
(2015) 05 AHC CK 0241

In the Allahabad High Court

Case No : C.M.W.P. Nos. 58843 of 2014, 12680 and 21028 of 2015

Pavan Coal Company L.L.P.

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Limited Liability Partnership Act, 2008 — Section 11, 12, 14, 2 (s), 21
Partnership Act, 1932 — Section 47
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 2(1)(h), 7

Citation : (2015) 8 ADJ 1 : (2015) 4 AWC 3371

Hon'ble Judges : Vikram Nath, J; Shashi Kant, J

Bench : Division Bench

Advocate : Shanti Bhushan, Rahul Agarwal, Rohan Gupta, Chhotey Lal Panday and Kamini Jaiswal, for the Appellant; Anurag Khanna, Nipun Singh, Mohit Singh, Ram Gopal Tripathi and Ajay Bhanot, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vikram Nath, J—The Ministry of Coal, Government of India issued an Office Memorandum dated 18.10.2007 laying down the New Coal Distribution Policy with regard to the consumers in Small and Middle Sectors as contained in Paragraph 3 of the Coal Policy filed as Annexure-2 to the Writ Petition No. 12680 of 2015 which directed that the earmarked quantity of coal for companies/consumers would be distributed through the agencies notified by the State Governments. It also provided that these agencies could be State Government Agencies, Central Government Agencies [National Co-operative Consumer Federation (N.C.C.F.J)/National Small Industries Corporation (N.S.I.C.) etc.] or industries associations as the State Government may deem appropriate. The agency so notified will continue to distribute coal until the State Government chooses to denotify it. There was further incorporation made that the agency/association so notified by the State Government would be required to enter into

Fuel Supply Agreement (F.S.A.) with coal company to be designated by the Coal India Limited and such agreement would continue to remain in force till either the State Government denotifies the agency/association or Coal India Limited shifts the obligation to some other coal company. With regard to the State of U.P., the Government vide the Government order dated 1.4.2008 (Annexure-3 to the Writ Petition No. 12680 of 2015) appointed the U.P. Small Industries Corporation Limited, Kanpur (a Government of India Undertaking) (hereinafter referred to as the U.P.S.I.C.) as the nodal agency for distribution of coal in the entire State of U.P. An agreement was executed on 19.4.2011 which is the fuel supply agreement in between the Central Coalfields Limited and the U.P.S.I.C. (Annexure-4 to the Writ Petition No. 12680 of 2015). The U.P.S.I.C. in turn as per the National Coal Policy advertised for appointment of a coal coordinator/handler to take care of lifting of the coal from the site and deliver it to the consumers as per the allotment made by the U.P.S.I.C. Pursuant to the said advertisement, the U.P.S.I.C. appointed one M/s. A.K.A. Logistics Private Limited as its handler (petitioner in Writ Petition No. 12680 of 2015).

2. This arrangement continued till July, 2014 when the State Government took a decision on 16.7.2014 to bifurcate the distribution of coal given to the U.P.S.I.C. by appointing another nodal agency, i.e., U.P. Pradeshik Cooperative Federation Limited (hereinafter referred to as the U.P.P.C.F.). 40% of the distribution remained with U.P.S.I.C. and 60% of the distribution was given to the U.P.P.C.F. (Annexure-10 to the Writ Petition No. 12680 of 2015).

3. The newly appointed nodal agency U.P.P.C.F. thereafter advertised for appointing its handler and accordingly notice was published on 30.8.2014 in different newspapers having State/National circulations, inviting the Expression of Interest (E.O.I.) from different firms/companies. The applications could be purchased up to 23.9.2014 and submitted on or before 27.9.2014. In all 9 applications were received by the U.P.P.C.F. A pre-bid meeting is said to have taken place on 24.9.2014 in which the Committee constituted by the U.P.P.C.F. and the applicants participated. On 27.9.2014, the technical bids were opened and as per the terms and conditions laid down by the U.P.P.C.F., marks were allotted to all the applicants under 7 different heads. The terms and conditions of the E.O.I, also provided that the highest 2 scorers would then be considered for opening of their financial bids. The financial bids are said to have been opened on 4.10.2014 in which 2 highest scorers were namely M/s. Pavan Coal Company (respondent in Writ Petition No. 58843 of 2014 and Writ Petition No. 12680 of 2015 and petitioner of Writ Petition No. 21028 of 2015) alongwith M/s. Swastik Coal Suppliers. It would be relevant to mention here that M/s. Pavan Coal Company scored 70 out of 70 marks whereas M/s. Swastik Coal Suppliers scored 58 marks. M/s. Sendoz Impex Limited (petitioner in Writ Petition No. 58843 of 2014) scored 18 marks and M/s. A.K.A. Logistics Private Limited (petitioner in Writ Petition No. 12680 of 2015) secured 50 marks.

4. On 4.10.2014, as the financial bid of M/s. Pavan Coal Company was better

than the second highest scorer M/s. Swastik Coal Suppliers, it was appointed as the coal handler for U.P.P.C.F. An agreement pursuant to the said appointment was executed on 10.10.2014. M/s. Sendoz Impex Limited filed Writ Petition No. 58843 of 2014 before this Court on 3.11.2014 praying for issuance of a writ in the nature of certiorari quashing the appointment of the respondent No. 3 (M/s. Pavan Coal Company) as coal coordinator appointed by the U.P.P.C.F. The prayers as claimed in the aforesaid writ petition are reproduced below :

"(i) Issue a writ order or direction in the nature of certiorari quashing the appointment of respondent No. 3 as coal coordinator appointed by the P.C.F.

(ii) Issue any suitable order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iii) To award the cost of the petition."

This Court while hearing the petition on admission passed the following order on 10.11.2014 :

"Having preliminarily heard the learned counsel for the petitioner on few of the submissions, upon our queries as regards the original records, Shri Ravi Kant, learned senior counsel appearing for the respondent No. 2, prays for a few days time to procure the original records and also to file a short counter-affidavit in the matter. Counsel for the petitioner also prays for couple of days time to complete his instructions and to procure the documents as regards the averments made in paragraph 13 of the writ petition concerning C.B.I, inquiry allegedly faced by the Managing Director/Proprietor of the respondent No. 3. The other respondents too, if so chosen, may file a short counter-affidavit on or before the next date.

However, it would be expected of the respondent No. 2 to keep the entire records relating to the tender proceedings in question available before the court on the next date.

Put up on 19.11.2014, as fresh, as prayed for."

5. M/s. A.K.A. Logistics Private Limited filed Writ Petition No. 12680 of 2015 before this Court on 26.2.2015 praying for quashing of the fuel supply agreement dated 28.10.2014 executed between the Central Coal Fields Limited and U.P.P.C.F., quashing of the order dated 4.10.2014 appointing the respondent No. 6 (M/s. Pavan Coal Company) as coal coordinator, quashing of the order dated 16.7.2014 and 30.9.2014 whereby the distribution work of the nodal agency was bifurcated by the order of the Chief Secretary, Government of U.P. and further for a direction to the respondents to allow the petitioner M/s. A.K.A Logistics Private Limited to carry out the business for the entire coal quantity of 11.39 lakh metric tonnes till determination of the petitioner's contract. The relief as claimed in the said petition is reproduced below :

"(i) Issue a writ, order or direction in the nature of certiorari quashing the

impugned Fuel Supply Agreement dated 28.10.2014 executed between the Central Coalfields Limited (C.C.L.) and respondent No. 5.

(ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 4.10.2014, appointing respondent No. 6 as the coal coordinator (Annexure-12 to the writ petition).

(iii) Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 16.7.2014 and 30.9.2014 passed by the Chief Secretary, Government of U.P., Lucknow (Annexures-10 and 11 to the writ petition).

(iv) Issue a writ, order or direction in the nature of mandamus, directing the contesting respondents to allow the petitioner to carry on its business for the entire coal quantity of 11.39 lakh metric tonnes, till the determination of petitioner's contract.

(v) Issue a writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(vi) Award the cost in favour of the petitioner."

6. This Court while entertaining this petition passed an interim order dated 9.3.2015 inviting counter-affidavit from all the respondents who were duly represented by their respective counsels and further restraining the respondent No. 6 (M/s. Pavan Coal Company) from indulging in any activities pertaining to handling and movement of coal in terms of the supply order dated 28.10.2014. The court further stayed the operation of the appointment order dated 4.10.2014. The interim order was made operative till 25.3.2015 which was the next date fixed in the matter. The interim order dated 9.3.2015 is reproduced below :

"Sri Vivek Kumar Singh, Advocate has filed vakalatnama on behalf of respondent No. 3 it is taken on record.

Notice on behalf of respondent Nos. 1 and 2 has been accepted by learned standing counsel, Sri Madhu Prakash is present on behalf of respondent No. 4, Sri C.L. Pandey, Senior Advocate is present on behalf of respondent No. 5 and Sri Rahul Agrawal, on behalf of respondent No. 6.

Heard Sri Anurag Khanna, learned counsel for the petitioner, Sri V.B. Singh, learned Advocate General, Sri Vivek Kumar Singh, Advocate on behalf of respondent No. 3, Sri Madhu Prakash on behalf of respondent No. 4, Sri C.L. Pandey, Senior Advocate assisted by Sri Ram Gopal Tripathi on behalf of respondent No. 5 and Sri Rahul Agrawal, on behalf of the respondent No. 6.

All the respondents pray for and are granted one week time to file counter-affidavit. Rejoinder-affidavit if any may be filed within two days thereafter.

Connect with Writ Petition No. 58843 of 2014, M/s. Sendoz Impex Ltd. v. State of U.P. and another.

In view of serious allegation made in paragraph Nos. 41 and 42 of the present writ petition wherein it has been stated that the respondent No. 6 has been charge-sheeted by C.B.I in the matter of handling and movement of coal, he is on bail under order of the Bombay High Court in Criminal Application No. 603 of 2012 as also in view of the averment contained in paragraphs 33, 34 and 35 of the present writ petition. We are of the opinion that prima facie case for grant of interim order is made out.

Once respondent No. 6 has been charge-sheeted in the matter of movement and handling of coal and is on bail granted by the Bombay High Court, he is appears to be unfit to be awarded any contract in the State of Uttar Pradesh for handling and movement of coal.

We direct that the respondent No. 6 shall not be permitted to indulge in any activities pertaining to handling and movement of coal in terms of supply order dated 28.10.2014 till 25th March, 2015. The operation of the order dated 4.10.2014 shall remain stayed till 25th March, 2015.

List on 25th March, 2015."

7. Challenging the correctness of the interim order dated 9.3.2015 passed in Writ Petition No. 12680 of 2015, 2 petitions for special leave to appeal were filed before the Supreme Court, one by the U.P.C.F. and the other by M/s. Pavan Coal Company, registered as petition for Special Leave to Appeal C Nos. 8659 of 2015 and 8691 of 2015 respectively. Both the aforesaid petitions were taken up for hearing on 20.3.2015 and both the petitions were dismissed, however, with certain observations. The order dated 20.3.2015 passed by the Apex Court is reproduced below :

"UPON hearing the counsel the court made the following

ORDER

Heard.

We see no reason to interfere with the interim order passed by the High Court.

The special leave petitions are accordingly dismissed.

We however request the High Court to hear the matter on Wednesday, the 25th March, 2015 when it is coming up for consideration before it.

Learned counsel for the petitioners and other respondents in the writ petition may file their counter-affidavits in the meantime before the High Court.

We hope and trust that none of the parties would seek any adjournment from the High Court on Wednesday, the 25th March, 2015."

8. It is in the aforesaid facts and circumstances that the two petitions were taken up for hearing giving due regard to the hope and trust reposed by the Supreme Court in the High Court.

9. Hearing in the matter commenced on 2.4.2015 and it was heard on day-to-day basis thereafter on 3.4.2015, 6.4.2015, 7.4.2015, 8.4.2015 and 9.4.2015. On 8.4.2015, when the counsel for the U.P.P.C.F. was called upon to submit his arguments, Sri Ravi Kant, senior counsel appearing on its behalf sought adjournment for a week or 10 days on the ground that the U.P.P.C.F. was reconsidering the decision of appointing M/s. Pavan Coal Company as its" coal coordinator/handler. Since the arguments had been heard on a number of dates, the matter was adjourned for the next day and the U.P.P.C.F. was directed to come up with its clear stand in the matter. On 9.4.2015, an application was filed by the U.P.P.C.F. supported by an affidavit praying for 2 weeks time to reassess the impact of the material facts and developments which came in light during the course of litigation on the award of contract in question in the interest of justice. The court passed an order on 9.4.2015 directing that the matter may come up on the next day requiring U.P.P.C.F. to place on record its stand. The following order was passed on 9.4.2015 :

"Sri Ravi Kant, learned senior counsel representing the U.P. Pradeshik Co-operative Federation Ltd. (respondent No. 5) has filed an application supported by an affidavit praying for two weeks time to reassess the impact of material facts and developments which came to light during course of litigation, on the award of contract in question in the interest of justice. This application is supported by the affidavit of one Anand Ram Kushwaha posted as Regional Manager, U.P. Co-operative Federation Ltd., Allahabad. The application has been strongly opposed by Sri Chhotey Lal Pandey, learned counsel appearing for the respondent No. 6. Sri Pandey has submitted that the matter may continue on day-to-day basis and may not be adjourned on the request of the respondent No. 5.

We may record here that it was made clear in the very beginning that matter would be heard on day-to-day basis. It may also be recorded here that in order to hear this matter considering the vast impact involved, the listed and unlisted matters of this Court, on the request of the court, are being transferred on daily basis to other courts. We accordingly direct that the matter may be placed tomorrow (10.4.2015) in the additional cause list to be taken up after fresh matters as is being followed for the last one week. It is also clarified that we are not stopping either the State Government or the U.P. Co-operative Federation Ltd. from reviewing or reconsidering their action in awarding the contract to respondent No. 6.

Interim order granted earlier to continue till tomorrow, i.e., 10.4.2015.

Office to get the application registered through computer section."

10. On 10.4.2015, the U.P.P.C.F. placed on record supplementary counter-affidavit No. 2 and alongwith it annexed a show cause notice dated 9.4.2015 issued by the Managing Director, U.P.P.C.F. calling upon its" coal coordinator/handler M/s. Pavan Coal Company (respondent No. 6) to submit reply on 3

charges mentioned therein. Another annexure attached to the supplementary counter-affidavit No. 2 was an order dated 9.4.2015 whereby the agreement executed on 10.10.2014 between respondent No. 6 (M/s. Pavan Coal Company) and the U.P.P.C.F. was suspended till further orders. Based on the above two facts, Sri Ravi Kant, senior counsel prayed for 10 days time to enable the U.P.P.C.F. to take a final decision in the matter after considering the reply that may be given by M/s. Pavan Coal Company for which a week's time was allowed. The matter was adjourned for 22.4.2015. The order dated 10.4.2015 is reproduced below :

"Sri Ravi Kant, learned senior counsel appearing for the respondent No. 5 Uttar Pradesh Pradeshik Co-operative Federation has filed an application praying for placing on record the Supplementary Counter-Affidavit-II attached with it. Supplementary Counter Affidavit-II has been sworn by Anand Ram Kushwaha, posted as Regional Manager, U.P. Co-operative Federation Ltd., Allahabad. Alongwith the said affidavit are annexed two Annexures. Annexure-S.A-1 is a show cause notice dated 9.4.2015 issued by the Managing Director of the U.P. Co-operative Federation Ltd., Lucknow, calling upon the respondent No. 6 M/s. Pavan Coal Company to submit reply on the three charges leveled against it within a week. Annexure-S.A-2 is an order passed by the Managing Director of the U.P. Co-operative Federation Ltd., Lucknow dated 9.4.2015 whereby in view of the serious charges leveled against respondent No. 6 M/s. Pavan Coal Company, the agreement executed on 10.10.2014 has been suspended till further orders.

Sri Ravi Kant, learned senior counsel has prayed that the matter may be deferred for 10 days so that final decision may be taken in the meantime by the Uttar Pradesh Pradeshik Co-operative Federation (respondent No. 5).

We accordingly direct that the matter may be listed on 22.4.2015. In view of the fact that the agreement executed by the Uttar Pradesh Pradeshik Co-operative Federation in favour of M/s. Pavan Coal Company has already been suspended by it, we do not find any reason to extend the interim order granted earlier. However, it would be open to the petitioners to apply for continuation of the interim order in case such suspension is revoked in the meantime.

Office to get the application registered through the Computer Centre."

11. M/s. Pavan Coal Company L.L.P. (earlier known as M/s. Pavan Coal Company) filed Writ Petition No. 21028 of 2015 before this Court on 13.4.2015 praying for issuance of a writ of certiorari quashing the suspension order dated 9.4.2015 as also the show cause notice of even date. The relief claimed in this petition is reproduced below :

"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 9.4.2015 as well as the notice dated 9.4.2015 (Annexure-1 to this writ petition) issued by the U.P.P.C.F., i.e., respondent No. 2;

(b) Issue a writ, order or direction in the nature of mandamus restraining the respondents from taking steps consequent to the notice dated 9.4.2015 issued by the U.P.P.C.F., i.e., respondent No. 2;

(c) Issue any other further relief, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner; and

(d) Award costs of the present writ petition to the petitioner."

12. After hearing learned counsel for the parties this Court passed an order on 15.4.2015 to connect this writ petition with the earlier 2 petitions and directed that the matter be fixed for 22.4.2015. the date already fixed in the earlier 2 petitions. On 22.4.2015, when the matter was taken up, an amendment application (registered as Application No. 156465 of 2015) was filed by the petitioner for adding certain paragraphs and grounds and also prayer clause for quashing the order dated 21.4.2015 passed by the Managing Director of the U.P.P.C.F. whereby the appointment of M/s. Pavan Coal Company vide order dated 4.10.2014 and the agreement executed on 10.10.2014 pursuant to the said appointment were cancelled.

13. Arguments have been heard in all the 3 petitions together.

14. We have heard Sri Shanti Bhushan, learned senior counsel alongwith Sri Chhotey Lal Pandey, Sri Prashant Chandra, Ms. Kamini Jaiswal, learned senior counsels assisted by Sri Rahul Agrawal and Sri Rohan Gupta, learned counsels for M/s. Pavan Coal Company, Sri Pinaki Mishra and Sri Shashi Nandan, learned senior counsel assisted by Sri Anurag Khanna and Sri Nipun Singh, learned counsels for M/s. A.K.A. Logistics, Sri Navin Sinha, learned senior counsel assisted by Sri Devansh Rathore, learned counsel for M/s. Sendoz Impex Limited, Sri Vijay Bahadur Singh, learned Advocate General for the State of U.P. assisted by Sri Ramesh Upadhyay, learned Chief Standing Counsel and Sri Ravi Kant, learned senior counsel assisted by Sri R.G. Tripathi, Sri Ajay Bhanot, Sri Mohit Singh and Sri Gaurav Mehrotra, learned counsels for the U.P.P.C.F.

15. The writ petitions filed by M/s. Sendoz Impex Limited and M/s. A.K.A. Logistics Private Limited primarily raised three grounds with regard to the appointment of M/s. Pavan Coal Company as the coal coordinator. The aspect relating to the bifurcation of the work of the nodal agency would be dealt with separately.

16. The first ground of attack was the violation of the terms of the E.O.I. (Clause 12) which provided that any proprietor or partner or director of the applicant firm/company shall not be black listed/debarred by any State agency and further that with regard to any work done within the State, there was no inquiry pending against it by any State or Central agency. According to the 2 petitioners, Pavan Gupta, one of the partners of M/s. Pavan Coal Company, was facing criminal charges and was charge-sheeted by the C.B.I. in the State of Maharashtra with regard to diversion and black marketing of coal, working as coal handler for

National Co-operative Consumers Federation (N.C.C.F.). In such circumstances M/s. Pavan Coal Company was not eligible to apply for being considered for appointment as coal coordinator/handler.

17. The second ground taken was that an affidavit was required under the terms and conditions of the E.O.I. to clearly state that the applicant firm/company which was carrying on the work of coal handling in different States of the Country had a good reputation (Achchi Prathistha) in those States. According to the 2 petitioners as one of the partners of M/s. Pavan Coal Company was facing criminal charges and the C.B.I, had submitted a charge-sheet against him, the Firm M/s. Pavan Coal Company could not be said to have a good reputation in the State of Maharashtra where it was carrying the work of coal handler for N.C.C.F. The affidavit given by one of the partners of M/s. Pavan Coal Company contains incorrect facts and amounts to misrepresentation.

18. Third and the last point taken by the 2 petitioners was to the effect that M/s. Pavan Coal Company was a partnership concern/firm at the time it purchased the tender documents and submitted the same on 27.9.2014. Soon thereafter on 29.9.2014 M/s. Pavan Coal Company partnership firm got itself converted and incorporated as a Limited Liability Partnership under the provisions of the Limited Liability Partnership Act, 2008 (hereinafter referred to as L.L.P. Act) in the name of M/s. Pavan Coal Company L.L.P. The case of U.P.P.C.F. is that the tender documents were purchased and submitted by M/s. Pavan Coal Company partnership firm which was in existence till 29.9.2014 and w.e.f. 29.9.2014 it became M/s. Pavan Coal Company L.L.P. but despite the same on 10.10.2014 the agreement was executed by the partner of M/s. Pavan Coal Company partnership firm and not M/s. Pavan Coal Company L.L.P. and, therefore, the agreement itself having been executed by a non-existent person/firm was void.

19. In addition to above 3 grounds other grounds were also raised by the 2 petitioners relating to certain relaxations in the terms and conditions of the E.O.I. The marking system was also criticized. Argument was also raised regarding incorrect award of marks. Further, Clause 12 of E.O.I, which limited the scope of inquiry with regard to work in the State of U.P. only as being against public policy. The said Clause 12 was said to be unreasonable, arbitrary and was made only to extend benefit to M/s. Pavan Coal Company, to become eligible. Even the first part of Clause 12 of the E.O.I, was criticized which had limited debarment/black listing by any State agency. The Central agencies were deliberately excluded.

20. During the pendency of the 2 petitions filed by M/s. Sendoz Impex Limited and M/s. A.K.A. Logistics Private Limited, U.P.P.C.F. after suspending the agreement in favour of M/s. Pavan Coal Company on 9.4.2015 and after giving a show cause notice of even date U.P.P.C.F. cancelled the agreement as also the appointment of M/s. Pavan Coal Company as its" coal coordinator/handler vide order dated 21.4.2015. Sri Navin Sinha, learned senior counsel appearing in Writ Petition No. 58843 of 2014 and Sri Shashi Nandan, learned senior counsel

appearing in Writ Petition No. 12680 of 2015 upon instructions stated that both these petitions may be dismissed as withdrawn in view of the development relating to the cancellation of the agreement of M/s. Pavan Coal Company. According to them as the reliefs claimed in the two petitions have since been granted by U.P.P.C.F. nothing survives to be considered in these petitions. In terms they also gave up their relief against bifurcation of work of the nodal agency. The said request for dismissing the 2 petitions as withdrawn was opposed by learned counsel for M/s. Pavan Coal Company and written objections were also submitted in that respect. Sri Rahul Agrawal, learned counsel representing M/s. Pavan Coal Company submitted that in case the 2 petitioners are withdrawing their petitions they should not be granted any liberty or leave to file an application for recall in case the Writ Petition No. 21028 of 2015 is allowed by this Court and the agreement in favour of M/s. Pavan Coal Company is restored. This issue will be taken up after the decision in Writ Petition No. 21028 of 2015. We therefore, proceed to deal with Writ Petition No. 21028 of 2015, M/s. Pavan Coal Company v. State of U.P. and others.

21. As mentioned in the earlier part of this order this petition Writ Petition No. 21028 of 2015, M/s. Pavan Coal Company v. State of U.P. and others, was originally filed against the show cause notice dated 9.4.2015 as also the order of suspension dated 9.4.2015 by which the agreement in favour of M/s. Pavan Coal Company had been suspended. However, as during the pendency of this petition U.P.P.C.F. terminated the contract on 21.4.2015 by cancelling the appointment vide order dated 4.10.2014 as also the agreement dated 10.10.2014 in favour of M/s. Pavan Coal Company, an amendment application was filed which has since been allowed and an amended petition has already been filed.

22. Sri Prashant Chandra, learned senior counsel appearing for the petitioner (M/s. Pavan Coal Company) submitted that once this Court was seized with the matter wherein the validity of the appointment of M/s. Pavan Coal Company and the agreement executed consequent thereto was under consideration, U.P.P.C.F. ought to have kept its hands off and should not have indulged into initiating any proceedings for cancellation. He further submitted that in case U.P.P.C.F. wanted to initiate such proceedings it ought to have taken leave or liberty from the court before proceeding any further in the matter. This argument does not appeal to us in as much as U.P.P.C.F. was well within its rights to reconsider as to whether the contract had been rightly obtained or not, whether or not there was any concealment or misrepresentation. The fact that M/s. Pavan Coal Company is proceeding in the matter was placed before the court and there was no embargo imposed upon U.P.P.C.F. for not proceeding to reconsider the giving of the contract to M/s. Pavan Coal Company. Thus, we do not find any infirmity or lack of jurisdiction in U.P.P.C.F. in reconsidering the matter and taking a decision pursuant to its "show cause notice".

23. The charge-sheet dated 9.4.2015 is the genesis of the termination order. It contained 3 charges. The 1st charge related to the concealment of material facts

while giving the disclosure as required by Clause 12 of the E.O.I. The nondisclosure related to the criminal case against Pavan Kumar Gupta, one of the partners of M/s. Pavan Coal Company in the State of Maharashtra where charge-sheet was submitted by the C.B.I, before the Special Judge (Anti-Corruption), Nagpur relating to the diversion and black marketing of coal while working as coal coordinator/handler for N.C.C.F. The charge mentioned is that N.C.C.F. was the nodal agency for the entire Country which included the State of U.P. also and as such there was deliberate concealment and incorrect information having been provided by M/s. Pavan Coal Company in stating that there was no inquiry or investigation pending with regard to handling of coal by any State or Central Agency. In support of this charge the U.P.P.C.F. has referred to 2 documentary evidences; first document is the charge-sheet submitted by the C.B.I, dated 28.12.2010 and second is an order dated 5.11.2014 passed by Mumbai High Court, Nagpur Bench in Criminal Application No. 603 of 2012, Pavan Ramsanehi Gupta v. C.B.I.

24. The 2nd charge alleged was that the tender submitted by M/s. Pavan Coal Company was accepted and approved on 4.10.2014. Thereafter, the agreement was executed on 10.10.2014. It was executed by a partner of and on behalf of M/s. Pavan Coal Company, a partnership firm. It further mentioned that during the hearing of earlier 2 writ petitions in the counter and supplementary counter-affidavits filed by M/s. Pavan Coal Company it was disclosed that M/s. Pavan Coal Company partnership firm had been converted into a limited liability partnership by the name of M/s. Pavan Coal Company L.L.P. on 29.9.2014. The information regarding this conversion into L.L.P. from a partnership firm was given only on 14.11.2014 by the Company whereas it should have been provided prior to 4.10.2014. The charge further mentioned that on 10.10.2014 at the time of execution of the agreement M/s. Pavan Coal Company partnership firm was not in existence and this fact having deliberately not been brought to the knowledge of the U.P.P.C.F., a fraud was committed by M/s. Pavan Coal Company. It further mentioned that deliberately by concealing material facts it entered into an agreement having been executed by a firm which was not in existence on the date of the execution. As such the agreement in question was void ab initio. In support of this charge the U.P.P.C.F. has referred to two documentary evidences; first document is the agreement dated 10.10.2014 and second document is Annexure-2 to the counter-affidavit of M/s. Pavan Coal Company dated 23.3.2015 filed in Writ Petition No. 12680 of 2015 which was a copy of the L.L.P. deal.

25. The 3rd charge alleged was that Sri Abhimanyu Kashiwar, a partner of the firm gave an affidavit as partner of the firm which stated that the firm carries out work of coal handling in different States of the Country and in all such States its reputation was good (Achchi Pratistha). According to the charge this statement was incorrect in as much as M/s. Pavan Coal Company indulged in diversion and black marketing of coal in the State of Maharashtra and the C.B.I., had submitted its charge-sheet before the Nagpur Court against Pavan Kumar Gupta, partner of

M/s. Pavan Coal Company. In such circumstances it could not be said that the reputation of the said firm was good. As evidence copy of the partner affidavit dated 5.9.2014 was relied upon.

26. M/s. Pavan Coal Company was called upon to submit its reply within a week with regard to the concealment of facts and committing fraud as to why the agreement be not cancelled. The charge-sheet also mentioned that in case no reply is received within the time allowed, the appointment and agreement as coal handler would be cancelled.

27. M/s. Pavan Coal Company submitted a detailed reply dated 17.4.2015 (Annexure-25 to the writ petition). The reply runs into 20 pages containing 54 paragraphs. Paragraphs 1 to 39 give the background and the procedure adopted in awarding the contract. Paragraph 40 deals with in detail all the 3 charges levelled in the charge-sheet. The remaining paragraphs thereafter further contain material facts relating to M/s. Pavan Coal Company. It was stated that the charges as framed were not tenable in law.

28. The order dated 21.4.2015 passed by the Managing Director cancelling the appointment as also the agreement also runs into 18 pages. It has separately dealt with each of the charges and also refers to the relevant paragraph No. 40 which is a specific reply to the 3 charges contained in the charge-sheet.

29. With regard to charge No. 1 it was stated in the objections filed by M/s. Pavan Coal Company that the charge-sheet submitted before the Nagpur Court was with regard to works carried out in State of Maharashtra and not in the State of U.P. therefore, there was no concealment or furnishing of incorrect facts as Clause 12 of the E.O.I., only required that the inquiry/investigation by a State or Central agency should be with regard to the works carried out in the State of U.P. itself. According to M/s. Pavan Coal Company there is no charge-sheet or inquiry or investigation by a State or Central agency with regard to any work done in the State of U.P. As such there was neither any concealment nor furnishing of any incorrect information. The finding however is that the charge-sheet submitted before the Nagpur Court by the C.B.I., was not only against the officers of the N.C.C.F. or the State agency M/s. Nitin Marketing but also against Pavan Kumar Gupta, partner of M/s. Pavan Coal Company. It was further found that it was the duty of M/s. Pavan Coal Company at the time of submitting its tender to have mentioned about this fact which was deliberately concealed. The Managing Director in the impugned order recorded that since the N.C.C.F. was the nodal agency for the allotment of coal in the entire Country which covers the State of U.P. also as such M/s. Pavan Coal Company was under obligation to have informed about this fact and about the charge-sheet filed before the Nagpur Court and thus its" eligibility would be hit by Clause 12 of the E.O.I.

30. With regard to charge No. 2 the objection of the petitioner M/s. Pavan Coal Company was that on 6.10.2014 before signing of the contract they had informed Sri G.S. Kalsi, Executive Director, U.P.P.C.F. the Incharge of the E.O.I.

Evaluation Committee about the conversion of M/s. Pavan Coal Company, a partnership firm, into M/s. Pavan Coal Company L.L.P. by an e-mail. It was also informed that copy of the registration certificate dated 29.9.2014 issued by the Registrar as well as a letter of M/s. Pavan Coal Company to the aforesaid effect was also attached alongwith the e-mail. M/s. Pavan Coal Company further mentioned that they had purchased the stamp papers required for executing the contract in the name of M/s. Pavan Coal Company L.L.P. on 8.10.2014 and it is on these stamp papers that the agreement had been executed. It is also the case of M/s. Pavan Coal Company that covering letter of the Bank dated 14.10.2014 about furnishing the bank guarantee of Rs. 50 lakhs was issued to M/s. Pavan Coal Company on behalf of M/s. Pavan Coal Company L.L.P. as per the terms and conditions of the E.O.I. This would show that the bank guarantee was charged from the account of M/s. Pavan Coal Company L.L.P. It further mentioned in the reply to the show cause that several letters were written in the month of October, 2014 to the U.P.P.C.F. by M/s. Pavan Coal Company L.L.P. which clearly mentioned this fact of conversion of the partnership firm into L.L.P. Further, reference was made to a communication dated 20.12.2014 by the U.P.P.C.F. requesting the petitioner M/s. Pavan Coal Company not to use L.L.P. in correspondence.

31. While dealing with these objections the Managing Director in the impugned order of termination has recorded that the e-mail communication dated 6.10.2014 which admittedly is the only communication prior to execution of the agreement on 10.10.2014 was sent at the personal I.D. of Sri G.S. Kalsi. The finding is that the petitioner M/s. Pavan Coal Company for the first time in its" communication dated 14.11.2014 mentioned about the conversion of the partnership into L.L.P. With regard to the e-mail on 6.10.2014 to Sri Kalsi the finding is that the communication with the U.P.P.C.F. was being made on e-mail I.D. hq@upcj.org. and not on any personal e-mail I.D. of any officer. The impugned order further proceeded to deal with the provisions contained in the Limited Liability Partnership Act, 2008 and referring to Clauses 7 (b) and (c) of Second Schedule. Clauses 7 (b) and (c) are quoted below :

"(b) all tangible (movable and immovable) property as well as intangible property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 (9 of 1932) removed from the records maintained under that Act."

32. According to the above provision on and from the date of registration specified in the certificate of registration issued under Clause 5 the firm shall be deemed to be dissolved and consequent thereof the earlier registration made under the Indian Partnership Act, 1932 be removed from the records maintained

under that Act. Relying upon such provision the Managing Director recorded a finding that w.e.f. 29.9.2014 M/s. Pavan Coal Company partnership firm having been converted and registered as M/s. Pavan Coal Company L.L.P., the partnership firm could not have remained in existence and the execution of the agreement on 10.10.2014 by a partnership firm would be by a non-existent party and as such the agreement would be void ab initio.

33. In reply to charge No. 3, the objections raised by the petitioner M/s. Pavan Coal Company are that mere filing of the charge-sheet against one of the partners of M/s. Pavan Coal Company cannot lead to a conclusion that the reputation of the Company was not good or that its" reputation stood tarnished. It is also the case of the petitioner M/s. Pavan Coal Company that even after the submission of the charge-sheet by the C.B.I., the N.C.C.F. had continued the petitioner as its" coal handler and agreement with the N.C.C.F. remained intact. The N.C.C.F. neither cancelled the agreement. nor at any stage initiated any proceedings against the petitioner M/s. Pavan Coal Company or gave any show cause notice or disrupted its working as coal handler. It is also the case of the petitioner that subsequently also N.C.C.F. had awarded work to the petitioner M/s. Pavan Coal Company.

34. The Managing Director found the explanation of the petitioner M/s. Pavan Coal Company as not convincing and relying upon the charge-sheet submitted by the C.B.I. before the Nagpur Court against Pavan Kumar Gupta, partner of M/s. Pavan Coal Company, proceeded to hold that the reputation of the petitioner could not be said to be good in the State of Maharashtra and as such the affidavit given by one of its" partners did not contain the correct facts.

Discussion : Charge No. 1 :

35. We have gone through the charge-sheet of the C.B.I, which has been placed on record as Annexure-8 to the Writ Petition No. 21028 of 2015. It is against a number of accused persons including Pavan Kumar Gupta and not exclusively against him. It clearly mentions that the diversion and black marketing of coal by the State Agent M/s. Nitin Marketing was in Maharashtra region. It nowhere mentions that the diversion and black marketing extended to any part outside the State of Maharashtra. Relevant extract from the charge-sheet submitted by the C.B.I., is reproduced below :

"(1-6) Brief facts of the case (add separate sheet, if necessary)

This case was registered in C.B.I., A.C.B., Nagpur branch under Section 120B r/w Sections 420, 467, 468, 471 and 477A, I.P.C. and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 on the basis of source information : alleging therein that the coal meant for the tiny and small consumers/industrial units to be distributed by National Co-operative Consumer Federation (N.C.C.F.) was diverted into the black market in Maharashtra region by Vijay Bansal of M/s. Nitin Marketing in connivance with the officials of N.C.C.F. Akola and unknown officials of W.C.L.

Investigation revealed that Government of India has issued directions to Coal India Limited for supply of coal to S.S.I. Units through National Co-operative Consumer Federation (N.C.C.F.) to various S.S.I. Units whose requirement for Coal was below 500 M.T. per annum had to be supplied coal at 20% above the notified floor price of the particular grade of coal.

The N.C.C.F., which was an apex federation of the consumer co-operative in India was appointed for distribution of coal to small and tiny consumer, treating it as a linked consumer; had appointed M/s. Pavan Coal Company, Kanpur as its agent for the distribution of coal to small and tiny consumers. In turn M/s. Pavan Coal Company appointed M/s. Nitin Marketing, Nagpur as sub-agent for Maharashtra region.

The above said accused public servants entered into criminal conspiracy with accused private persons during the period from Jan., 2005 to Dec., 2007 with the common object to cheat the Coal India Limited in the matter of distribution of Coal allotted by Coal India Limited (C.I.L.) for small and tiny consumers, and in furtherance of " the said criminal conspiracy, by misusing their official position committed criminal misconduct and showed undue favours to M/s. Pavan Coal Company, Kanpur, agent of N.C.C.F. and his sub-agent, M/s. Nitin Marketing, Nagpur, by allowing them to lift coal against bogus and forged challans and invoices in the name of non-existing units, and issuing challans in the names of non-entitled units against the guidelines formulated by N.C.C.F., H.Q. and C.I.L. for distribution of coal to genuine consumers, and thereby facilitated the diversion of the coal meant for small/tiny units elsewhere.

In furtherance of said criminal conspiracy pirate accused persons intentionally and dishonestly violated the formulated guidelines of N.C.C.F., opened the accounts in various banks and also in fictitious names deposited the cash in it and issued cheque in favour of N.C.C.F. for taking delivery of the coal in the name of these units.

Investigation disclosed that Shri Jadhav and the other accused public servants in furtherance of the criminal conspiracy with the private accused persons, and by dishonestly and fraudulently showed supply of 153046.55 M.T. of coal to 341 units diverted the coal meant for small and tiny consumers and thereby caused wrongful loss to the tune of Rs. 1,28,55,910 and wrongful gain to themselves.

The aforesaid acts on the part of above mentioned accused persons constitute the commission of offences which are punishable under Section 120B r/w Sections 420, 468, 471, I.P.C. and Section 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988."

36. From a perusal of the above extract it is clear that charge related to diversion and black marketing only in Maharashtra region by M/s. Nitin Marketing, Nagpur.

37. It is the case of the petitioner that M/s. Nitin Marketing, Nagpur was its" sub-agent for coordinating coal distribution in Maharashtra region only. The petitioner

has also tried to convince that it had no role to play with the diversion or black marketing and the mischief was committed by M/s. Nitin Marketing. The conclusion drawn by the Managing Director in his impugned order dated 21.4.2015 is that the diversion and black marketing of coal with regard to which the C.B.I., had submitted a charge-sheet before the Nagpur Court is extended to the State of U.P. also but as borne out from the charge-sheet, rather in terms it is confined to the State of Maharashtra only. There was no evidence before the Managing Director to draw the conclusion that the diversion and black marketing which was being investigated by the C.B.I., extended to the State of U.P. also. What prompted it to record this finding can be best explained by the said authority.

38. Clause 12 of the E.O.I, was framed by the U.P.P.C.F. itself. U.P.P.C.F. could not have gone beyond it and was to strictly follow its own terms and conditions. U.P.P.C.F. was bound by its own terms and conditions. Clause 12 of the E.O.I., is reproduced below :

39. It may be a relevant question as raised by the 2 petitioners the unsuccessful tenderers that this Clause 12 of the E.O.I., was arbitrary inasmuch as any firm or partner involved in any criminal activity specially relating to coal diversion or black marketing whether in the State of U.P. or outside the State of U.P. should be placed in the same bracket and there should not have been a separate bracket by restricting activity in the State of U.P. only. But since we are not going into that question at the moment as the 2 petitioners have sought to withdraw their writ petitions, we will proceed as per the terms and conditions fixed by the U.P.P.C.F.

40. Having perused the said clause as quoted above and the charge-sheet submitted by the C.B.I. we are unable to accept the finding recorded by the Managing Director on charge No. 1. As per the language of Clause 12 of the E.O.I, the petitioner M/s. Pavan Coal Company could not be held to be not eligible as there was no material to show that with regard to any work done in the State of U.P. there was any enquiry/investigation by any State or Central agency. It is clear from the charge-sheet submitted by C.B.I, before the Nagpur Court that it related only to works carried out in the State of Maharashtra. Thus, it would not lie in the mouth of U.P.P.C.F. to say that there was any violation of Clause 12 of the E.O.I. U.P.P.C.F. cannot widen the language and import of Clause 12 of the E.O.I. which they had themselves framed. They were bound by their own terms and conditions. It may be open to other parties to criticize Clause 12 of the E.O.I, in the manner it was drafted. We therefore, hold that finding of the Managing Director in the impugned order with regard to charge No. 1 cannot be sustained.

Discussion : Charge No. 3 :

41. Charge No. 3 is interlinked with charge No. 1. as such we would first deal with charge No. 3 and thereafter with charge No. 2. Charge No. 3 relates to the

affidavit given by Sri Abhimanyu Kashiwar, one of the partners of M/s. Pavan Coal Company. In paragraph 3 thereof he has stated that the reputation of M/s. Pavan Coal Company in all other States where it was carrying out work as coal handler was good. This statement it was alleged not correct, only on account of the fact that there was a charge-sheet of the C.B.I, against one of the partners Pavan Kumar Gupta in the State of Maharashtra. Copy of the draft affidavit was provided to the parties as part of the tender document and has been filed as part of Annexure-14 to the Writ Petition No. 21028 of 2015. The proforma of the affidavit is reproduced below :

42. The submission advanced on behalf of the petitioner is that there can be no parameter or matrix to determine the magnitude or quality of good reputation [Achchi Pratistha). It would be purely subjective and would be based upon the belief and bona fide of the person swearing the affidavit. Specific case of the petitioner has been that it was not involved in any diversion or black marketing of coal in the State of Maharashtra with regard to which the C.B.I, had submitted the charge-sheet. The petitioner, however, admits that M/s. Nitin Marketing was its" sub-agent for the State of Maharashtra only and whatever mischief was committed was by the said agent. The C.B.I, in its charge-sheet had of course included Pavan Kumar Gupta, one of the partners, but mere submission of the charge-sheet would not mean that the accused has been convicted or that he has committed a crime. It is the belief of the investigating agency that there may be prima facie evidence against the charge-sheeted persons and they are named accordingly. The order of the Bombay High Court also refers to this aspect of the matter in the following words :

"1. Heard learned counsel Shri A.S. Manohar for the applicant and learned Special Public Prosecutor Shri S.B. Ahirkar for the non-applicant.

2. Admit. Heard finally by consent of learned counsel for the parties.

3. The applicant is one of the accused in Special Case No. 33/2010. The said case has been filed against the applicant and others for the offences punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120B, 468, 406, 420 and 471 of the Indian Penal Code. The conspiracy charge is levelled against the public servants and the private persons. The applicant is not a public servant. He is a coal distributor.

4. The National Co-operative Consumers Federation (hereinafter referred to as "N.C.C.F.") was getting allocation of coal from various subsidiaries of Coal India Limited. The coal allocated was to be distributed to small scale industries. N.C.C.F. had appointed the applicant as All India Agent for distribution of coal to small scale industries. The applicant, under an agreement with the N.C.C.F., was under an obligation to appoint sub-agents for proper distribution of coal to small scale industries.

5. The allegations against the applicant and other accused including some of the officers of Coal India Limited are that they entered into a conspiracy to divert the

coal meant for small scale industries to open market and make money out of it. In pursuance of the said conspiracy, the coal allocated by Coal India Limited and given for distribution to the applicant was diverted to open market with the help of sub-agents. It is how the public servants have committed offence of misconduct and the private persons are party to the conspiracy for committing offence punishable under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and other offences of the Indian Penal Code including cheating and criminal breach of trust.

6. As far as diversion of coal to open market is concerned, the learned counsel Shri A.S. Manohar for the applicant has nothing to say in the matter at this stage. His argument is confined to the fact that the sub-agents were responsible for diversion of coal to the open market and that there is no material against the applicant to try him for the offence of conspiracy. The learned Special Public Prosecutor Shri S.B. Ahirkar has submitted that the applicant was responsible for the acts done by the sub-agents as he stood as a guarantor for all the sub-agents for which he was getting 0.5% service charges. The learned counsel Shri A.S. Manohar has countered the argument by submitting that the obligation of the applicant was of civil nature and if at all he had not supervised the work of sub-agents properly, the necessary civil action can be taken against him by the N.C.C.F. It is submitted that the applicant cannot be held liable for the criminal offences allegedly committed by the sub-agents.

7. In this regard, what is necessary to be noted is that the charge of conspiracy is difficult to prove by direct evidence. Conspiracy, it is said, is hatched in secrecy and, therefore, the same could be proved by circumstantial evidence. It is, therefore, difficult to get any direct material against the accused. The non-applicant will have to rely upon the circumstantial evidence, which can be gathered from various facts on the basis of evidence led before the trial court. One of the circumstances, which could be seen prima facie is that the applicant had failed to maintain necessary control over the sub-agents. It is also equally possible to say that the applicant was party to the acts committed by sub-agents inasmuch as such a huge quantity of coal could not have been diverted in open market by sub-agents without knowledge of the main agent. There are various other circumstances on which I do not want to comment at this stage because it may adversely influence the learned trial court. Suffice it to say that the court can draw inference on the basis of various circumstances and charge of conspiracy, as already stated, can be established on the basis of circumstances. The applicant cannot claim discharge only because there is no direct evidence against him. I do not find any substance in the application. The application stands dismissed."

43. For one or the other reasons the High Court went on to dismiss the petition filed under Section 482, Cr.P.C. by Pavan Kumar Gupta. The S.L.P. filed against the Bombay High Court order was also dismissed by the Apex Court. The trial has not concluded and there is no conviction against Pavan Kumar Gupta.

44. It is also the case of the petitioner which apparently is not disputed that the petitioner has been in the business of coal handling for approximately 3 decades and claims that it has neither been black listed nor charge-sheeted nor its contract has been terminated on account of breach of contract or otherwise ever. For this reason the partner of the petitioner's firm Abhimanyu Kashiwar strongly believed that the reputation of the firm was good in all the States where the firm was carrying on business of coal handling. One more fact may be recorded here that even after submission of the charge-sheet the petitioner's work has not been terminated or disturbed by the N.C.C.F. The petitioner has received and entered into other contracts in other States as coal handler subsequent to the submission of the charge-sheet.

45. The affidavit which was required to be given by one of the partners of the firm is simply worded as it is nowhere defined as to how Prathista is to be determined and what are the parameters to be considered in declaring the reputation [Pratishtha] to be good (Achchi).

46. It may also be noted that the term "Pratishtha" is subjective and is open to interpretation. The affidavit has been sworn on personal belief and hence cannot be said to be false on this ground alone. Even as per the own showing of U.P.P.C.F. it has been contended that "Prathista" is akin to reputation and it is different from "character" since it connotes what the perception of the general public is. It is submitted that the perception of the general public is subjective and not objective. Moreover, it may be noted that it is not the case of U.P.P.C.F. that the general public opinion was taken into account at the time of or before passing the impugned order.

47. Hence, the question here is not whether the Prathista is good or not but whether the partner of the firm Abhimanyu Kashiwar could be denied from even expressing his assessment that he believed that the petitioner firm was a respectable firm, due to it being the oldest and most experienced in the country with no previous bad antecedents and for all other reasons recorded above. Just because a charge-sheet had been filed against one of the directors of the firm, its long untarnished reputation could not be said to be tarnished at least in his belief and understanding. The answer would have to be in the negative since mere filing of the charge-sheet is of no consequence and a person would be presumed to be innocent unless proved guilty. Reference in this regard may be had to the following decisions of the Apex Court and High Courts :

"(i) In Manoj Narula Vs. Union of India (UOI), (2014) AIRSCW 5287 : (2014) 9 SCALE 600 : (2014) 9 SCC 77 , the Supreme Court in paras 121 and 122 has explained as follows :

121. The expression "criminal antecedents" or "criminal background" is extremely vague and incapable of any precise definition. Does it refer to a person accused (but not charged or convicted) of an offence or a person charged (but not convicted) of an offence or only a person convicted of an offence? No clear

answer was made available to this question, particularly in the context of the presumption of innocence that is central to our criminal jurisprudence. Therefore, to say that a person with criminal antecedents or a criminal background ought not to be elected to the legislature or appointed a Minister in the Central Government is really to convey an imprecise view.

122. The law does not hold a person guilty or deem or brand a person as a criminal only because an allegation is made against that person of having committed a criminal offence - be it in the form of an off-the-cuff allegation or an allegation in the form of a first information report or a complaint or an accusation in a final report under Section 173 of the Criminal Procedure Code or even on charges being framed by a competent court. The reason for this is fundamental to criminal jurisprudence, the rule of law and is quite simple, although it is often forgotten or overlooked - a person is innocent until proven guilty. This would apply to a person accused of one or multiple offences. At law, he or she is not a criminal - that person may stand "condemned" in the public eye, but even that does not entitle anyone to brand him or her a criminal. Consequently, merely because a first information report is lodged against a person or a criminal complaint is filed against him or her or even if charges are framed against that person, there is no bar to that person being elected as a Member of Parliament or being appointed as a Minister in the Central Government.

(ii) In *Kailash Gour and Others Vs. State of Assam*, AIR 2012 SC 786 : (2012) CriLJ 1050 : (2012) 1 JCC 519 : (2011) 14 JT 306 : (2011) 13 SCALE 549 : (2012) 2 SCC 34 : (2012) 1 UJ 47 : (2012) AIRSCW 524 , the Supreme Court in para 39 has explained as follows :

39. It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well-settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between the accused "may have committed the offence" and "must have committed the offence" which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognized as a human right which cannot be wished away. See *Narendra Singh and Another Vs. State of M.P.*, (2004) CriLJ 2842 : (2004) 1 DMC 799 : (2004) 1 JT 29 Supp : (2004) 4 SCALE 543 : (2004) 10 SCC 699 : (2004) 3 SCR 1148 : (2004) AIRSCW 3094 : (2004) 3 Supreme 304 and *Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another*, AIR 2005 SC 2277 : (2005) CriLJ 2533 : (2005) 4 JT 123 : (2005) 5 SCC 294 : (2005) 3 SCR 345 : (2005) AIRSCW 2215 : (2005) 3 Supreme 679 .

(iii) In *S. Ganesan Vs. Rama Raghuraman and Others*, (2011) 1 Crimes 165 : (2011) 3 JCC 1542 : (2011) 1 JT 1 : (2011) 2 RCR(Criminal) 283 : (2011) 1 SCALE 12 : (2011) 2 SCC 83 : (2011) 1 SCR 27 : (2011) AIRSCW 2751 : (2011) AIRSCW 3937 : (2011) 3 Supreme 431 : (2011) 5 Supreme 308 , the Supreme Court in paragraph 39 has explained as follows :

39. Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India.

(iv) In *Girja Prasad Sharma and Others Vs. Umashankar Pathak*, AIR 1973 MP 79 : (1972) 17 MPLJ 1003 : (1972) MPLJ 1003 , the High Court in para 18 has explained as follows :

18. Reasonable and probable cause with reference to the duty of an Investigating Officer who files a charge-sheet for prosecution of a person as a result of his investigation means whether the investigation showed existence of facts from which it could be said that there was a case proper to be laid before the court. It is true that he has a certain measure of discretion and can reject palpably false evidence, but when the evidence of commission of offence is from apparently credible source, it is not his duty to scrutinize the same like a court to find whether the accused is really guilty. His only duty is to find out honestly whether there is reasonable and probable cause to bring the accused to a fair trial. Reference in this connection may be made to *Glinski v. McIver*, 1962-1 All ER 696 at p. 710, where Lord Denning observed as follows :

"In truth he (a man who brings a prosecution) be he a police officer or a private individual has only to be satisfied that there is a proper case to lay before the court, or in the words of Lord Mansfield, that there is a probable cause "to bring the accused to a fair and impartial trial" see *Johnstone v. Sutton*, (1786) 1 Term Rep 510 at 547. After all, he cannot judge whether the witnesses are telling the truth. He cannot know what defences the accused may set up. Guilt or innocence is for the Tribunal and not for him. Test it this way : Suppose he seeks legal advice before laying the charge. His counsel can only advise him whether the evidence is sufficient to justify a prosecution. He cannot pronounce on guilt or innocence. Nevertheless the advice of counsel, if honestly sought and honestly acted on, affords a good protection : See *Ravenga v. Mackintosh*, (1824) 2 B and C 693 at 697, by Bayley, J. So also with a police officer. He is concerned to bring to trial every man who should be put on trial, but he is not concerned to convict him. He is no more concerned to convict a man than is counsel for the prosecution. He can leave that to the jury. It is for them to believe in his guilt, not for the police officer. Were it otherwise, it would mean that every acquittal would be a rebuff to the police officer. It would be a black mark against him, and a hindrance to promotion. So much so that he might be tempted to "improve" the evidence so as to secure a conviction. No, the truth is that a police officer is only concerned to see that there is a case proper to be laid before the court."

48. We may reproduce the following quotations on reputation with appreciation :

"A man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others. Calumny requires no proof. The throwing out [of] malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain

things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it.

WILLIAM HAZLITT, Characteristics

Reputation is but a synonym of popularity : dependent on suffrage, to be increased or diminished at the will of the voters.

WASHINGTON ALLSTON, Memoirs and Essays

Reputation is an idle and most false imposition; oft got without merit, and lost without deserving.

WILLIAM SHAKESPEARE, Othello

A brand for a company is like a reputation for a person. You earn reputation by trying to do hard things well.

Jeff Bezos

Reputation, reputation, reputation! O, I have lost my reputation! I have lost the immortal part of myself, and what remains is bestial.

WILLIAM SHAKESPEARE, Othello"

49. Right to one's reputation is a personal right protected under Article 21 of the Constitution. Further, right to freedom of expression under Article 19 is subject to right to reputation of others. In Umesh Kumar Vs. State of Andhra Pradesh, (2013) 9 AD 581 : AIR 2014 SC 1106 : (2013) 11 SCALE 28 : (2013) 10 SCC 591 : (2014) 2 SCJ 209 , Apex Court expressed on reputation in para 18 of the report as follows :

"18. Allegations against any person if found to be false or made forging someone else's signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as "to have a good name; the credit, honour, or character which is derived from a favourable public opinion or esteem and character by report". Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is "not only a salt of life but the purest treasure and the most precious perfume of life".

In Smt. Kiran Bedi Vs. Committee of Inquiry and Another, AIR 1989 SC 714 : (1989) CriLJ 903 : (1989) 1 JT 21 : (1989) 1 SCALE 10 : (1988) 2 SCALE 42 : (1989) 1 SCC 494 : (1989) 1 SCR 20 : (1989) 1 UJ 340 , Supreme Court

referred to Bhagwad Gita, Blackstone's Commentary of the Laws of England and Corpus Juris Secundu. Paras 22 to 24 of the report are reproduced hereunder :

"22. The following words of caution uttered by the Lord to Arjun in Bhagwad Gita with regard to dishonour or loss of reputation may usefully be quoted :

"Akirtinchapi bhutani kathalshyanti te-a-vyayam. Sambha-vitasya Chakirtir maranadatirichyate. (2.34)

(Men will recount thy perpetual dishonour, and to one highly esteemed, dishonour exceedeth death.)"

23. In Blackstone's Commentary of the Laws of England, Vol. I, 4th Edn., it has been stated at p. 101 that the right of personal security consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health and his reputation.

24. In Corpus Juris Secundum, Vol. 77 at p. 268 is to be found the statement of law in the following terms :

It is stated in the definition Person, 70 C.J.S. p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his Commentaries classifies and distinguishes those rights which are annexed to the person, *jura personarum*, and acquired rights in external objects, *jura rerum*; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of remedies. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. According to Chancellor Kent as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.

The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4, and this right is within the constitutional guaranty of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.

Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right.

In *Kishore Samrite Vs. State of U.P. and Others*, (2013) 5 AD 594 : (2012) 10 JT 393 : (2012) 10 SCALE 330 : (2013) 2 SCC 398 , the Supreme Court observed in para 58 of the report that the term person includes reputation in addition to other physical and personal attributes as follows :

58. The term "person" includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. "Reputation" is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. (Ref. *Kiran Bedi v. Committee of Inquiry and Nilgtris Bar Assn. v. T.K. Mahalingam*). The methodology adopted by the next friends in the writ petitions before the High Court was opposed to political values and administration of justice. In *Kushum Lata v. Union of India*, this Court observed that (SCC p. 182, para 5) when there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, the said petition should be dismissed by the court. If such petitions are not properly regulated and abuse averted, it becomes a tool in unscrupulous hands to release vendetta and wreak vengeance as well."

50. For all the reasons recorded above we are unable to accept the finding recorded by the Managing Director that the affidavit contained incorrect statements with regard to the reputation of the petitioner firm. The statement given was an honest belief of the deponent in his own wisdom and understanding.

Discussion : Charge No. 2 :

51. The 2nd charge was that the execution of the agreement by M/s. Pavan Coal Company Partnership being void ab initio as the partnership had ceased to exist w.e.f. 29.9.2014. It further mentioned that the conversion of the partnership into a limited liability partnership having not been communicated to the U.P.P.C.F., a fraud has been committed by the petitioner.

52. Learned senior counsel for the petitioner Sri Prashant Chandra has taken us to the various provisions of the L.L.P. Act and the Second Schedule appended thereto. We shall refer to the relevant provisions of the L.L.P. Act at the relevant stage.

53. The first submission is that the words used as "if and "deemed" in Section 55 and the Second Schedule of the L.L.P. Act create a legal fiction and it cannot be

said that upon registration of the limited liability partnership, the partnership firm ceased to exist for all purposes and in that circumstances even if the partnership firm after registration of the limited liability partnership continued/to execute the agreement, there would be no legal infirmity. Further submission is that the legislature was conscious of the fact that immediately upon registration of a limited liability partnership, the partnership firm although would cease to exist only in so far its registration under the Indian Partnership Act, 1932 is concerned but insofar in other acts of the partnership are concerned, the same could be continued. Reference has also been made to the use of words "may" and "shall" at different places in the Second Schedule which also according to the learned senior counsel were consciously included in the relevant provisions so as to save the action of the partners of the firm even after registration of the limited liability partnership. Reliance has been placed upon a judgment of this Court in the case of Mahadeo Ram Ram Jatan Vs. Commissioner of Sales Tax, (1970) 26 STC 186 and also on another judgment in the case of The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, (2013) 3 AD 73 : AIR 2013 SC 1241 : (2013) 3 JT 417 : (2013) 3 JT 409 : (2013) 2 SCALE 452 : (2013) 5 SCC 470 : (2013) AIRSCW 1244 .

54. It was next submitted that there is a principle of rectification, which if applied, the agreement executed on 10.10.2014 by the partnership firm could be rectified for which appropriate steps could be taken by the U.P.P.C.F. As already recorded above, it is the case of the petitioner M/s. Pavan Coal Company that the stamp papers on which the agreement was executed had been purchased in the name of M/s. Pavan Coal Company L.L.P.; the Bank guarantee of Rs. 50 lakhs as security was also issued by the Bank on the instructions of M/s. Pavan Coal Company L.L.P.; all the partners of the partnership firm were partners of M/s. Pavan Coal Company L.L.P., no less no more; the assets both tangible and intangible of the partnership firm had been transferred to the limited liability partnership and therefore, even if the partners executing the agreement as partners of the partnership firm, the limited liability partnership could not be penalized to the extent that the agreement itself would be cancelled on this ground. It is also the case of the petitioner that despite due intimation to the U.P.P.C.F. it was only on the insistence of the U.P.P.C.F. that the contract had been executed by the partnership firm.

55. It is also very strongly urged on behalf of the petitioner that in view of the conduct of the U.P.P.C.F. and the stand taken by it in the 2 writ petitions filed earlier challenging the appointment of M/s. Pavan Coal Company as the coal coordinator and the agreement pursuant thereto, it would have been in the fitness of things that the U.P.P.C.F. ought to have got the agreement rectified and not cancelled it on this ground. In support of above submission reference has been made to the counter-affidavits filed by the U.P.P.C.F. in the 2 writ petitions filed by M/s. Sendoz Impex Limited and M/s. A.K.A Logistics Limited as also the grounds taken by the U.P.P.C.F. in the petition to special leave before the Apex

Court challenging the interim order passed by the Division Bench of this Court on 9.3.2015. We have been taken to various paragraphs of the pleadings in the earlier 2 writ petitions as also the special leave petition filed before the Apex Court.

56. On the other hand Sri Ravi Kant, learned senior counsel appearing for the respondent-U.P.P.C.F. submitted that the new provisions contained in the L.L.P. Act and the Second Schedule appended thereto the partnership firm stood extinguished on 29.9.2014 and got converted into a limited liability partnership and, therefore, w.e.f. 29.9.2014 it was only the limited liability partnership which could have carried on the unfinished transactions of the partnership firm and conclude the same. All unfinished transactions of the partnership firm could have been continued by the limited liability partnership on or after 29.9.2014. In the present case, as the fact relating to the conversion of the partnership firm into the limited liability partnership had been withheld by the petitioner from U.P.P.C.F. and thus by playing fraud and concealment the partnership firm which was nonexistent entity on 10.10.2014 executed the agreement which would not be a valid agreement and would be void ab initio.

57. Learned counsel for the petitioner in reply has sought to argue that the mistake was only superficial and would at best be described as misdescription of the name of a party entering into the agreement and nothing more. It is further submitted that M/s. Pavan Coal Company Partnership Firm and M/s. Pavan Coal Company L.L.P. were in fact one and the same. Therefore, if any illegality had crept in the same could have been corrected by way of rectification. Rectification has been elaborately dealt with by the petitioner by explaining that it is common law principle based upon equity and involves that if by reason of a mistake common to both the parties, the written contract is drawn up in a manner not reflecting the true intention of the parties, the parties shall be free to rectify it. Reference has been made to the following text :

"Common mistake.--It has long been an established rule of equity that where a contract has by reason of a mistake common to the contracting parties been drawn up so as to militate against the terms intended by both as revealed in their previous oral understanding, the court will rectify the document so as to carry out such intentions. So if the written agreement was intended to reflect the terms of the earlier agreement but fails to do so, a party will be entitled to rectification unless it was shown that the parties intended to vary the terms of the earlier agreement. Rectification will not be ordered, in contrast, if the terms of the written agreement were intended to supersede the terms of the earlier oral agreement. If a written agreement fails to mention a matter because the parties simply overlooked it, having no intention on the point at all, nor if they decided deliberately to omit the issue. In such cases the written agreement must be construed as it stands.

Mistake in recording of terms or as to legal effect.--Rectification may be ordered where the document did not record correctly what the parties had agreed, or

where the legal effect of the words used was not what the parties had agreed to; for example, if the document states that ?x is to be paid "free of tax" when what was meant was that the payment would be of such sum that after deduction of tax would amount ?x.

(Chitty on Contracts, 31st Edition, Volume 1, Professor Hugh Beale, Maxwell and Sweet)"

58. From a reading of the above text it is apparent that a mistake which is common to the contracting parties only can be corrected or rectified in order to carry out the intentions. It is further to be noted that the rectification can be only for the terms of the agreement and cannot be used for substituting a party executing the agreement.

59. We have considered the submissions advanced by the parties.

60. Under the provisions of the L.L.P. Act, once a partnership firm or a company converts into a limited liability partnership then on and from the date of registration specified in the registration of certificate, all tangible (movable or immovable) and intangible property vested in the firm or the company and all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company and also the whole of the undertaking of the firm or the company shall be transferred to and shall vest in the limited liability partnership without any further assurance act or deed. Such provisions have been specifically provided in Section 58(4)(b) of the L.L.P. Act and paragraph 7 (b) of the Second Schedule. Thus, the transactions already concluded or midway of the partnership firm prior to its conversion into the limited liability partnership would stand transferred to limited liability partnership from the date of the registration. It is only the limited liability partnership which is competent to carry on the concluded transactions or complete the unfinished transactions of the firm after the conversion on and from the date of registration of the limited liability partnership. Relevant provisions of L.L.P. Act are being dealt with and quoted at a later stage in this judgment.

61. Copy of the agreement dated 10.10.2014 has been filed as Annexure-17 to the Writ Petition No. 21028 of 2015. Relevant part giving the description of the contracting parties is reproduced below :

62. It is clear that the partner signing the contract was acting as partner of M/s. Pavan Coal Company and not M/s. Pavan Coal Company L.L.P. There is no recital in the agreement also to the effect that partnership had converted into L.L.P. and that under the provisions of L.L.P. Act it was the L.L.P. which was entering into the contract. It is also not the case of the petitioner that actually the partner signing the agreement was acting on behalf of the L.L.P. and it was on account of inadvertent or bona fide mistake that the words "L.L.P." could not be incorporated in the agreement of 10.10.2014. On the contrary it is admitted to the petitioner that the agreement was executed by the firm upon insistence of the U.P.C.F. There also appears to be another reason for the firm to execute the

agreement. The appointment letter dated 4.10.2014 of coal handler mentioned the name of the firm and not the L.L.P.

63. We now consider the relevant provisions under the L.L.P. Act. Under Section 3 of the L.L.P. Act a limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners and has a perpetual succession. Under Section 3 (3) of the L.L.P. Act any change in the partners of a limited liability partnership would not effect the existence, rights or liabilities of the limited liability partnership. Section 4 of the L.L.P. Act provides that the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership. Section 12 of the L.L.P. Act provides for incorporation by registration with the Registrar upon fulfilment of the requirements imposed by the provisions contained in Section 11 of the L.L.P. Act. Registrar has been defined under Section 2 (s) of the L.L.P. Act to be a Registrar or an Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar having the duty of registering companies under the Companies Act, 1956. Section 14 of the L.L.P. Act provides the effect of registration which reads as under :

"14. Effect of registration.--On registration, a limited liability partnership shall by its name, be capable of-

(a) suing and being sued :

(b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible.;

(c) having a common seal, if it decides to have one; and

(d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer."

64. Under Section 21 of the L.L.P. Act every limited liability partnership is required to bear the name and address of its registered office, registration number and a statement that it is registered with limited liability on all its invoices, official correspondences and publications. The extent of liability of limited liability partnership and that of liability of partnership has been laid down under Sections 27 and 28 of the L.L.P. Act. Chapter X of the L.L.P. Act deals with the conversion of a preexisting firm or private company or a public limited company into a limited liability partnership. Section 55 of the L.L.P. Act provides that a firm may convert into a limited liability partnership in accordance with the provisions of this Chapter and the Second Schedule. In the present case it is a conversion of partnership firm into a limited liability partnership and therefore, the provision of the Second Schedule as also the other provisions of Chapter X would be relevant.

65. Section 58 of the L.L.P. Act deals with the registration and effect of conversion. The same is reproduced below :

"Section 58-Registration and effect of conversion.--(1) The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, shall, subject to the provisions of this Act and the rules made thereunder, register the documents submitted under such Schedule and issue a certificate of registration in such form as the Registrar may determine stating that the limited liability partnership is, on and from the date specified in the certificate, registered under this Act:

Provided that the limited liability partnership shall, within fifteen days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 (9 of 1932) or the Companies Act, 1956 (1 of 1956), as the case may be, about the conversion and of the particulars of the limited liability partnership in such form and manner as may be prescribed.

(2) Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, the limited liability partnership to which such firm or such company has converted, and the partners of the limited liability partnership shall be bound by the provisions of the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be, applicable to them.

(3) Upon such conversion, on and from the date of certificate of registration, the effects of the conversion shall be such as specified in the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be.

(4) Notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second Schedule, the Third Schedule or the Fourth Schedule, as the case may be,-

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be."

66. The Second Schedule contains 7 paragraphs. There is no issue that the partnership firm has converted into a limited liability partnership and registered

as such on 29.9.2014. Paragraph 5 of the Second Schedule deals with the registration of conversion, which is admitted to be 29.9.2014. It further requires that the limited liability partnership shall within 15 days of the date of registration inform the concerned Registrar of the Firms or Registrar of the Companies with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956 about the conversion and of the particulars of the limited liability partnership.

67. Paragraph No. 7 of the Second Schedule provides the effect of registration. It reads as follows :

"7. Effect of registration.--On and from the date of registration specified in the certificate of registration issued under paragraph 5,-

(a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act;

(b) all tangible (movable and immovable) property as well as intangible property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 removed from the records maintained under that Act."

68. Clauses (a), (b) and (c) of Paragraph 7 of the Second Schedule are to the effect that on and from the date of registration specified in the certificate of registration issued under Paragraph 5 as mentioned in opening part thereof. According to Clause (a) the limited liability partnership would come into existence on and from the date of registration specified in the certificate of registration; under Clause (b) it is provided that from that date all tangible (movable and immovable) property as well as intangible property vested in the firm all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deal from the date mentioned in the certificate of registration; Clause (c) provides that the firm shall be deemed to be dissolved and if earlier registered under the Indian Partnership Act, 1932 removed from the record maintained under that Act. All the above consequences take effect from the date of registration as limited liability partnership.

69. It is these words "shall be deemed to be" which have been emphasized upon by the learned senior counsel for the petitioner to show that there was a deeming clause and the legal fiction stood corrected and should be given full effect and taken to a logical conclusion keeping in mind that the object for which the fiction was created should not be lost. We are unable to accept the

submission of the learned senior counsel that the partnership firm would by legal fiction continue in any form whatsoever to act any further. The words used "deemed to be" in Clause (c) of Paragraph 7 of the Second Schedule only make it further clear that on or from the date of registration the firm would stand dissolved. There can be no other meaning assigned or attributed to the phrase, and language used therein. The effect of registration takes place on and from the date of registration and on and from the said date it is limited liability partnership firm which comes into existence and becomes a legal entity to carry on further all transactions, and hold all assets and liabilities of the firm.

70. Before proceeding further we may also refer to the provisions contained under Section 58, sub-clause (4) of the L.L.P. Act which in terms is the same as the language used in paragraph 7 of the Second Schedule that is to say even at the cost of repetition that on and from the date of registration of L.L.P. the firm or a company as the case may be would stand dissolved and removed from the records of the Registrar of the Firms or Registrar of the Companies as the case may be. The words "deemed to be" used in fact cannot extend any benefit to the petitioner rather it is to their detriment.

71. The question would now arise as to what would be the effect if a non-existing entity entered into an agreement. A company incorporated "under the Companies Act, 1956 or a partnership firm registered under the Indian Partnership Act, 1932 is a legal entity competent to contract. In the present case the limited liability partnership registered under the L.L.P. Act became competent to contract having acquired legal entity w.e.f. 29.9.2014. M/s. Pavan Coal Company became limited liability partnership which was registered and incorporated under the L.L.P. Act on 29.9.2014. It was this legal entity which was competent to enter into a contract in view of the provisions contained under Section 14 of the L.L.P. Act. Prior to 29.9.2014 M/s. Pavan Coal Company Partnership Firm was a registered firm under the provisions of the Indian Partnership Act, 1932. Once the conversion took place w.e.f. 29.9.2014 the partnership firm stood dissolved in view of Section 58, Clause (4)(c) of the L.L.P. Act from the date of registration as also under Paragraph 7 (c) of the Second Schedule to the L.L.P. Act. That would clearly mean that the partnership firm was not in existence from 29.9.2014 and, therefore, it could not be competent to enter into a contract. It was a nonexistent firm on 10.10.2014 when the agreement was executed.

72. The argument advanced on behalf of the petitioner that the mistake was only superficial if at all there was any mistake and the same could have been corrected by way of rectification between the parties. The argument in our opinion cannot be sustained for the reason that this is not a case of any mistake in description of the parties or the work assigned or any terms of the contract but this is a case where a non-existing firm is said to have entered into an agreement and such agreement would result into a situation that there was no contract at all. Reference may be had to the judgment of the Apex Court in the

case of Andhra Pradesh Tourism Development Corpn. and Another Vs. Pampa Hotels Ltd., AIR 2010 SC 1806 : (2010) 1 CompCas 160 : (2010) 3 CompLJ 21 : (2010) 4 JT 343 : (2010) 4 SCALE 195 : (2010) 5 SCC 425 : (2011) 105 SCL 765 : (2010) 4 SCR 942 : (2010) AIRSCW 2906 .

73. In the above case of Andhra Pradesh Tourism Development Corporation Limited (supra), the company M/s. Pampa Hotels Limited got the certificate of registration by the Registrar of the Companies on 9.4.2003 and a further certificate under Section 149 (3) of the Companies Act, 1956 was given by the Registrar of the Companies on 6.6.2003 certifying that the said company was entitled to commence the business. In the said case the agreement had been executed on 30.3.2002 and at that time the Company M/s. Pampa Hotels Limited was neither incorporated nor had the certificate of the Registrar of Companies permitting it to commence business. In these circumstances the Supreme Court held that there was no contract and on that count held that the company was not entitled to seek arbitration under the agreement. Paragraphs 16 to 18 of the said report are reproduced below :

"16. Section 7 of the Act as noticed above, defines an arbitration agreement as an agreement by the parties to submit to arbitration. The word "party" is defined in Section 2(1)(h) of the Act as a party to an arbitration agreement. An agreement enforceable by law is a contract. An agreement has to be between two or more persons. Therefore, if one of the two parties to the arbitration agreement was not in existence when the contract was made, then obviously there was no contract and if there was no contract, there is no question of a clause in such contract being an arbitration agreement between the parties.

17. The two agreements dated 30.3.2002 categorically refer to Pampa Hotels Ltd. as an existing company (promoted for the purpose of implementing the project by Sudalagunta Hotels Ltd.) incorporated under the provisions of the Companies Act, having its registered office at 209, T.P. Area, Tirupati and represented by its Managing Director Sri S. Jayarama Chowdary. The agreements are not entered by the promoters of the company, but purportedly by the company itself, represented by its Managing Director. Admittedly on 30.3.2002 there was no such company in existence. Admittedly there was no such company having its registered office at 209, T.P. Area, Tirupati on that date. Admittedly, S. Jayarama Chowdary was not the Managing Director of any company of that name on that date. When one of the parties to the Lease Agreement and Management Agreement, was a non-existent imaginary party, there is no contract.

18. This is not a case of one of the parties being in existence, but being under some legal disability to enter into contracts. This is a case where there was no "party" at all, but someone claiming that there was an existing company capable of entering into contracts. The position would have been different, had the agreement been entered by the promoters of the respondent-company before its incorporation for the purposes of the company and such contract was warranted by the terms of incorporation."

74. The other submission on behalf of the petitioner is with regard to the conduct of the U.P.P.C.F. somersault they took during the pendency of the writ petitions or that they were estopped from changing their stand also cannot be of any help inasmuch as where the agreement itself had been executed by a nonexistent party, the contract would be void and there could be no estoppel against law. The U.P.P.C.F. could not have justified something which was void from the very inception. Thus, we do not find any infirmity in the findings of the Managing Director with regard to the charge No. 2 insofar as the agreement being void ab initio. However, with regard to committing of fraud we are not entering into that question as there were disputed question of facts in that regard.

75. Another argument raised by Sri Prashant Chandra, learned senior counsel for the petitioner was to the effect that the agreement could have been cancelled under the terms of the contract only upon a finding recorded on an issue mentioned in Clause 12 and Clause 19 of the agreement and not otherwise. In the present case as there is no allegation with regard to the violation of Clause 12 or Clause 19 and as such the agreement could not have been cancelled.

76. According to Clause 12 the second party to the agreement, i.e., M/s. Pavan Coal Company was required to furnish a security amount by way of demand draft or bank guarantee of Rs. 50 lakhs within 10 days of the appointment of the coal handler. In the event of default of submitting the security of Rs. 50 lakhs it would be understood that the second party to the agreement is not willing to accept the work and the appointment would be deemed to be cancelled automatically. Further, as per Clause 19 of the agreement assessment would be made with regard to the work of the second party, i.e., M/s. Pavan Coal Company on quarterly basis and if it is found that the fixed target is not satisfactory, the first party, i.e., U.P.P.C.F. would be within its right to cancel the agreement.

77. It is true that in the present case, the agreement has not been cancelled for the breach of Clause 12 or Clause 19 but has been cancelled on three grounds one of which is that the second party which executed the agreement was non-existent as it had ceased to exist w.e.f. 29.9.2014, i.e., the date of the conversion of the partnership firm into L.L.P. Once the agreement has been found to have been executed by a non-existent party, the only consequence is cancellation of the same even if the terms of the agreement had not been said to be violated. We thus do not find any merit in this argument.

78. In addition to the above we may also record here that paragraph 5 of the affidavit clearly stated that in case any information furnished by the firm is found to be incorrect then also the U.P.P.C.F. would be entitled to forfeit the earnest money and cancel the E.O.I.

79. We may now refer to the provisions contained under Section 47 of the Indian Partnership Act, 1932 which is reproduced below :

"47. Continuing authority of partners for purposes of winding up.--After the dissolution of a firm the authority of each partner to bind the firm, and the other

mutual rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise :

Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent : but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

80. On perusal of the said provision it is clear that after dissolution of a firm the authority of each partner would continue to complete the transactions began but unfinished at the time of dissolution but not otherwise. In the present case, partnership firm converted into a limited liability partnership and has got itself incorporated under the L.L.P. Act. Under the provisions of L.L.P. Act a partnership firm upon conversion into L.L.P. would be deemed to be dissolved. This is one reason why benefit to the authority of a partner of a partnership firm to complete unfinished transactions at the time of the dissolution of the partnership firm cannot be extended to a partner of the partnership firm, which has converted into a limited liability partnership and which subsequently stands dissolved under the provisions of the L.L.P. Act. Reference may be had to Section 58(4)(c) of the L.L.P. Act and Paragraph 7 (c) of the Second Schedule to the L.L.P. Act. Thus, the agreement dated 10.10.2014 executed by a partner of the firm after its conversion into limited liability partnership and its consequent dissolution, by an on behalf of the firm, cannot be acknowledged under law. The L.L.P. Act does not save or protect any such action of the partner of the firm which has since converted and consequently dissolved rather it is specifically excludes the applicability of the Indian Partnership Act, 1932.

81. Section 4 of the L.L.P. Act clearly provides that the provisions of the Indian Partnership Act, 1932 shall not apply to limited liability partnership. Section 4 of the L.L.P. Act is reproduced below :

"4. Non-applicability of the Indian Partnership Act 1932.--Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a limited liability partnership."

82. We may also note our concern as to what prompted the firm to get itself converted into a limited liability partnership in the middle of a major contract under process. Despite specific query from court, counsel for M/s. Pavan Coal Company L.L.P. (petitioner) could not did not give any satisfactory answer. The only answer given was that it was a combined decision of the partners to convert the firm into a limited liability partnership and process for the same had started much earlier but the registration was granted only on 29.9.2014 by the Registrar over which the partners had no control.

83. For all the reasons recorded above, Writ Petition No. 21028 of 2015, Pavan Coal Company L.L.P. v. State of U.P. and 2 others, is liable to be dismissed and is

accordingly dismissed. In view of the above that Writ Petition No. 21028 of 2015 has been dismissed, the other 2 petitions, i.e., Writ Petition No. 12680 of 2015, M/s. A.K.A. Logistics Private Ltd. v. State of U.P. and 5 others, and Writ Petition No. 58843 of 2014, M/s. Sendoz Impex Ltd. v. State of U.P. and 2 others, as per statement made by learned counsel for the parties stand dismissed as withdrawn. In the facts of the case there shall be no order as to costs.

84. We may record here that the conduct of the officers of the U.P.P.C.F. has not been fair and above board. Salient features in this regard are incorporated hereunder :

"(i) Drafting and framing of Clause 12 of the E.O.I, by limiting its scope to the State of U.P. only may be justified by them.

(ii) Whether it was deliberately and mischievously drafted to extend undue advantage to M/s. Pavan Coal Company so that it could become eligible.

(iii) Contesting the two Writ Petition Nos. 58843 of 2014 and 12680 of 2015 and justifying their action by filing counter-affidavits in support of M/s. Pavan Coal Company.

(iv) Filing S.L.P. before Supreme Court against interim order dated 9.3.2015, supporting M/s. Pavan Coal Company.

(v) The grounds on which charge-sheet was issued and agreement cancelled was known to them since 1st week of November, 2014 but still no action was taken rather they supported their action and now after 5 months on the same grounds contract has been cancelled.

(vi) Whether Sri G.S. Kalsi, Executive Director was dealing with the contract in issue and interacting with the parties at all stages and if yes then the effect of the communication of e-mail at his id, on 6.10.2014 regarding conversion into L.L.P.

(vii) Why the partnership firm was allowed to execute the agreement on 10.10.2014 ?

(viii) Under what circumstances letter dated 20.12.2014 was issued esting M/s. Pavan Coal Company to correspond as a firm and not as L.L.P."

85. We direct the Chief Secretary, Government of U.P. to get an inquiry conducted into the affairs of U.P.P.C.F. on the above points and on any other aspect relating to the award and cancellation of contract with M/s. Pavan Coal Company, by an Officer not below the rank of Principal Secretary. The inquiry may be got concluded within 2 months of the filing of the certified copy of this order by any of the parties or its communication by the Registrar General of this Court. If in the inquiry any of the officers are found at fault appropriate departmental civil and criminal proceedings be initiated forthwith. Registrar General of this Court is directed to forward a copy of this order to the Chief Secretary, Government of U.P. within a month from today and ensure that it is

duly served.