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Court : Patna

Decided On : Dec-04-2003

Judge : R.M. Prasad, J.

Appeal No. : C.W.J.C. No. 6495 of 2003

Appellant : Aman Lime Works and anr.

Respondent : The State of Bihar and ors.

Disposition : Petition allowed

Judgement :

R.M. Prasad, J.

1. In this writ petition, the petitioning-Units had initially prayed for issuance of writ in the nature of mandamus commanding the respondents to resume the supply of coal to their factories immediately pursuant to the direction given in L.P.A. 701 and 710 of 2002 (Annexure 6) filed by the M/s. Central Coalfields Limited and others against the judgment of the learned Single Judge passed in C.W.J.C. No. 10066 of 2000 and 10124 of 2000 (Annexure 5) read with the order of the General manager, District Industries Centre, Rohtas, Sasaram to the Director, Industries, Bihar, Patna, vide letter, contained in Memo No. 534 dated 3-5-2003 (Annexure 8), whereby he found both the industries to be in workable condition and decided the matter in their favour. However, in view of the subsequent development, which has

been brought on record by way of Annexure B to the counter-affidavit filed on behalf of respondents No. 1 and 2, learned counsel for the petitioners submitted that the petitioners are now aggrieved by the said order (Annexure B), whereby permanent registration of the petitioners' industries has been cancelled with immediate effect.

2. In short, the relevant facts are that the petitioners are registered with the Bihar Government as Small Scale Industries, which entitles such Units to certain benefits for promotion of industries in this State. The petitioners' Units are also registered with Coal India Limited and/or its subsidiary companies under a certain Scheme, whereunder they have been granted linkage which entitles them to certain benefits including supply of coal on out of turn basis. According to the Scheme of the Bihar Government, such registered small scale units are entitled to supply of coal, inter alia, without payment of sales tax.

3. It appears that the State Government received complaints that many such Units have either been closed down or exist only on paper to obtain the quota of coal without payment of sales tax and after enjoying other benefits admissible to them. In order to check such malpractices, the Coal Companies held a meeting with the State Government and recorded joint minutes dated 26-4-2000, whereby it was agreed that the State of Bihar shall make inspection of such Units and inform the Coal Companies about their functioning and status. In implementation of the minutes, the State Government issued show cause notice dated 21 -7-2000 to the petitioners that their Units were closed and, therefore, were called upon to explain as to why their registration as Small Scale Industries be not cancelled. The petitioners filed their show cause wherein in substance they stated that the Units have been operating spasmodically because of inadequate supply of coal.

4. It seems that the General Manager, District Industries Centre, Rohtas at Sasaram, Camp Office, Kaimur, Bhabhua, vide Memo No. 206 dated 26-6-2000, wrote to the Coal India Limited about closure of 25 Units contained in the list attached thereto stating therein that their supply of coal may be terminated to prevent misuse and diversion for sale in black-market. The petitioners were placed at serials No. 11 and 14 of the said list. As a consequence thereof the Deputy

Sales Manager, Central Coalfields Limited issued order dated 15-7-2000 discontinuing supply of coal to both the petitioners, who being aggrieved by the said order filed C.W.J.C. No. 10066 of 2000 and 10124 of 2000 respectively, which were allowed and the orders impugned therein were quashed, vide order dated 15-1-2002, contained in Annexure 5. This Court held that the action of the State Government amounted to pre-empting the whole matter causing prejudice to the petitioners without proper application of mind to the cause shown by them and thus left it open to the State Government and its functionaries to issue fresh show cause notice to the petitioners, if so advised, and directed that the petitioners shall be entitled to supply of coal as per the linkage policy of the Coal Company till such time the State Government passes a final order.

5. The Central Coalfields Limited and others filed L.P.A. No. 701 and 710 of 2002, which were disposed of by the Division Bench vide order dated 5-7-2002, contained in Annexure 6, whereby the Division Bench after considering the controversy as to whether till a final order is passed, coal is to be supplied under the linkage system or it should remain suspended in the public interest, held that the supply of coal should be suspended till the matter is finally decided by the concerned authority and accordingly did not find any infirmity in the orders impugned in the two writ applications. The Division Bench further directed the authority to dispose off the matter within a period of two months, and, further, that it goes without saying that if the matter is finally decided in favour of the writ petitioners, then necessary communication should be made to the Coal India Limited and its subsidiary for the benefit in terms of the linkage system and in case the matter is decided against the writ petitioners, they shall not be entitled to take the benefits under the linkage system. Thereafter, the General Manager, District industries Centre, Rohtas, Sasaram, vide letter (Annexure 8), on enquiry, held that both the Units are in workable condition 'to function. However, later, vide order (Annexure B), he cancelled the permanent registration of the petitioners Units on the basis of the so-called site inspection reports of the Regional industries Extension Officer, Durgawati, Mohania, Kaimur dated 10-4-2002 and 3-4-2003, wherein productions in the said Units were found closed.

6. Learned counsel for the petitioners has contended that it is not in dispute that

the productions were closed which fact was also noticed in the earlier order dated 3-

5-2003 of the General Manager, contained in Annexure 8, but this was on account of

stoppage of supply of coal without which petitioning Units could not proceed with the

production. He thus submitted that in the absence of any dispute that both the Units

are in workable condition as was reported by the General Manager, District Industries

Centre, Rohtas, Sasaram, vide its order dated 3-5-2003, contained in Annexure 8, the order cancelling the permanent registration with immediate effect, vide Annexure

B, is wholly arbitrary and bad in law.

7. Learned counsel for the State has not been able to defend the order, contained in Annexure B, which obviously has not taken into consideration the fact that the petitioning Units were found to be in workable condition, but productions were closed because of non-supply of coal pursuant to the direction of the Division Bench contained in Annexure 6 till the matter is finally decided in favour of the writ petitioners.

8. Mr. Vishwa Mohan Kumar Sinha, learned counsel for the Central Coalfields Limited, however, ventured to submit that the petitioning Units have violated the terms and conditions by lifting the coal even when the factories are closed about which the Coal Company should have been informed within 72 hours.

9. I fail to appreciate the said submission of the learned counsel for the Central Coalfields Limited. It is not even alleged that there was misuse of coal by the petitioners supplied to them at the time of closure. The sole ground was that the

production in the factories was found to be closed which obviously was on account of non-supply of coal which was the only source for their production of lime by the factory of petitioner No. 1 and Sodium Silicate by the factory of the petitioner No. 2. Thus, in my opinion, the cancellation of registration as well as non-supply of coal to the petitioning Units after the order of the General Manager, District Industries Centre dated 3-5-2003, contained in Annexure-8, are not based on any valid reason and are wholly arbitrary.

10. Accordingly, this writ petition is allowed. The order, contained in Annexure B, is held to be bad and the respondents are, accordingly, directed to resume the supply of coal to the petitioners' factories in the light of the judgment of the Division Bench, contained in Annexure 6, forthwith.

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