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**(2011) 03 P&H CK 0041**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1794 of 2011**

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|--------------------------------------|----|------------|
| M/s Faridabad Industries and Another | Vs | APPELLANT  |
| State of Haryana and Others          |    | RESPONDENT |

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**Date of Decision :** 08-03-2011

**Acts Referred:**

**Citation :** (2011) 163 PLR 480

**Hon'ble Judges :** Ranjit Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Ranjit Singh, J.—The petitioners have prayed for quashing the order of termination of Fuel Supply Agreement dated 16/19.11.2010 entered into between the petitioners and respondents No. 2 to 4 and for issuing a writ,- order or direction in the nature of mandamus not to give effect to the order of termination. Further prayer is to quash clause 4.4 of Fuel Supply Agreement executed between Bharat Coking Coal Limited ("BCCL" for short) for direction to extend the Fuel Supply Agreement for further 17 months for which the supply of coal was not given by the respondents.

2. The petitioners had applied for grant of coal linkage. Respondent No. 2 and its subsidiaries after making complete assessment of plant/ unit of the petitioners recommended grant of coal linkage for allotment of coal per month. The quota and quantity of 5,000 tones of coal every month to each of the petitioners was allowed vide order dated 2S.03.1996 and 02.11.1999. Sometime in the year 1997-98, supply of steam coal to the petitioner was discontinued. The petitioner challenged the said order before this Court. This Court had then allowed the writ petition and order in this regard is at Annexure P-7. The respondents had then assailed this order before the Hon"ble Supreme Court and their SLP was dismissed. The supply of coal thereafter was resumed.

3. Sometime in the March 2005, the respondents came out with the policy of

Education. It is alleged that the respondents abruptly without any reason stopped the supply of coal to most of the industrial units. As per the petitioners, this was done in collusion with the big traders with a motive for black marketing of the coal and elimination of small consumers like the petitioners. This policy was challenged before the Hon''ble High Courts of Jharkhand, Uttar Pradesh, Bihar, Maharashtra and Orissa. Ultimately, the Hon''ble Supreme Court declared the E-auction scheme to sell coal to be ultravires by allowing the SLP.

4. It is thereafter that the Central Government formulated the new coal distribution policy and this new policy was notified superseding the earlier one. The coal supply under linkage system was replaced by the bilateral enforceable Fuel Supply Agreement. All the existing valid linked consumers were required to enter into Fuel Supply Agreement with the coal companies under Clause 2.3 of the New Coal Distribution Policy. The petitioners, thereafter, had entered into Fuel Supply Agreement with the respondents. It is alleged that this agreement was arbitrarily suspended on 05.08.2008. This order was challenged through a writ petition before the Hon''ble High Court of Jharkhand. The said writ petition was disposed of directing the respondents to reconsider the claim of petitioners'' by affording them opportunity to bring on record all the documents in support of their claim and by taking into consideration the reply against the points after recording finding on each point with cogent reasons. The necessary exercise was required to be completed within a period of three months. It is stated that thereafter, the respondents had revoked the suspension order and had commenced supply. The petitioners, thereafter, had received continuous supply on the basis of Fuel Supply Agreement, which was signed on 15.11.2008.

5. One FIR was lodged by the CBI against some units including the petitioners on 07.06.2009 alleging misappropriation of coal. On this basis, the supply was again suspended on 13.06.2009. The petitioners again filed the writ petition before the Hon''ble Jharkhand High Court and the court was pleased to stay the order of suspension of supply of coal. The respondents were directed to resume the supply forthwith. The respondents impugned that order by filing LPA. The stay order granted by Single Judge was confirmed. The respondents then filed SLP against the orders passed by the Jharkhand High Court. The Hon''ble Supreme Court has upheld the order of suspension of supply as passed by the respondents and had set aside the order passed by the Single Judge and LPA Bench of Jharkhand High Court.

6. While allowing the SLP, the Hon''ble Supreme Court has noticed this fact that the respondent/BCCL has initiated proceedings by issuing show cause notice dated 16.07.2009 to the petitioners asking them to explain as to why the Fuel Supply Agreement executed in favour of the petitioners should not be cancelled on the basis of FIR lodged by the CBI containing the allegations of criminal conspiracy on the part of the petitioners leading to breach of terms and conditions of Fuel Supply Agreement. The Hon''ble Supreme Court observed that if the petitioners furnished their explanation, the same shall be considered by the

respondent/BCCL and it may then take decision whether to resume the supply of coal to the petitioners in accordance with law. Pursuant thereto the respondents had terminated the Fuel Supply Agreement, as per clause 15.1.5 of the agreement. Aggrieved against the same, the petitioners have filed the present writ petition to challenge the order of termination of the Fuel Supply Agreement.

7. Leaving the question of maintainability of the writ petition open to challenge the termination of contract through writ petition, the notice was issued to the respondents. The respondents have put in appearance and have filed reply. Counsel appearing for the respondents has raised some preliminary objection alleging that the petitioners have resorted to forum hunting besides raising a challenge about the maintainability of the writ petition to impugn the order of termination of a contract. Submission is that challenge by way of the writ petition to the terms of contract, which is purely commercial in nature and where no public interest is involved, would not open. It is also pointed out that the petitioners had earlier chosen to challenge the order of suspension before the Jharkhand High Court but now without much justification have approached this Court when the order of termination has been passed.

8. Mr. Rajiv Atam Ram, Senior counsel appearing for the petitioners, however, would seriously join issue on the preliminary objections so raised. He submits that there is no justification for the respondents to allege forum hunting as it is not a case where the petitioners were declined any relief by Jharkhand High Court for which they could have thought of approaching some other forum. Learned counsel points out that termination order was communicated to the petitioners and received at place under the jurisdiction of this Court. The supply was also being made at a place under the jurisdiction of this Court where the petitioners/units are located and so it cannot be said that this court would not have any jurisdiction to entertain the writ petition. As per the counsel, part of cause of action has arisen under territorial jurisdiction of this Court.

9. The counsel would also dispute the submission that writ to challenge the contractual obligation would not be maintainable and in this regard would seek support from the order passed by the Hon'ble Supreme Court in this case while dealing with suspension order, which is inter se parties.

10. Without going into the merits of the pleas raised before me and even without adjudicating the preliminary objections raised by the respondents in regard to the forum hunting or maintainability of writ petition to challenge the contractual agreement, I am of the view that it would be more appropriate for the petitioners to approach the High Court of Jharkhand, where the petitioners had voluntarily chosen to file the petition to challenge the order of suspension. Even on one of the earlier occasion also, the petitioners had filed the writ petition before the Jharkhand High Court when the supply was suspended. The writ petition challenging the order of suspension of supply is still pending before the Jharkhand High Court and it was only against the interim order passed by the Single Judge that the LPA and SLP were filed. The order of termination in this

background, would appear to be something, which is consequential of the order of suspension. In fact the reason to pass the suspension order and that of terminating the contract is for the same reasons and basis. It would not, thus, be appropriate for the petitioners to approach one court for a relief which is related to a cause which is subsequent but on the same basis. To be fair to Mr. Rajiv Atma Ram, he has submitted that the writ to challenge the suspension of supply has become infructuous. It may or may not be so but the fact remains that it is still pending. The cause of suspension of supply and termination being same, the earlier writ could also be amended to pursue the challenge.

11. Accordingly, without going into the maintainability of this writ petition before this Court or the issue of maintainability of the writ petition to challenge the contractual obligations, I am of the considered view that it would be appropriate for the petitioners to file the writ petition before the Jharkhand High Court where they have earlier filed a petition for similar cause and which is pending. The present writ petition is, accordingly, disposed of with liberty to the petitioners to file a petition before the Jharkhand High Court. All the submissions made by the respective counsel in regard to the maintainability of the writ petition are left open, to be urged, if so desired and to be decided by the "Jharkhand High Court.