

(2009) 10 JH CK 0057
In the Jharkhand High Court

Alok Fuels (P) Ltd.

APPELLANT

Vs

Coal India Limited and Others

RESPONDENT

Date of Decision : 06-10-2009

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2009) 10 JH CK 0057

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Judgement

Sushil Harkauli, J.—On 15.7.2009, after hearing both sides, the following order was passed:

The suspension of the supply of coal took place on 13th of June, 2006 which means more than a month has already passed. Even if suspension of supply pending enquiry is permissible, it would appear to be reasonable to expect some prima-facie verification or prima-facie reliable material to establish the misuse of allocated coal, in order to warrant a serious measure like suspension of supply which can have far reaching and long lasting impact not only upon production but also upon the goodwill of the industry, and perhaps may also result in breach of supply-orders by the concerned industry to which coal supply has been stopped.

In the circumstances, list this matter in the next week by which time learned Counsel representing the respondent nos. 2 & 3 will obtain the instructions from the said respondents and he will also try to obtain instructions from respondent No. 1 about the material which was in their possession, on the date on which supply was directed to be suspended, which could warrant a satisfaction of a rational and reasonable mind about the misuse of allocated coal so as to warrant of suspension of supply of coal.

2. A counter affidavit has been filed by the respondents on 26.8.2009 which does not disclose any other or further material, apart from the F.I.R., which could form

the basis of the suspension of the supply of coal.

3. While it is true that this is not an F.I.R. lodged by a private individual but an F.I.R. lodged by a comparatively responsible institution like the C.B.I., but the fact remains that before suspending the supply of coal, the respondent Nos.2 and 3 should have been in possession of some cogent and credible material or should have conducted some preliminary enquiry, instead of blindly going by the ex-parte allegations in the F.I.R. for taking the drastic decision of suspension of supply of coal.

4. The F.I.R. was lodged on 7th of June, 2009. Almost four months have passed and yet the respondents have no other material except that four months' old F.I.R. to justify their action. It has not even been stated that as a result of investigation pursuant to the said F.I.R. any further material has been uncovered which could have corroborated any of the allegation against the petitioner made in the said F.I.R.

5. The learned Counsel for the respondent has relied upon Section 23 of the Indian Contract Act saying that the object of the agreement was "unlawful" and therefore, the agreement has become void. This submission completely overlooks the fact that first there has to be a cogent finding based on some material which is reliable showing that the object of the agreement was "unlawful". Drastic actions are not permissible only on conjectures.

6. As already stated, there is no material by which the respondent has been able to show that any kind of black-marketing was done by the petitioner or any kind of mis-utilisation of the allotted coal was made by the petitioner.

7. In the circumstances, the order suspension of supply of coal will remain stayed. The respondents are directed to resume the supply of coal to the petitioner forthwith.

8. List this case after two months to enable the respondents to procure and file corroborative material with regard to any of the allegations against the petitioner made in the F.I.R.