

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 6848 OF 1999

M/s. Bharat Coking Coal Ltd. & Ors.

Appellant (s)

Versus

Santosh Kumar Singh

Respondent (s)

(with appl(s) for raising additional grounds)

With

Civil Appeal Nos. 6850/1999(with appl(s) for raising additional grounds)
6849/1999 (with appl(s) for raising additional grounds with prayer for
interim relief)
and 6851/1999 (with appl(s) for raising additional grounds with prayer for
interim relief)

Date: 16/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE A.K. MATHUR

For Appellant(s)

Mr. Mohan Parasaran, ASG
Mr. E.Venu Kumar, Adv.
Mr. Niwas R. Khalap, Adv. for
Mr. Anip Sachthey, Adv.

For Respondent(s) Mr. N.R. Choudhury, Adv. for

Mr. Somnath Mukherjee, Adv.

RR Ex parte

UPON hearing counsel the Court made the following
O R D E R

The appeals are allowed in terms of the signed order.

(J.S. Rawat)
Court Master

(Vijay Aggarwal)
Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6848 OF 1999

M/s. Bharat Coking Coal Ltd. & Ors.

Appellant (s)

Versus

Santosh Kumar Singh

Respondent (s)

With
Civil Appeal Nos. 6850/1999, 6849/1999 and 6851/1999

O R D E R

M/s. Bharat Coking Coal Ltd. and its officers (hereinafter referred to as "the appellants") being aggrieved against the common order passed by a Division Bench of the High Court of Judicature at Patna, Ranchi Bench (as it then was), have filed these appeals. By the impugned order the High has partly allowed the writ petitions filed by the respondents. As the Writ Petitions were clubbed and disposed of by the High Court by passing a common order, we propose to do the same and dispose of the appeals by passing a common order.

Brief facts:

By virtue of Colliery Control Order framed under the Defence of India Rules 1911 and continued in force under Section 16 of the Essential Commodities Act, the appellants were empowered to charge service charges which include cost of transportation and administration charges, on supply of coal from the stockyard.

The High Court while allowing the writ petition, filed by one Birendra Kumar Sinha (CWJC No.1336/87), directed the appellants not to realise the service charges from the writ petitioner for supply of coal directly from the colliery. It, however, held that the appellants were

entitled to charge service charges in respect of the coal supplied from the stockyard.

The respondents filed writ petitions in the High Court seeking writ of Mandamus directing the appellants to refund the service charges illegally collected from the respondents-writ petitioners on the coal lifted by the appellants from the colliery of the appellants @ Rs.25/- per ton.

Relying upon the judgment of the Division Bench of the High Court of Patna in Birendra Kumar Sinha v. Bharat Coking Coal Limited & Ors. being CWJC No. 1336 of 1987 (R) in which it has been held that Bharat Coking Coal Limited was not justified in levying "service charges" on the coal lifted by the consumer from the pit-head of the colliery as no service was rendered, the writ petitions were partly allowed, directing the appellants to refund the service charges on the Bills which were annexed to the Writ Petitions. Special Leave Petition No. 9887 of 1988 filed by M/s. Bharat Coking Coal Ltd. & Ors., the appellants herein, was dismissed on 31.8.1988 with the observation that the appellants were not justified in levying service charges as the coal had been collected by the respondent-consumers from the pit-heads and not from the stockyards.

The question involved in the case was, whether the coal had been supplied to the respondents from the stockyards? If the answer is in the affirmative, the appellants were justified in collecting the service charges but, if the coal was supplied from the pit-heads then the appellants would not be justified in levying the service charges as no service was being

rendered by the appellants.

The High Court in the impugned judgment has referred to paragraph 27 of the writ petition containing an averment of fact as to the place from where the coal was lifted. Paragraph 27 reads as under:

"27) That the respondent no.1 is regularly charging the service charge at the rate of Rs.25/- per tonne from the petitioner and the petitioner had paid the service charge at the rate of Rs.25/- on many occasions for lifting coal from the colliery on the basis of delivery order and sale order.

Copies of sale order and delivery order in favour of the petitioner charging Rs.25/- per tonne as service charge for lifting coal from the colliery are being filed herewith and marked as Annexure 10 and 10/A to this application."

The respondents produced Bills as Annexure-10 and 10/A in CWJC No. 2271 of 1990 (R), Annexure-10 in CWJC No.2278/90(R) and Annexures 10 and 10/A in CWJC No.55/91(R), disclosing the dates on which payment of service charges was made by the respondents for supply of coal from the colliery.

The High Court came to the conclusion that the averments made by the respondents-writ petitioners were vague inasmuch as they had failed to disclose as to whether the coal was lifted from the stockyards or colliery pits. In the absence of the details as to the lifting of the coal from the pit-heads, a writ of Mandamus could not be issued against the appellants, but since the respondents had produced the aforesaid four bills in which it was mentioned that the coal had been lifted from the colliery, the High Court gave a direction to the appellants to refund the service charges mentioned in the bills, copies of which were filed as Annexures referred to above,

within a period of three months of the production of the certified copy of the judgment.

We agree with the High Court to the extent that averments made by the respondents are vague and lacking in particulars. They have failed to make a positive averment to the effect that they had lifted the coal from the pit-head of the colliery and not from the stockyards. They have further failed to disclose as to how much service charges have been paid by them to the appellants. The only averment made in the writ petition by the writ petitioners-the respondents herein, is that they had paid the service charges @ Rs.25/- per tonne "on many occasions" for lifting the coal from the colliery. In support of the fact that the appellants had levied the service charges the respondents produced four Bills referred to above. Perusal of the Bills does not show as to from where the coal had been lifted, i.e., from the pit-head or from the stockyard. In the absence of the specific averment to the effect that the coal had been lifted from the pit-head of the colliery or any other admitted fact showing that the coal had been lifted from the pit-head, the High Court was not justified in ordering the refund of the service charges mentioned in the bills. Rule laid in Birendra Kumar Sinha's case (supra) because of lack of particulars of the point from which the coal was picked up by the respondents, shall not be applicable in these cases. High Court has erred in taking a view contrary to what we have said above.

For the foregoing reasons, these appeals are accepted; the impugned order is set aside and the writ petitions are ordered to be

dismissed. However, there shall be no order as to costs.

J.

.....
(ASHOK BHAN)

New Delhi;
March 16, 2005.

.....J.
(A.K. MATHUR)