the petitioner No. 2 was within its rights to suspend the supplies of coal to the purchasers in these cases till the doubts were cleared in appropriate proceedings.”

9. In the facts of these cases, however, we find that no FIR as such has been lodged by the CBI alleging that the supplies of coal made to the 45 industrial consumers have not been utilized in their respective industrial units.

“Moreover, Para 3.1 of the New Coal Distribution Policy dated 18.10.2007 of the Government of India, Ministry of Coal, clearly states that the State Governments may take appropriate steps to evaluate the genuine consumption and monitor the use of coal supplied to units in small and medium sector like smokeless fuel, brick kiln, coke oven units, etc. We find that sufficient materials have been filed before the High Court by the respondents along with their Writ Petitions to show that the agencies of the State Government, namely, the District Industries Centres, have evaluated the genuine consumption and monitored the use of coal by the industrial consumers in their respective industries. It also appears that the petitioner No.2 issued notices dated 03.02.2010 and 08.06.2010 to the 45 industrial consumers to furnish documents in proof of the end-use of coal allotted to them for their respective industries for the financial year 2009-2010 and the respondents had furnished some materials pursuant to the notices dated 03.02.2010 and 08.06.2010 but instead of examining those materials relating to the end-use of coal in the industrial units of the industrial consumers furnished by the respondents, petitioner No.2 has suspended the supplies of coal on 01.07.2010 soon after the CBI filed charge sheets on 28.06.2010 against Shri Udayan Bhattacharya, the then General Manager of the petitioner No.2, and the ten industrial consumers against whom CBI had lodged the FIR on 07.06.2010. The materials placed before the High Court prima facie show that the order dated 01.07.2010 of petitioner No.2 suspending the supplies of coal to the 45 industrial

consumers was arbitrary and unfair and the High Court was justified in staying the order dated 01.07.2010 as an interim measure.”

10. We accordingly dismiss the Special Leave Petitions and vacate the interim orders passed by this Court. We make it clear that the observations made in this order will not influence the High Court in deciding the Writ Petitions on merits. No costs.