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**(2018) 08 PAT CK 0023**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No.11858, 11018 of 2016

M/s Bhagwati Coke Industries Pvt. Ltd.

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

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**Date of Decision :** 08-08-2018

**Acts Referred:**

Indian Contract Act, 1872 — Section 28  
Constitution of India, 1950 — Article 32, 226, 227

**Citation :** (2018) 3 PLJR 881

**Hon'ble Judges :** NILU AGRAWAL, J

**Bench :** Single Bench

**Advocate :** P.K. Shahi, Alok Kumar Agrawal, Priya Gupta, Mohit Agarwal, Vishwa Mohan Kr. Sinha

**Final Decision :** Dismissed

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## **Judgement**

1. Heard Mr. P.K. Shahi, learned Senior Advocate along with Mr. Alok Kumar Agrawal for the petitioners, Mr. Vishwa Mohan Kumar Sinha for the respondent nos. 2 and 3 and learned counsel appearing for the State of Bihar.

2. The issues involved in both the writ applications are the same, hence, for the sake of convenience C.W.J.C. No. 11858 of 2016 is being taken up.

3. Petitioner in C.W.J.C. No. 11858 of 2016 has prayed for following reliefs :

(i) For quashing the order of termination of Coal Supply Agreement vide Memo No. 5227-34 dt. 23.05.2016 communicated to the petitioner at its

address at Aurangabad by which the petitioner has been informed that its Coal Supply Agreement to the unit of the petitioner has been terminated, as

being wholly illegal and without any authority of law;

(ii) For restraining the Respondents from invoking/encashing the Bank Guarantee consequent upon termination of the Coal Supply Agreement, as

intimated vide the impugned letter dt. 23.5.2016;

(iii) For a direction to the Respondents to resume the supply of coal to the unit of petitioner as the same has been discontinued for mala fide reasons

and/or for any other relief(s) for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case.

4. However, during pendency of the writ application petitioner by way of I.A. No. 3419 of 2017 has prayed to add the following reliefs :

(iv) For a direction to the Respondent No. 2, Central Coalfields Ltd., which had stopped the coal supply on the letter of the District Magistrate now to

restore the supply of coal, in view of the letter dt. 29.7.2016 as also the present Enquiry Report vide Letter No. 794 dt. 30.03.2017;

(v) For a direction to the Respondent Superintendent of Police to act, in view of the direction contained in letter No. 1140 dt. 2.4.2017 and to take a

decision with respect to the pending criminal case of the petitioner.

5. Since the prayer of the petitioner is relevant for adjudication, I.A. No. 3419 of 2017 is allowed to be treated as part of the writ application.

6. Petitioners are Private Limited Companies incorporated under the Companies Act, 1956 and are engaged in production of smokeless fuel under the

Technology Development by the Central Mines Planning and Design Institute Limited (CMPDI) and Central Fuel Research Institute (CFRI).

7. Petitioner applied to the Central Coalfields Limited (hereinafter referred to as the CCL) and was granted linkage of allocation of coal to the

petitioner on 23.07.1998, as for production of smokeless fuel, coal is the raw material. A new Coal Distribution Policy, 2007 having been framed, an

agreement for supply of coal between the petitioner and the CCL was entered into on 30.04.2008. Initially agreement was for five years, which was

further renewed for a further period of five years up to 30.04.2018. Petitioner made huge investments from his own capital and after seeking loans

from the Bank and financial institutions, set up the unit by acquiring land, construction of building, purchase of machinery and employment of

employees.

8. During subsistence of the agreement between the petitioner and the CCL the respondent-Collector constituted a team for inspection of different

industrial units and the unit of the petitioner was inspected on 14.02.2016 and 17.02.2016. All the documents were produced before the inspecting

team by the unit. However, the District Magistrate sealed the unit without preparing any inspection report or inventory and on the same day an F.I.R.

was lodged being Aurangabad Muffasil P.S. Case No. 42/2016 dated 18.02.2016 making certain allegations with regard to shortage or misuse of coal

and functioning of the unit. The District Magistrate vide letter no. 983 dated 29.02.2016,

Annexure-5 also wrote to the General Manager (S & M), CCL of 43.77 metric tones of coal along with copy of the F.I.R. directing the CCL to

discontinue the supply of coal to the petitioner levelling allegation of blackmarketing. A show cause notice was issued to the petitioner by the CCL

dated 08.03.2016, Annexure-6 as to why Fuel Supply Agreement be not terminated and supply of coal to the petitioner was suspended. It may be

mentioned that petitioner moved this Court in C.W.J.C. No. 7555 of 2016 challenging the sealing of his unit and the direction of the District Magistrate,

Aurangabad vide letter dated 29.02.2016 to the CCL for stopping supply of coal. The petitioner submitted his show cause reply stating therein that all

the terms and conditions of the agreement is being followed and coal is released on production of certificate by the Bihar Industrial Area Development

Authority to the dealer. Neither any physical verification of the stock has been made nor any weighment of coal has been made. Details of stock/

ledger has not been seen and allegation of blackmarketing of coal is based on conjecture and surmises. There was no contravention of the terms and

conditions of the Fuel Supply Agreement and investigation as per the F.I.R. is yet to complete. However, the reply to the show cause having not been

found satisfactory, the respondent- CCL terminated the Coal Supply Agreement and forfeited the bank guarantees by Annexure-8 to the writ

application, which is under challenge by the petitioner.

9. Learned counsel for the petitioner submits that the show cause notice dated 08.03.2016, as contained in Annexure-6 is stigmatic, the action taken

under Clause 4.4 of the agreement was at the behest of the District Magistrate, who had conducted inspection without any physical verification of the

stock nor any committee was constituted to initiate verification process under Clause 4.4 of the agreement and wholly on the basis of inspection done

and a report so submitted and the F.I.R. so lodged at the behest of the District Magistrate, such action has been taken, which is in complete violation

of the principles of natural justice. The enquiry by the District Magistrate, which formed the basis of the F.I.R. and the show cause notice so issued, was made by the District Magistrate or subordinate team of officers in the district administration and police, who had no authority to make inspection of the industrial premises of the petitioner, which has been done in the most haphazard manner. It is in pursuance to the interim order passed by this Court in C.W.J.C. No. 7555 of 2016 that the industrial unit of the petitioner was unsealed on 29.07.2016 as contained in Annexure-17 and a direction was issued to the General Manager (S& M), CCL to continue supply of coal to the industrial unit of the petitioner. The enquiry was conducted by the Additional Collector on the instruction of the Collector vide letter No. 794 dated 30.03.2017 who submitted enquiry report to the Collector without furnishing a copy of the same to the petitioner. However, the petitioner obtained the said copy under the Right to Information Act. After hearing the Director of the unit of the petitioner it was found by the Additional Collector that the unit of the petitioner was in the working condition and the F.I.R. was lodged by the inspecting team on the basis of estimated assessment without any physical verification, which is Annexure-19. Thereafter the District Magistrate vide letter dated 02.04.2017 has supplied the enquiry report of the Additional Collector to the Superintendent of Police, Aurangabad for necessary action. He, thus, seeks resumption of supply of coal and a direction to the CCL to restore supply of coal in view of letter of the District Magistrate dated 29.07.2016 and enquiry report of the Additional District Magistrate dated 30.03.2017 as the supply was stopped only on the basis of estimated assessment without any physical verification and also seeks a direction to the Superintendent of Police to take decision with regard to pending criminal case of the petitioner.

10. Mr. V.M.K. Sinha, learned Senior Counsel for the Respondent-CCL submits that the present writ application is not maintainable as Clause 18.4 of the Agreement, Annexure-1 specifically stipulates as follows :

18.4. Governing laws : This Agreement and the rights and obligations hereunder shall be interpreted, construed and governed by the law of India.

The court of Jharkhand High Court at Ranchi shall have exclusive jurisdiction in all matters under the agreement.

11. He further submits that in the case of the petitioner, who has challenged the

price on some items of raw coking coal in C.W.J.C. No. 4217 of 2015

vide order dated 27.07.2016, in which the petitioner was a party, this Court taking into consideration the case of the Central Coalfields Limited & Ors.

vs. M/s Babul Smokeless Fuel (P) Ltd. in L.P.A. No. 786 of 2009 dated 02.02.2011 has held that as per Clause 18.4 of the Agreement, the High

Court of Jharkhand at Ranchi shall have the exclusive jurisdiction in all matters, which have been upheld right up to the Apex Court in SLA (Civil) No.

16777 of 2011 observing therein that even if it is assumed that part of cause of action falls within the territorial jurisdiction of this Court, this Court

refused to exercise discretionary jurisdiction in view of the doctrine of forum convenience, which he has annexed as Annexure- R/1 to his counter

affidavit. He submits that the law is well settled as once a view has been taken by the Division Bench, unless it suffers from glaring error, judicial

propriety demands to take a similar view.

12. To this, the counsel for the petitioner submits that the inspection was done by the District Magistrate, Aurangabad and on the basis of the

inspection F.I.R. was lodged at Aurangabad being Aurangabad Muffasil P.S. Case No. 42 of 2016, inspection was done at the industrial unit of the

petitioner, which is situated in Aurangabad and thereafter the report of the Additional Collector, Aurangabad finding that the inspection was done on

an estimated assessment and not on physical verification ordered for unsealing the unit of the petitioner and, as such, would not oust the jurisdiction of

this Court to entertain, as under Article 226 of the Constitution of India part of cause of action arose within the territorial jurisdiction of this Court and

the agreement will not curtail the jurisdiction of this Court under Article 226 of the Constitution of India. In this connection, he relies on the judgment in

the case of L. Chandra Kumar vs. Union of India and others since reported in (1997) 3 SCC 261 holding that the jurisdiction conferred on the High

Court under Article 226/227 and on the Supreme Court under Article 32 is a part of basic structure of the Constitution and, thus, cannot be taken

away even by any statute what to say about an agreement between the parties. He further urged that Allahabad High Court in the case of M/s P.R.

Transport Agency vs. Union of India since reported in AIR 2006 Allahabad 23 has held that when the parties entered into an agreement confining

themselves to the jurisdiction of one of the several civil courts having territorial

jurisdiction in respect of a suit basically the parties are restrained upon themselves from approaching the other civil courts whose jurisdiction has been excluded, as such, the jurisdiction of other civil courts get ousted subject to Section 28 of the Contract Act, however, the power of judicial review given to the High Court under Article 226 of the Constitution being the basic structure cannot be curtailed even by statute what to say by any agreement made between the parties. Thus, the ouster clause can only oust territorial jurisdiction of civil courts and not of the High Court.

13. Learned counsel for the Respondent-CCL also submits that the agreement, which was further renewed with the industrial unit of the petitioner for a further period of five years, has lapsed on 30.04.2018 and now there is a new policy of 2018, which is Annexure-R/6, in which there is no provision of renewal, although, learned counsel for the petitioner submits that such new policy of the Ministry of Coal, Government of India is of allocation of linkage for non-regulated sector and petitioner being a regulated sector, the said policy will not apply in the case of the petitioner.

14. On consideration of the rival submission of the parties, even if it is assumed that a part of cause of action had fallen within the jurisdiction of this Court, but in view of the express agreement between the parties, especially Clause 18.4, which in no equable terms shows that the rights and obligations flowing from the agreement shall be interpreted, construed and governed by the laws of India, the High Court of Jharkhand at Ranchi shall have the exclusive jurisdiction in all matters under this agreement. Hence, I am of the considered opinion that both the writ applications has to fail on the ground of maintainability in view of the decision in the case of Central Coalfields Limited(supra) upheld right up to the Apex Court and in view of the decision rendered by this Court in C.W.J.C. No. 4217 of 2015 in the case of M/s Bhagwati Coke Industries Pvt. Ltd. In the present matter, Jharkhand High Court at Ranchi would have the exclusive jurisdiction for consideration as per Clause 18.4 of the agreement.

15. The two writ applications are, accordingly, dismissed.