IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7265 of 2024

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M/s Progressive Industries Pvt. Ltd. through its Director Mr. Shaquib Ansari, aged about 43 years (Male) S/o Samser Ansari having its Registered Office at- MI 220, Lohiya Nagar, Malahi Pakri Chowk, opposite Doctors Colony, Kankarbagh, Patna, Pin-800020, and having its Business address- Tola Mirchaiganj, Village and P.O.-Sarsu, Banganga Tapovan Jetnian Road, Gaya, Pin-805109.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Industries, State of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Govt of Bihar Patna
3. The Principal Secretary, Department of Mining, Govt of Bihar Patna.
4. The Bihar State Mining Corporation Ltd. through its Chief Executive Officer, Vikas Bhawan, New Secretariat, Bailey Road, Patna, Bihar, Pin-800015
5. The Chief Executive Officer, Bihar State Mining Corporation Ltd., Vikas Bhawan, New Secretariat, Bailey Road, Patna, Bihar, Pin- 800015
6. The Managing Director, the Bihar State Mining Corporation Ltd., Vikas Bhawan, New Secretariat, Bailey Road, Patna, Bihar, Pin- 800015
7. The General Manager, the Bihar State Mining Corporation Ltd., Vikas Bhawan, New Secretariat, Bailey Road, Patna, Bihar.
8. The Administrative Officer, Bihar State Mining Corporation Ltd., Vikas Bhawan, New Secretariat, Bailey Road, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddharth Shankar Pandey, Advocate
For the Respondent/s	:	Mr. Ajay Bihari Sinha, GA-8
		Mrs. Kalpana, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-09-2024

The impugned orders forfeited the security deposit and blacklisted the petitioner for three years on the ground of violation of the terms of contract. The contract itself was for

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supply of coal, which identical matter was considered by us in ***CWJC No. 1114 of 2024 and analogous case (M/s Bhagwati Coke Industries Pvt. Ltd. vs. The State of Bihar and Ors.)*** in which we looked into the agreement and found that there is a specification of an Annual Contracted Quantity (ACQ) and a Monthly Scheduled Quantity (MSQ), the latter of which is $1/12^{th}$ of ACQ. The question agitated was whether the agreement stipulated the actual utilisation equivalent to the MSQ in each of the months in a year; especially as to whether there was a prohibition in exceeding the MSQ.

2. On facts, it is to be noticed that the supply of coal was not regular and the contention of the petitioner was also that in many months there was no supply and they had to lockdown their manufacturing unit for want of coal. In certain months, the deficiency in supply of the either months were made up; in which months the units functioned overtime for utilisation of the coal supplied. The restriction in the agreement was also that there should not be any shortage in use of the 100% of the ACQ and there was no restriction to the use of MSQ in a month.

3. We held so in Paragraph Nos. 9 and 10 of the aforementioned judgment:

> *9. The specific contention of the purchaser/ petitioners is that that the petitioners' Unit had to*

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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.

4. In the present case also, the ground stated for blacklisting and for forfeiture of security amount was similar to that indicated hereinabove.

5. In such circumstances, following the aforesaid judgment, we set aside the order of blacklisting. We also make it

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clear that unless the agreement has expired by reason of efflux of time, it has to continue until rescinded by either party as per the terms of the agreement.

6. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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Uploading Date	06.09.2024
Transmission Date	

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