IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.55 of 2019

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1. M/s Maa Mundeshwari Carbon Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its place of business situated at Bhairopur, P.O. Paharia, P.S. Bhagwanpur, District Kaimur at Bhabhua through one of its Directors, Manoj Kumar Singh, S/o Shri Rajeshwar Prasad Singh, Resident of Bhairopur, P.O. Paharia, P.S. Bhagwanpur District Kaimur at (Bhabhua) presently residing at Flat no. 28, Konark Apartment, Near Punch Mukhi Mandir, East Boring Canal Road, P.S. Shri Krishna Puri, District- Patna.
2. Manoj Kumar Singh, S/o shri Rajeshwar Prasad Singh, Resident of Bhairopur, P.O. Paharia P.S. Bhagwanpur, District Kaimur at (Bhabhua) presenty residing at Flat No. 28, Konark Apartment, Near Punch Mukhi Mandir, East Boring Canal Road, P.S. Shri Krishna Puri, District Patna.

... ... Petitioner/s

Versus

1. The Central Coalfields Ltd., a Subsidiary of Coal Indian Ltd., (Sales & Marketing Department), Darbhanga House, Ranchi through its Chairman-cum-Managing Director.
2. The General Manager (Sales & Marketing), Central Coalfields Ltd., Darbhanga House, Ranchi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Senior Advocate
For the Respondent/s	:	Mr. Vishwa Mohan Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

5 19-10-2020 Heard Mr. S.D. Sanjay, learned Senior Counsel for the petitioners and Mr. Vishwa Mohan Kumar Sinha, learned counsel for the respondents through video conferencing.

The petitioner in this writ petition seeks quashing of order dated 10.10.2018, passed by the General Manager (Sales & Marketing), Central Coalfields Limited communicated to the petitioner vide Letter No.14228-52, by which the petitioners have been informed that all business activities between Central

Coalfields Limited and M/s Maa Mundeshwari Carbon Pvt. Ltd. shall be banned till final adjudication of FIR (R/C-2(A) 12/2012-R) registered by the CBI against M/s Maa Mundeshwari Carbon Pvt. Ltd.

Brief facts, which is essential but bereft of unnecessary details, is that the petitioners in pursuance of advertisement inviting the entrepreneurs to establish Special Smokeless Fuel Industries established M/s Maa Mundeshwari Carbon Pvt. Ltd. for supply of smokeless coal to the consumers after investing good amount and the loan taken from the bank and financial institution. Central Coalfields Limited agreed to supply coal for special smokeless fuel to the petitioner at the notified price. The facility of linkages had been granted to various units including the unit of the petitioner and only thereafter such industries have been settled for manufacturing soft coke and smokeless fuel to the people of the countryside. Later on the coal companies decided to effect sale of raw coal by way of E-Auction Scheme after doing away to the linkages that is assured supply of linked quantity of coal at the notified price but said decision of the coal companies was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court in Ashoka Smokeless Coal India Pvt. Ltd. & Ors. vs.

Union of India & Ors., (2007) 2 SCC 640 upheld the challenge of the entrepreneurs and held that E-Auction of coal for the linked consumers was not permissible and accordingly declared the policy ultra vires. In pursuance thereof new policy came into effect. Coals were supplied according to the fuel supply agreement arrived at between the two sides, but later on the industry of the petitioners has been inspected and CBI registered the aforesaid case, which is still pending. Fuel supply agreement has also come to an end in the year 2013. During this period, the supply of coal to the industry of the petitioner was stopped and later on the same was restored. The petitioner also challenged the order of termination of fuel supply agreement by filing CWJC No.12021 of 2013, which is pending for consideration, but in the meantime, the petitioner received Reference No. CCL/HQ/C-4/S & M/FSA/Vig./8489-8510, dated 12.08.2015, by which the petitioners were informed that the petitioners have been black listed. The petitioners filed CWJC No.7591 of 2016 for quashing the aforesaid letter. A Bench of this Court vide order dated 22.02.2018 relying on the judgment of the Hon'ble Supreme Court in the case of Kulja Industries Limited vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited, reported in (2014) 14 SCC 731 remanded the

the matter to the General Manager (Sales & Marketing), Central Coalfields Ltd. holding that the petitioner has been debarred from carrying on its business activities for an indefinite period as permanent debarment from business is bad in law. Thereafter the petitioners filed representation before the General Manager (Sales & Marketing), Central Coalfields Ltd. and also gave reminders but the General Manager (Sales & Marketing) by order dated 10.10.2018 ordered that all business activities between Central Coalfields Ltd. and M/s Maa Mundeshwari Carbon Pvt. Ltd. shall be banned till final adjudication of FIR (R/C-2(A) 12/2012-R) registered by the CBI against M/s Maa Mundeshwari Carbon Pvt. Ltd.

Mr. S.D. Sanjay, the learned Senior Counsel for the petitioners submits that the writ petition being CWJC No.7591 of 2016 filed by the petitioners was allowed holding that debarment is never permanent and the period of debarment is variably depend upon the nature of offence committed by the erring contractor but the respondents by the impugned order again black listed the petitioners till disposal of the criminal case registered by the CBI, which amounts for all practical purposes that the debarment of the petitioners from doing any business with the respondents is for permanent period because the criminal case was registered by the CBI in the year 2012. Eight years have already elapsed but the criminal case has got no substantive progress. The disposal of criminal case may take further 10-20 years and, therefore, debarment of the petitioners till disposal of the criminal case lodged by the CBI for all practical purposes is permanent debarment. The respondents have passed the order indirectly debarring the petitioners for indefinite period which the respondents should not have passed directly, therefore, the order is illegal and not sustainable.

Mr. S.D. Sanjay, the learned Senior Counsel further submits that now policy of supply of coal has undergone a sea change. Now the coal is supplied by the coal companies after E-Auction. Anybody can participate in E-Auction for purchasing coal after delisting the coal from the list of essential commodities, therefore, no question arises for diverting the coal for other purposes than one for which the industries have been established. The petitioners have already suffered for more than eight years due to non-supply of coal to the industry of the petitioner although the petitioners have spent huge amount on establishment of the industry from his own corps and from the loan obtained through the financial institutions. It is further submitted that in the case of Pawan Kumar and Deepak Kumar

(CWJC No.13263, 13319 of 2008), 2009 (4) PLJR 104, this Court has held that mere pendency of criminal case does not lead to any conclusion of guilt. On mere allegation by a party against another party, if the second party is deprived from his right to business it would amount to a punishment with irreparable injury and thus, in any view of the matter, the order black listing the petitioners till disposal of the criminal case is by no stretch of imagination can be said to be reasonable on the facts of the case.

While supporting the order as contained in Annexure-17, Mr. Vishwa Mohan Kumar Sinha, learned counsel for the respondents submits that the petitioners have grossly breached the terms and conditions of clause 4.4 of the fuel supply agreement. The petitioners received the coal for the use of his special smokeless fuel plant but the petitioners sold/diverted and transferred the coal to others for other purposes and that is the material breach of the terms of agreement. The C.B.I., A.C.B. Branch, Ranchi filed an FIR bearing R.C. 02(A)/2012-R against the officials of the Central Coalfields Ltd and against the Directors of M/s Maa Mundeshwari Carbon Pvt. Ltd that they all entered into a conspiracy supplied/received fuel coals but they breached terms and conditions of fuel supply agreement. It is further submitted that of course the coal has been delisted from the list of essential commodities but still it is a scars and the Hon’ble Supreme Court has held in the case of Ashoka Smokeless Coal India Pvt. Ltd. (supra) that institution of a criminal case creates reasonable doubt over the issue of misutilization of coals and hence suspension of coal supply by coal company is justified. The respondents have passed the order on remand after affording full opportunity of hearing to the petitioners. It is further submitted that the Hon’ble Supreme Court has also in the case of Sushila Chemicals (P) Ltd. v. Bharat Coking Coal Ltd., (2010) 10 SCC 388 has held that the very object of Government is to allot coal to appellants for utilization in their plants and not for any other purpose, therefore, if FIR is lodged by CBI, it created serious doubts that allotted coal may be diverted or sold in the open market instead of being utilized in plant of appellants, BCCL is within its rights to suspend supplies of coal to appellants till doubts are cleared, therefore, the order is perfectly right and does not require interference.

Having considered the facts and submissions of both sides, I find that initially the petitioners entered into a fuel supply agreement with the respondents company for running his plants for producing special smokeless coal. After sometimes an inspection was made and according to the petitioners no irregularities were found. The CBI also inspected the premises of the petitioners and found certain irregularities in utilization of the coal supplied to the petitioners for running the plant and on such, the FIR being (R/C-2(A) 12/2012-R) was registered. After institution of the FIR, the supply of coal to the plant of the petitioners was temporarily suspended but after sometimes when the petitioners approached and made his position clear, the supply was restored. Again the respondents terminated the fuel supply agreement on 30.04.2013 and thereafter an order was passed on 12.08.2015 for black listing the petitioners forever. The petitioners filed CWJC No.7591 of 2016 and this Court relying on the judgment of Kulja Industries Limited (supra) remanded the case to pass order afresh after hearing the petitioners on the point of quantum of punishment and on the point of debarring or black listing the petitioners for indefinite period. From perusal of the order dated 10.10.2018 (Annexure-17), which is impugned in this writ petition, it is apparent that instead of black listing the petitioners for indefinite period, the respondents ordered that all business activities between Central Coalfield Ltd. and M/s Maa Mundeshwari Carbon Pvt. Ltd.

shall be banned till the final adjudication of the FIR registered by the CBI. From the order itself, it appears that although the respondents have not passed the order black listing or debarring the petitioners for doing any business with the respondents for indefinite period, but till disposal of the FIR. The CBI registered the FIR in the year 2012 but even after lapse of eight years, no substantive progress in criminal case is reported and the disposal of the criminal case, as usually and generally found, will take one or two decades more, therefore, debarment for one or two decades more to the petitioners from doing any business with the company amounts to debarment for the whole life of the petitioners and it is almost permanent. If the authorities are not under the law can black list or debar a person from doing any business for life or for indefinite period, the authority cannot be allowed to pass such order contingent to happening of a certain events in future. Happening of such events may take decades and till then the petitioner may suffer irreparable loss. The Hon'ble Supreme Court in the case of Kulja Industries Limited (supra) in para 25 observed as follows:

"Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

Therefore, this Court in the earlier judgment, while remanding the case of the respondents to pass fresh order in accordance with law after taking into consideration the nature of offence and the period of punishment/debarment, should appropriately be proportionate to the offence keeping in consideration that the debarment or black listing the petitioners forever or contingent to the happening of an event, which is not certain and happening of such event may take decades, is bad in law. The disposal of the criminal case is not dependent only on the co-operation of the petitioners. Of course the CBI lodged the FIR in the year 2012 but even after lapse of eight years, the criminal case is still pending and perhaps, as it has been submitted, that the further proceeding in the criminal case has already been ordered to be stayed by the Jharkhand High Court, The CBI has not taken any step during the pendency of last eight years, therefore, I find that the respondents have circumvent the order of this Court by not specifically making the debarment for indefinite period but debarment is almost made contingent upon happening of an event such as disposal of the criminal case and the disposal of criminal case may take many more years and till then the petitioner cannot be legally debarred from doing any business and the petitioner shall suffer irreparable loss. It further appears that now the coal has been delisted from the essential commodities and the coal is not now remained as essential commodity and the coal is sold by the company on E-Auction, therefore, the person who wishes to purchase coal can purchase the coal at the maximum price offered by different bidders in E-Auction. Now the coal is not made available to any plant on a low or subsidized price, therefore, there is no question of selling coal in black market.

Now the next question arises that what should be the appropriate penalty on which the quantum of sentence is to be inflicted. The facts which are to be considered at the time of awarding penalty for black listing the petitioners for the period for which the petitioners should be black listed is that now the coal is sold at E-Auction and not at any subsidized price or the price fixed earlier, therefore, the chance of black marketing the coal after purchasing the same at higher price has already been minimized. No useful purpose would be served if the industry of the petitioners is closed for non-supply of coal to the plant of the petitioners, therefore, I remand this case to the respondents to pass order afresh after considering the relevant facts and pass appropriate order which would be commensurate to the acts done by the petitioners within three months from the date of receipt of this order.

Having considered the facts aforesaid and discussions made above, the order dated 20.10.2018 as contained in Annexure-17 is quashed. The authorities are directed to pass order afresh in accordance with law within three months from the date of receipt of this order.

The writ petition is allowed.

(Prabhat Kumar Jha, J)

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