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Court : Jharkhand

Decided On : Feb-24-2016

Appellant : Jagdhatri Coke Manufactures Through Its Partner Awadh Kishore Sahay

Respondent : Bharat Coking Coal Limited and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No. 4562 of 2012
1. Mugma Coke Oven Private Limited 2. Shree Shyam Coke Manufacturing Industries Private Limited 3. Akash Coke Industries 4. Chotanagpur Hard Coke Industries 5. Continental Products 6. Jai Maa Kali Udyog Limited 7. Kali Mata Soft Coke Manufacturing Industries 8. OSD Coke P Ltd.

9. Shree Balaji Coke Industries 10. Shree Durga Hard Coke Manufacturing Company 11. Shree Krishna Hard Coke Industries 12. Supreme Hard Coke Manufacturers 13. Valley Hard Coke Corporation of India ..Petitioners. -Versus- 1. Bharat Coking Coal Limited 2. Chairman/Managing Director, Bharat Coking Coal Limited, Dhanbad, Jharkhand 3. General Manager (Sales & Marketing), Bharat Coking Coal Limited, Dhanbad, Jharkhand 4. Director of Finance, Bharat Coking Coal Limited, Dhanbad, Jharkhand 5. Coal India Limited, Kolkata (West Bengal) 6. Union of India, service through Secretary, Ministry of Coal, Shastri Bhavan, New DelhiRespondents. with W. P. (C) No. 4543 of 2012 1. Gee Tee Hard Coke

Traders 2. Maharaja 3. Oriental Coke Mfg. Pvt. Ltd.

4. Uttamchand Virbhandas & Company 5. Vinod Coke Industries 6. Kalyenswari Coke Pvt. Ltd.

7. Mahadev Coke PlantPetitioners. vs.- 1. Bharat Coking Coal Limited 2. Chairman/Managing Director, Bharat Coking Coal Limited, Dhanbad, Jharkhand 3. General Manager (Sales & Marketing), Bharat Coking Coal Limited, Dhanbad, Jharkhand 4. Director of Finance, Bharat Coking Coal Limited, Dhanbad, Jharkhand 5. Coal India Limited, Kolkata (West Bengal) 6. Union of India, service through Secretary, Ministry of Coal, Shastri Bhavan, New DelhiRespondents. with W. P. (C) No. 4588 of 2012 1. Sanjay Hard Coke Industries 2. Pandra Hard Coke Industries 3. Sharma Bee Hive Plant 4. Shree Ganesh Hard Coke Industries 5. Bihar Coke Manufacturing Company 6. Coal Project India 7. Durga Fuel Company 8. Gopal Industries & Co.

9. Kala Coke & Chemicals Pvt. Ltd.

10. Maithan Coal Company Private Limited -2- 11. P. R. Fuels Private Limited 12. Pure Mineral & Engineers Syndicate (P) Ltd.

13. Rahul Coke Private Limited 14. Shiv Shankti Coke Industries 15. Sri Aurobindo Fuels Limited 16. Shree Dwarka Bee-hive Plant Private Limited 17. Shree Ganesh Laxmi Industries 18. Smriti Sourabh India Private Limited 19. Bhagwati Industrial Corporation 20. Khetawat Coke Manufacturing Company 21. Maa Kali Coke Plant Limited 22. S. K. Coal & Coke Private LimitedPetitioners. vs.- 1. Bharat Coking Coal Limited 2. Chairman/Managing Director, Bharat Coking Coal Limited, Dhanbad, Jharkhand 3. General Manager (Sales & Marketing), Bharat Coking Coal Limited, Dhanbad, Jharkhand 4. Director of Finance, Bharat Coking Coal Limited, Dhanbad, Jharkhand 5. Coal India Limited, Kolkata (West Bengal) 6. Union of India, service through Secretary, Ministry of Coal, Shastri Bhavan, New DelhiRespondents. with W. P. (C) No. 422 of 2016 Jagdhatri Coke ManufacturersPetitioner vs.- 1. Bharat Coking Coal Limited 2. The Chairman-cum-Managing Director, Bharat Coking Coal Limited, Dhanbad, Jharkhand 3. The Director (Finance), Bharat Coking Coal Limited, Dhanbad 4. The

General Manager (S & M), Bharat Coking Coal Limited, DhanbadRespondents. CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : M/s Biren Poddar, Darshana Poddar & Piyush Poddar (W.P.C No. 4562, 4543 and 4588 of 2012) & M/s Ayush Aditya, Shashank Shekhar (in W.P.C. No. 422 of 2016) For the Respondents : Mr. Indrajit Sinha & Mr. Ananda Sen 8/24.02.2016 Heard learned counsel for the parties.

2. Petitioners in all these writ petitions have a claim for refund of the amounts along with interest collected in excess of notified price during the prevalence of e-auction scheme of the Coal India Limited, which was held to be illegal and constitutionally invalid in view of the judgment rendered by the Apex Court in the case of Ashoka Smokeless Coal India (P) Ltd. Vrs. Union of -3- India reported in (2007) 2 SCC640 Petitioners in W.P.C. Nos. 4562 of 2012, 4543 of 2012, 4588 of 2012 approached this Court with the said prayer claiming refund @ 12% of the excess amount collected by the respondent- Bharat Coking Coal Limited, Dhanbad. Petitioner in W.P.C. No. 422 of 2016 had approached this Court earlier in 2009 with the same prayer also seeking quashing of the order dated 2.9.2009 of the General Manager, B.C.C.L where under its representation for refund of the amounts was rejected. This writ petitioner chose to withdraw the said writ petition after it has preferred the instant writ petition being W.P.C No. 422 of 2016 seeking refund of the amount collected in excess relying upon the judgment rendered by the Apex Court in the case of S.J.Coke Industries Private Limited & others Vrs. Central Coalfields Limited & others reported in (2015) 8 SCC72 It also sought quashing of the order of rejection of its representation dated 2.9.2009.

3. Learned counsels for the petitioners submit that pursuant to the quashing of the e-auction scheme in view of the judgment rendered by the Apex Court in the case of Ashoka Smokeless Coal India (P) Ltd.(supra), several writ petitions were filed seeking refund of excess money collected by the respondents Coal Companies, such as Central Coalfields Limited, Eastern Coalfields Limited. The Apex Court in the case of Eastern Coalfields Limited Vrs. Tetulia Coke Plant(P) Ltd. reported in (2011) 14 SCC624 held that consequent to the scheme itself being set at naught by the Apex Court, whatever action has been taken following e-auction scheme by the Coal Companies, has also been declared to be illegal and therefore the Coal

Companies become liable to refund the entire money which it has collected in excess of the notified price. This is consequent to the quashing of -4- the scheme which was reiterated by the Hon'ble Apex Court wherein contempt petition was filed and disposed of also. It is submitted that the claim of refund was therefore not in the realm of doubt after the pronouncement of the judgment rendered by the Apex Court in the case of Tetulia Coke Plant(P) Ltd.(supra). However similar matters again came before the Apex Court arising out of judgment rendered by the Patna High Court in the case of S.J.Coke Industries Private Limited & others (supra). Learned counsels for the petitioners submit that now the issue involved is no longer res-integra as the Apex Court in the case of S.J.Coke Industries Private Limited & others (supra) has been pleased to hold that the issue of refund having been squarely adjudicated in the case of Tetulia Coke Plant(P) Ltd.(supra) there is no justification on the part of the Coal Companies to deny benefit of such law on the ground of parity. Learned counsels for the petitioners submit that the plea raised by the Coal Companies have been squarely negated after a comprehensive discussion and the Apex Court was of the view that after law has been declared on the subject, individual Coal Companies do not have justifiable basis to resist the claim of funds. These petitioners have therefore pressed for claim of refund relying upon the judgment rendered in the case of S.J.Coke Industries Private Limited & others (supra) 4. Respondent- B.C.C.L have filed counter affidavit in the first three writ petitions. Learned counsel for the respondent have also referred to the pendency of Transfer Petition (Civil) No. 100 of 206 before the Apex Court in relation to the question of refund of the petitioners there in. According to the Respondents, the issue so far as the respondent- Coal Company- B.C.C.L is concerned, still remains open. Respondents however have not been able to over - 5- come the specific declaration of law rendered by the Apex Court in the case of S.J.Coke Industries Private Limited & others (supra) after consideration of the judgment rendered earlier in the case of Ashoka Smokeless Coal India (P) Ltd(supra) and Tetulia Coke Plant(P) Ltd. (supra) referred therein.

5. The question of refund raised in by the present petitioners are in the nature of those raised by other parties in the case which have been decided by the Apex Court in the case of S.J.Coke Industries Private Limited & others (supra), though in relation to other Coal Companies like Central Coalfields Ltd and Eastern

Coalfields Limited referred to herein above. Para 24 to 36 of the judgment rendered in the case S.J.Coke Industries Private Limited & others (supra) contain opinion of the Apex Court and the ratio rendered.

6. Having considered the relevant aspects of the pleadings on behalf of the parties as noticed herein above, it would only be proper that the respondent examine the cases of individual petitioners in respect of their claim for refund along with interest in the light of the judgment rendered by the Apex Court in the case of S.J.Coke Industries Private Limited & others (supra) and come to an informed decision on individual claims of each of the petitioners. Learned counsel for the respondent in W.P.C. No. 422 of 2016 submits that in the light of what have been observed herein above, consideration of claim of refund of the instant petitioner can also be done in the light of the judgment rendered by the Apex Court in the case of S.J.Coke Industries Private Limited & others (supra). In that event the order of rejection dated 2.9.2009 would not come in the way of the respondents in taking a fresh decision in -6- the matter upon examination of relevant attendant facts and in accordance with law keeping in view the judgment rendered in the case of S.J.Coke Industries Private Limited & others (supra).

7. Individual petitioners are therefore required to make their representation together with all necessary facts and documents before the competent authority under the respondent- BCCL / the General Manager (S & M), Bharat Coking Coal Limited, Dhanbad. Let such consideration be made in accordance with law by the respondents within a reasonable time preferably 16 weeks from the date of receipt of the copy of this order along with representations filed on behalf individual petitioners.

8. Needless to say that upon such consideration, if claim of the individual petitioners are found admissible, the amount in question be refunded along with interest @ 6% as per the ratio laid down by the Apex Court in the case of S.J.Coke Industries Private Limited & others (supra).

9. All the writ petitions are disposed of. (Aparesh Kumar Singh, J.) A. Mohanty