IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.863 of 2019

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M/s Jai Mangala Fuels Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its place of business situated at Lakhi Bagh, P.S. Manpur, District Gaya through its Managing Director, Ashok Kumar Singh, S/o Shri Babban Singh Resident of Lakhi Bagh, P.S. Manpur, District- Gaya.

... ... Petitioner.

Versus

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

... ... Respondents.

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

CAV ORDER

5 04-02-2021 Heard Mr. S.D. Sanjay, learned Senior counsel appearing for the petitioner, and Mr. Vishwa Mohan Kumar Sinha, learned counsel appearing for the respondents.

2. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to quash the order dated 10.10.2018 passed by the General Manager (Sales & Marketing), Central Coalfields Limited, Darbhanga House, Ranchi (Respondent No.2) communicated to the petitioner vide Letter No.14302-26 dated 10.10.2018 (Annexure-9 to the writ application), by which the petitioner has been informed that all business activities between

Central Coalfields Limited (Respondent No.1) and M/s Jai Mangala Fuels Private Limited (petitioner) shall be banned till the final adjudication of FIR (R/C-05(A)2012-R) registered by the CBI against the petitioner M/s Jai Mangala Fuels Private Limited.

3. The brief facts, leading to this writ application, is that the petitioner is a Company, incorporated under the provisions of the Companies Act, 1956 and carrying on business. In pursuance of the advertisement inviting the entrepreneurs to establish Special Smokeless Fuel Industries by the Coal India Limited, the petitioner M/s Jai Mangala Fuels Private Limited established a unit for supply of smokeless coal to the consumers after investing good amount and the loan taken from the Bank and the Financial Institutions. 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, later on, the Coal Companies agreed to sell 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. The said decision of the Coal Companies was challenged before the Hon'ble Apex Court and the Hon'ble Apex 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. Subsequently, the Government of India, Ministry of Coal, vide Office Memorandum No.23011/4/2007-CPD dated 18.10.2007 declared New Coal Distribution Policy dated 18.10.2007 by which the classification of consumers into Core and Non-Core Sector has been done away. In Clause-4, it has been detailed that the linkage system will be replaced with a more transparent bilateral commercial arrangement of enforceable Fuel Supply Agreement. All the existing valid Linked Consumers whose linkage/MPQ during the year 2006 and 2007 was 4200 tones or more have to enter into Fuel Supply Agreement with the Coal Companies not later than six months from the date notified by the Coal India Limited. Failure to enter into Fuel Supply Agreement will result in discontinuation of supplies at fixed price. In Clause-2.3, it has been detailed that 75% of the quantity as per the normative requirement of the consumers/actual users would be considered for supply of coal through Fuel Supply Agreement by Coal India Limited at Notified price to be fixed and declared by the Coal India

Limited. The balance 25% of coal requirement of the Units will be sourced by them through E-Auction/Import of coal etc. as their preferences. When the matter of challenge of E-Auction was pending for consideration before the Hon'ble Apex Court for the purpose of passing order on interim arrangement, the Hon'ble Apex Court directed the Linked Units including the Unit of the petitioner to furnish all the details about the genuineness of their Unit and that the Unit was running. The petitioner and others submitted all their documents before the Hon'ble Apex Court and this fact has also been noticed by the Hon'ble Apex Court in its Judgment. The petitioner, in view of the commencement of New Coal Distribution Policy, entered into Fuel Supply Agreement on 30.04.2008, and, thereafter, the petitioner was booking its coal regularly and the respondents were supplying coal to the Petitioner Unit without any interruption and the petitioner was regularly submitting its utilization report about the manufacture and sale of Soft Coal as required by the Respondents. Later on, the Industrial Unit of the petitioner was inspected by the C.B.I. Team on 23.09.2011 without any prior intimation. The Team found the Unit of the petitioner fully working and operational and, on demand, various documents were produced before the C.B.I. Team. The

C.B.I. Team also furnished receipt about receiving the documents but no report about the operational status of the Unit was handed over to the petitioner. The petitioner was also not furnished with any outcome of the inspection of the C.B.I. Team. Thereafter, the information was sought by the petitioner and others from the Coal Company Limited about the result of the inspection report under Right to Information Act, then vide letter dated 29.09.2011, consequent upon the inspection, the report of the operational status of the Unit of the petitioner was delivered in a tabular form, wherein the name of the petitioner was found at serial no.12, in which it was mentioned that inspection was conducted in the Unit of the petitioner and it was found to be operational. In the meanwhile, the coal dispatches to the petitioner Unit was suspended vide letter dated 22.05.2012 without disclosing any reason. A wireless message bearing No.4643-70 dated 22.05.2012 was also sent by the General Manager (Sales and Marketing), C.C.L., Ranchi, to the different Collieries. The petitioner tried to know the reason of suspension of supply of coal to the petitioner from the office of the Respondent No.2 but nothing was disclosed to the petitioner. Thereafter, the petitioner filed C.W.J.C. No.17729 of 2012 before this Court and the same was allowed by this Court vide order dated 28.09.2012 with a direction to the C.B.I. Anti Corruption Branch, Ranchi, to supply a copy of the Inspection Report to the petitioner. In compliance of the aforesaid order, the C.B.I. sent the Inspection Report to the petitioner (Annexure-5 to the writ application). On perusal of the same, the petitioner noticed that nothing adverse was mentioned in the Inspection Report and everything was found in order. The Report did not disclose any irregularity or misutilisation of coal by the petitioner but in spite of that an FIR was lodged by the C.B.I. at Ranchi on 03.04.2012. The petitioner challenged the said FIR by filing the quashing application vide Cr. M. P. No.1060 of 2012 before the Hon'ble Jharkhand High Court at Ranchi and the interim protection to the petitioner in criminal case was granted. Thereafter, the petitioner was served with the Original Blacklisting Order vide Reference NO.CCL/HQ/C-4/S&M/FSA/VIG/8511-32 dated 12.08.2015, by which the petitioner was informed that its Unit has been blacklisted by banning all business activities in between the petitioner and the Central Coalfields Limited (Respondent No.1) {Annexure-6 to the writ application}. The said order was challenged by the petitioner before this Hon'ble Court by filing C.W.J.C. No.8691 of 2018 on different grounds and this Hon'ble Court vide order dated 10.09.2018 quashed the aforesaid order dated 12.08.2015 and remanded the matter to the General Manager (Sales & Marketing), Central Coalfields Limited, Ranchi (Respondent No.2), for taking a fresh decision with respect to the period of blacklisting to be imposed upon the petitioner after granting opportunity of hearing to the petitioner in accordance with law {Annexure-7 to the writ application}. Thereafter, the petitioner filed its representation dated 26.09.2018 before the Respondent No.2 in compliance of the order dated 10.09.2018 passed in C.W.J.C. No.8691 of 2018 to reconsider the order of Blacklisting/banning all business activities in between the petitioner and the Central Coalfields Limited (Respondent No.1). Thereafter, the Respondent No.2 passed the impugned order dated 10.10.2018 to the effect that all business activities between CCL and the petitioner M/s Jai Mangala Fuels Private Limited shall be banned till the final adjudication of FIR {R/C-05(A)2012-R} registered by CBI against the petitioner M/s Jai Mangala Fuels Private Limited {Annexure-9 to the writ application}.

4. Mr. S.D. Sanjay, the learned Senior counsel for the petitioner, submits that C.W.J.C. No.8691 of 2018 filed by the petitioner was allowed on 10.09.2018 holding that debarment is never permanent and the period of debarment would variably depends upon the nature of offence committed by the erring Company but the Respondent No.2 by the impugned order dated 10.10.2018 again blacklisted/debarred the petitioner till disposal of the criminal case registered by the CBI, which amounts for all practical purposes that the debarment of the petitioner from doing any business with the respondents is for permanent period because the criminal case was registered by the CBI in the year 2012 and even after passing over of eight years, there is no substantive progress in the case. The disposal of criminal case may take further 10-20 years and, therefore, debarment of the petitioner till disposal of the criminal case lodged by the CBI for all practical purposes is permanent debarment. As such, the Respondent No.2 has passed the order indirectly debarring the petitioner for indefinite period which the Respondent No.2 should not have passed directly. Therefore, the order is illegal and not sustainable. He further submitted that now policy of supply of coal has been changed and, now, the coal is supplied by the Coal Companies on 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 petitioner has already suffered for more than eight years due to non-supply of coal to its Unit, although the petitioner had spent huge amount on establishment of the Unit from his own corps and from the loan obtained through the Financial Institutions. He 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 impugned order of blacklisting/banning all business activities in between the petitioner and the Central Coalfields Limited (Respondent No.1) till disposal of the criminal case by no stretch of imagination can be said to be reasonable on the facts of the case.

5. On the other hand, supporting the impugned order as contained in Annexure-9 to the writ application, Mr. Vishwa Mohan Kumar Sinha, learned counsel for the respondents, submitted that the petitioner has grossly breached the terms and conditions of clause 4.4 of the Fuel Supply Agreement. The petitioner received the coal for the use of its special smokeless fuel plant but the petitioner sold/diverted/transferred the coal to others for other purposes and that is the material breach of the terms of agreement. The C.B.I. has lodged an FIR bearing R/C-05(A)/2012-R against the officials of the Central Coalfields Ltd. and the petitioner that they all entered into a conspiracy in supplying/receiving the fuel coals and breached the 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. and Others** (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 petitioner. It is further submitted that the Hon'ble Supreme Court 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.

6. From the aforesaid facts and submissions of both sides, It is clear that, initially, the petitioner entered into a fuel supply agreement with the respondents for running his unit for producing special smokeless coal. After sometimes an inspection was made and according to the petitioner, no irregularities were found. The CBI also inspected the premises of the petitioner and found certain irregularities in utilization of the coal supplied to the petitioner for running the plant and, on such, the FIR being (R/C-05(A)2012-R) was registered. After institution of the FIR, the supply of coal to the plant of the petitioner was temporarily suspended but after sometimes, when the petitioner 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 by the Respondent No.2 for black listing the petitioner forever. Thereafter, the petitioner filed CWJC No.8691 of 2018 and this Court relying on the Judgment of **Kulja Industries Limited Versus Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited**

{(2014) 14 SCC 731} remanded the case to pass order afresh after hearing the petitioner on the point of quantum of punishment and on the point of debarring or black-listing the petitioner for indefinite period. From perusal of the order dated 10.10.2018 (Annexure-9 to the writ petition), which is impugned in this writ application, it is apparent that instead of blacklisting the petitioner for definite period, the Respondent No.2 ordered that all business activities between Central Coalfield Ltd. and the petitioner M/s Jai Mangala Fuels Private Limited shall be banned till the final adjudication of the FIR registered by the CBI. From the order itself, it appears that although the Respondent No.2 has not passed the order of black listing or debarring the petitioner for doing any business with the respondents for indefinite period, but till disposal of the case registered by the CBI. 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 petitioner from doing any business with the company amounts to debarment for the whole life of the petitioner and it is almost permanent. If the authorities are not under the law can blacklist 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 recognized 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."

7. Therefore, this Court in the earlier Judgment, while remanding the case to the Respondent No.2, directed the Respondent No.2 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 petitioner 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 petitioner. 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.

8. 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 in 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 unit of the petitioner is closed for non-supply of coal. Therefore, the matter is remanded to the respondents to pass order afresh after considering the relevant facts which would be commensurate to the acts done by the petitioner within three months from the date of receipt of this order.

9. Having considered the facts aforesaid and discussions made above, the order dated 10.10.2018, as contained in Annexure-9 to this writ application, 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.

10. Accordingly, with the aforesaid direction and observation, this writ application is disposed of.

(Rajendra Kumar Mishra, J)

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