IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1114 of 2024

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M/s. Bhagwati Coke Industries Pvt. Ltd. a Private limited Company having its Registered Office at Urmila Vila, Surya Mandir Road, P.S.- Aurangabad, District Aurangabad and its Industrial Unit at M-2, Industrial Area, Aurangabad, through one of its Directors namely, Shyam Kishore Prasad, aged about 67 years, Male, son of Late Dev Nandan Prasad, Resident of Urmila Villa, Surya Mandir Road, P.S.- Aurangabad, District- Aurangabad.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikash Bhavan, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikash Bhavan, Patna.
3. The Bihar State Mining Corporation Limited, a Government of Bihar Undertaking, through its Chief Executive Officer, Room No. 164, Vikas Bhavan, Bailey Road, Patna.
4. The General Manager, Bihar State Mining Corporation Limited, Room No. 164, Vikas Bhavan, Bailey Road, Patna.
5. The Deputy General Manager, Gaya Cluster, Bihar Industrial Area Development Authority, Gaya.
6. The Area In-charge, Industrial Area, Bihar Industrial Area Development Authority, Aurangabad.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 1011 of 2024

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M/s Konark Coke Industries Partnership Firm having its Registered Office at Urmila Vila, Surya Mandir Road, P.S. Aurangabad, District Aurangabad and its Industrial Unit at Teldiha, Madanpur, Aurangabad, through one of its Partners namely, Shyam Kishore Prasad, aged about 67 years, Male, Son of Late Dev Nandan Prasad, Resident of Urmila Villa, Surya Mandir Road, P.S. Aurangabad, District Aurangabad.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikash Bhavan, Patna.

2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikash Bhavan, Patna.

3. The Bihar State Mining Corporation Limited, a Government of Bihar Undertaking, through its Chief Executive Officer, Room No. 164, Vikas Bhavan, Bailey Road, Patna.

4. The General Manager, Bihar State Mining Corporation Limited, Room No. 164, Vikas Bhavan, Bailey Road, Patna.

5. The General Manager, District Industry Center (DIC), Aurangabad.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 1114 of 2024)

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr.Mohit Agarwal, Advocate
For the Respondent/s	:	Mr. S.D. Yadav AAG-9
For Mining	:	Mr. Naresh Dikshit, Spl. PP
		Ms. Kalpana, Advocate

(In Civil Writ Jurisdiction Case No. 1011 of 2024)

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr.Mohit Agarwal, Advocate
For the Respondent/s	:	Mr. S.D. Yadav AAG-9
For Mining	:	Mr. Naresh Dikshit, Spl. PP
		Ms. Kalpana, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-07-2024

The issue raised in both the writ petitions is the legality of the order passed by the Bihar State Mining

Corporation Limited ('Corporation' for short) forfeiting the security deposit and blacklisting the petitioners for three years on the ground of violation of the terms of the contract.

2. Learned Senior Counsel S. D. Sanjay appearing for the petitioners has submitted that the petitioners are coal intensive industries who could procure coal only through the respondent-Corporation. They had entered into an agreement as produced in the writ petition for specific yearly allocation in metric tonnes. The supply of Coal was, however intermittent and the petitioners' unit had been forced to remain idle in certain months and work overtime in other months when the supply is effected. Subsequently, a show cause notice was issued to the petitioners on the ground that the monthly utilization of the petitioners is far in excess of that provided for in the agreement. The show cause notice did not put forth any penal consequence, if the explanation proffered by the petitioner is not satisfactory. This alone would vitiate the order as per the decision of a Division Bench of this Court in the **State of Bihar Road Construction Department Vs. Espan Insrastructure (I) Ltd. 2023 SCC Online Pat 7047.**

3. From the agreement produced, it is also argued that the quantity of Coal allocated is mentioned only on a yearly basis and there is no requirement of a monthly utilization. It is urged that either the orders impugned be set aside or at least the matter be remanded for fresh issuance of show cause notice since the consequence visited on the petitioner was never put to them in the show cause notice.

4. The learned Standing Counsel for the respondent-Corporation has opposed the writ petition. It is pointed out from the agreement that it specifically refers to a Monthly Scheduled Quantity (MSQ) which is 1/12th of the Annual Contracted Quantity (ACQ). Admittedly, the petitioners have utilized coal more than that is allocated for a month and hence it goes against the terms and conditions of the contract. The learned Standing Counsel asserts that the writ petition has to be dismissed.

5. The facts in the writ petition are more or less similar; but for the difference in quantity and months in which the excess utilization was complained of. The counter affidavit filed by the respondent-Corporation also indicates that the proceedings were initiated on the basis of excess

monthly utilization of the Coal allocated to the petitioners which is 1/12th of the ACQ.

6. It is trite that an agreement has to be read as a whole and provisions therein cannot be read in isolation from the other clauses. For convenience, we refer to the documents from CWJC No. 1114 of 2024. Annexure-P/1 is the Fuel Supply Agreement between the 3rd respondent and the petitioner. The Corporation, is the agency nominated by the Government of Bihar for supply of coal; which called for applications from eligible consumer units/purchasers in small and medium sector/consumer units/purchasers, in the prescribed format, registering the annual demand of coal. Both the petitioners had applied under the same and agreements were entered into with the respondent-Corporation. The ACQ as per Clause-4.1 in CWJC No. 1114 of 2024 was 9960 tonnes. Clause-4.2 empowered the Corporation to reduce the supply from the ACQ in the event of reduced allocation from the Coal Company to the Corporation. The purchaser; which is how the petitioners are defined in the agreement, could not claim any compensation or damage for short supply. Clause-4.4

enables the Corporation to revise the ACQ on a yearly basis, based on the coal lifted by the purchaser in the immediately preceding year; which decision of the Corporation is final and binding on the purchaser. Clause-4.5 prohibited the purchaser in utilizing the coal in any other manner other than that prescribed in the agreement. Clause-4.6 required the purchaser to submit monthly and quarterly utilization reports to the Corporation. Clause-4.8 has the nominal heading of *'Monthly Scheduled Quantity'* (MSQ) which is 1/12th of the *'Annual Contracted Quantity'* (ACQ).

7. Hence, it has to be observed that the agreement speaks of an ACQ and an MSQ. The question we would be required to answer is as to whether there was any stipulation of actual use in a month; whether the agreement stipulated the actual utilization equivalent to the MSQ in each of the months in a year.

8. The ACQ as we saw from the agreement is for the full year and the monthly quantity is also specified to be 1/12th of the ACQ. By Clause-4.9 a compensation is provided only for short lifting. It is clearly indicated that for

any year if the level of lifting by the purchaser falls below 100 per cent of ACQ then the purchaser would be liable to pay compensation. It is an admitted position that the Corporation did not supply the MSQ in every month; on which the purchaser could raise no grievance since a short supply would not enable them to claim loss or damages. The agreement also did not provide for a monthly utilization of coal and did not prohibit the excess utilization in a particular month; which also has to be considered in the context of the supply having been made intermittently and not in every month within a year.

9. The specific contention of the purchaser/ petitioners is that that the petitioners' Unit had to work overtime during the months in which the supply was made and remained idle when there was no supply of coal. Considering the fact that the requirement was to supply a specified quantity of coal annually and the rigor of compensation falling on the purchaser, as specified in the agreement only on under-utilization of 100 per cent of the ACQ in a whole year; we cannot find the purchaser to be at fault for using coal as and when it was supplied, which

resulted in the monthly utilization exceeding the monthly scheduled quantity.

10. Reading the agreement as a whole, we can only understand that the contract was to supply specified quantity annually. There was also stipulation of a monthly scheduled quantity, the non-supply of which would not prejudice the Corporation since such short supply would always depend on the supply of coal from the Coal Companies. The purchasers also could not have raised a grievance against the non-supply or short supply in any month coming within an year. The penalty of compensation also is confined to short-lifting of coal as per the ACQ and not as per the MSQ. The revision of the ACQ to be supplied to each purchaser would also depend upon the utilization of the purchaser in the preceding year and not of every month. We also have to look at Schedule-1 of the agreement which specifies the ACQ, the mode of transport; being by road and also indicates that the supply will be as per the availability.

11. Annexure-P/2 series issued by the 3rd respondent-Corporation indicates that the allotted quantity of certain months was supplied far later. For example the

quantity for August and September 2020-21 have been supplied in December, that of October and November 2020-21 have been supplied in January, of December 2021 and January-2022 being supplied in March and that of February and March-2022 being supplied on 31.03.2022.

12. The learned Standing Counsel has also argued that there is an arbitration clause provided which is an alternate efficacious remedy. The Hon'ble Supreme Court in ***State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499*** has held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can but exercise the power, if it comes to the conclusion, that there has been breach of principles of natural justice or

that due procedure required for the decision has not been adopted. The High Court would also interfere, if it comes to a conclusion that there is infringement of fundamental rights or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged and when there is a clear abuse of process of law.

13. On the above reasoning, we are of the opinion that this is a fit case where there can be interference caused to the impugned orders in the writ petition under Article 226 of the Constitution of India itself. The show cause notice issued and the allegations made therein cannot be legally sustained as per the terms of the agreement. There is absolutely no utilization prescribed for each month in a year and compensation is also for only short-lifting and not for excess utilization. The utilization even as per the terms of the agreement can only be based on the supply of the coal which as per the terms of the agreement is only on the basis of the availability of coal supplied by the Coal Companies.

14. We hence, set aside the impugned orders and make it clear that unless the agreements have expired by

reason of efflux of time, they have to be continued until rescinded by either party as per the terms of the agreement.

15. Both the writ petitions stand allowed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J : I agree.

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	10.07.2024
Uploading Date	16.07.2024
Transmission Date	NA