

**IN THE HIGH COURT OF CHHATTISGARH AT
BILASPUR**

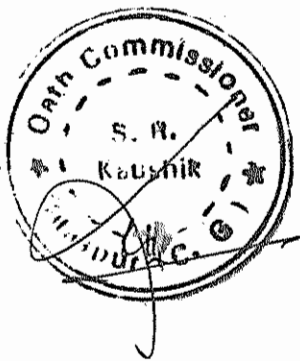
WRIT PETITION (C) NO. 2404 OF 2014

PETITIONER: M/s Sunflag Iron and Steel Company Limited, a Company incorporated & Registered under Companies Act, 1956, having its Registered Office at 33, Mount Road, Sadar, P.S. Sadar, Nagpur 440001 through its authorized Signatory Mr. Jagdish Jha S/o. Anant Lal Jha, Vice President Purchase, aged about 67 years, R/o Sunflag Colony, Bhandara, P.S. Bhandara, District Bhandara (Maharashtra State)

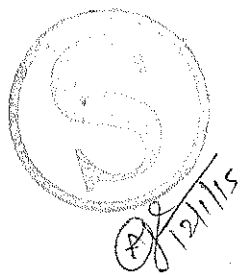
A. No. 2404/14
Presented by Shri. A. H. S. G.
8/12/14

VERSUS

- RESPONDENTS:** 1) Coal India Limited, through its Chairman, having its office at 13, R.N. Mukherjee Road, Kolkata-700 001
- 2) South Eastern Coalfields Limited through its Chairman, & Managing Director, having its Registered Office at Seepat Road, P.S. Sarkanda, Bilaspur, Chattisgarh - 495006
- 3) Indian Bank, Nagpur Branch, through its Branch Manager, Cement Road, Shivaji Nagar, Dharampeth Extension, Nagpur - 440010 P.S. : Sitabuldi



**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**



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HIGH COURT OF CHHATTISGARH, BILASPUR

**DB: HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE &
HON'BLE SHRI CHANDRA BHUSHAN BAJPAI, J.**

Writ Petition (C) No. 2404 of 2014

PETITIONER

M/s Sunflag Iron and Steel
Company Limited

Versus

RESPONDENTS

Coal India Limited and others

**WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF
INDIA**

Appearance :

Shri Ali Asgar, Advocate for the Petitioner.
Dr. N.K. Shukla, Sr. Advocate with Shri Shailendra Shukla,
Advocate for Respondent No.2.

ORDER
(09.01.2015)

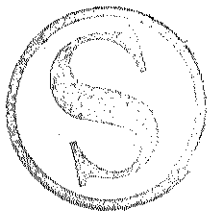
NAVIN SINHA, ACTING C.J.

1. We have heard Learned Counsel for the Petitioner and for Respondent No.2.
2. The Writ Petition was filed assailing an order dated 30.5.2014 issued by the Respondent terminating the Fuel Supply Agreement on allegations that the Petitioner had failed to lift the specified quantity within the stipulated time. The challenge was also to the consequential order dated 5.12.2014 invoking the Bank Guarantee.
3. Learned Counsel for the Petitioner submits that the impugned order dated 30.5.2014 itself manifests that Clause 16.1.4 of the Fuel Supply

Agreement stipulated giving of a prior written notice for not less than 30 days and after which the security deposit could be forfeited. He submits that the requirement for a notice of at least 30 days was but another manifestation of a show cause notice to facilitate the Petitioner by filing a reply to convince the authorities that there was no need to terminate the Agreement or that he was not at fault. Even after referring to the Clause, the letter proceeds to straightaway terminate the Agreement and forfeit the security deposit without such 30 days notice. The fact that the Petitioner may have protested against the same on 21.6.2014, cannot be justification for the Respondents to contend that they have considered his representation by treating the earlier termination dated 30.5.2014 as a show cause notice. He submits that the language of the order dated 30.5.2014 militates against it being a show cause notice. The language used makes it apparent that it was issued with a closed mind, rendering the alleged opportunity to show cause into an empty formality. In the meantime, the Respondents have also invoked the Bank Guarantee on 5.12.2014.

4. Learned Counsel for Respondent No.2 submitted that the final termination has been ordered on 3.12.2014 by treating the order dated 30.5.2014 to be a show cause notice and after due consideration of the cause shown on 21.6.2014.

5. At this stage, we are only concerned with the decision making process of the Respondents in exercise of our powers for judicial review and not merits of the decision itself. If there is any infirmity in the decision making process, that would be sufficient for us to hold that the action of respondents was unjustified.



6. The order dated 30.5.2014 makes it manifest that under Clause 16.1.4 of the Fuel Supply Agreement, before termination, a prior notice of not less than 30 days was required to be given. It was but a facet of the principles of natural justice as a show cause notice to enable the Petitioner an opportunity to convince the Respondents within 30 days that termination was not called for in the circumstances. It is not the case of the Respondents that they gave any notice to the Petitioner before 30.5.2014 much less of 30 days. If that was not enough, we find it difficult to uphold the final order on the principle of a post decisional hearing with a closed mind as the order dated 30.5.2014 in no uncertain terms states that the Agreement is terminated and the security deposit is forfeited.
7. The order dated 3.12.2014 without furthermore, in the facts of the case automatically becomes unsustainable. Consequentially, invoking of the Bank Guarantee on 5.12.2013 also becomes bad in the law.
8. The order dated 3.12.2014 is therefore set aside. The Petitioner shall validate the Bank Guarantee. The Respondents shall pass a fresh order in accordance with law within a period of three months provided the Petitioner himself cooperates. The Bank Guarantee encashed shall be refunded to the Petitioner within two weeks from the date of its furnishing the fresh Bank Guarantee.
9. The Writ Petition is allowed.

Sd/-
Acting Chief Justice

Sd/-
Chandra Bhushan Bajpai
Judge