
(2013) 10 PAT CK 0060
In the Patna High Court
Case No : C.W.J.C. No. 14742 of 2013

Solar Industries (P) Ltd.

APPELLANT

Vs

The Central Coalfields Limited

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2014) 2 PLJR 307

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.N. Singh, J.—Petitioner is a Company incorporated under the Indian Companies Act, 1956. It has its registered office at Bokaro in the State of Jharkhand and its factory at Tendua, Dehh-on-Sone in the District-Rohtas (Bihar). It has challenged the order of the respondent Regional Manager of Central Coalfield Limited dated 30.4.2013, as contained in Annexure-12, by which the Fuel Supply Agreement (in short "the said Agreement") between the petitioner and the respondent Central Coalfield Limited (in short "C.C.L.") has been terminated by invoking the clause 15.1.5 of the said Agreement, and security deposit of petitioner in the form of bank guarantee has been directed to be forfeited in terms of clause 3.6 thereof. Prayer is also for quashing of the letter dated 30.5.2013, as contained in Annexure-13, by which the Senior Manager has written to the Branch Manager of the Allahabad Bank at Ranchi for encashment of the bank guarantee of the petitioner and remitting the amount in the account of the C.C.L., maintained in the State Bank of India. Consequent prayer is to direct the C.C.L. to release coal to the petitioner in terms of the said Agreement and to release the agreed quantity of coal to the unit of the petitioner with effect from February, 2012. On the mentioning of learned counsel for the petitioner, the matter was notified and was taken up at 2.15 pm on 1.8.2013. Interim orders were passed restraining invocation of the bank guarantee and the matter was adjourned for 5.8.2013. On 5.8.2013 orders were passed for the matter to be listed on 12.8.2013 at 2.15 pm

and interim order was directed to continue. On 12.8.2013, learned counsel for the respondents raised some preliminary issues through a counter affidavit with regard to the maintainability of the writ application and prayed the matter to be fixed for 26.8.2013. The matter was thereafter taken up on 29.8.2013 on which date, on the joint prayer of learned counsels for the parties, the matter was adjourned for 9.9.2013. On 9.9.2013 learned counsel for the respondents requested the Court to hear the matter on the point of maintainability of the writ application first. Accordingly, matter was heard on the point of maintainability of the writ application.

2. Learned counsel for the respondents, opening his arguments, challenging the maintainability of the writ application, first submitted that, as per clause 18.4 of the Fuel Supply Agreement between the parties, vide Annexure-3, they had agreed that the High Court of Jharkhand shall have exclusive jurisdiction in all matters under the agreement. Hence, it was not open for the petitioner to challenge the termination of the said Agreement in this Court and to pray for mandamus to the respondents to resume supply of coal to its unit as per the fixed terms. He next submitted that the Headquarter of the petitioner-Company was within the jurisdiction of the Jharkhand High Court; the Fuel Supply Agreement had been entered into at a place within the jurisdiction of the same High Court; the Headquarter of the respondents was also within the same High Court and the impugned orders and letters had been issued by the authorities of the respondents from a place within the jurisdiction of the same High Court. Hence, remedy, if any, to the petitioner lay before the Jharkhand High Court and not before this Court. He next submitted that the petitioner has indulged into "forum shopping" inasmuch as it had indeed filed a writ application in the Jharkhand High Court against the same impugned orders/letters. However, when it could not get any interim orders there, it withdrew the writ application and thereafter- has filed this writ application in this Court for identical relief's. He submitted that the "forum shopping" has been deprecated by the Apex Court very strongly and which. has held it to be discouraged. In support of this submission, he has placed reliance on the judgments of the Apex Court in the case of Rajiv Bhatia Vs. Govt. of Nct of Delhi and Others, and the Division Bench judgment of the Madras High Court in the case of M/s. Bhanu Construction v. Andhra Bank, delivered on 7.10.2005 in W.P. Nos. 3386/2003, W.P. No. 18669/2003, W.P. No. 18670 and 18671 of 2003. He lastly submitted that the petitioner has been guilty of "suggestio falsi and suppressio veri" in its dealings in the matter before the Jharkhand High Court and this Court. He submitted that in the Jharkhand High Court I.A. No. 5345/13 was filed earlier, on the ground that inadvertently some error had occurred in the name of petitioner in the writ application. Therefore, permission was sought for to withdraw the same with liberty to file a fresh writ application with the original name. Accordingly, the writ application was dismissed as withdrawn by the learned Judge of the Jharkhand High Court on 29.7.2013, with the aforesaid liberty. Learned counsel for the respondents has produced a photocopy of the certified copy of the order-sheet of

the said writ application of the petitioner. He submitted that, before 29.7.2013, petitioner had already taken steps for filing of this writ application in this Court, but this fact was completely suppressed from the Jharkhand High Court and an impression was created through the said I.A. that, with the correct name, a fresh writ application shall be filed in that court itself. But, instead of doing the same, the writ application has been filed in this Court.

3. Learned counsel for the petitioner tried to justify filing of this writ application in this Court, in spite of clause 18.4 of the said Agreement, as referred to by the learned counsel for the respondents, on the ground that petitioner was not having equal bargaining power. Hence, any agreement or concession, made by it in the said Agreement, cannot be a bar in exercise of extraordinary jurisdiction by this Court under Article 226 of the Constitution of India, if the claim of the petitioner otherwise merits consideration. In reply to the second objection, he referred to several documents, available on records as Annexure-4 onwards upto the impugned Annexure-12, to submit that the preliminary enquiry by the CBI on allegations of diversion and resale of the coal, inspection by vigilance team, its report, show cause notice and all other correspondences by the respondents with the petitioner, were in relation to its factory at Rohtas, within the jurisdiction of this Court. He also referred to clause 4.4 of the agreement to show that the respondents were under the agreement to supply coal directly to the factory site of the petitioner at Dehri-on-Sone. He also referred to one judgment of the learned Single Judge of this Court in the case of M/s. Bhawani Coke Industries Private Limited v. The Coal India Limited dated 29.6.2012 (C.W.J.C. No. 4578 of 2012) and submitted that the issue of jurisdiction in such matters has already been decided by this Court under identical situation. He also referred to judgments of the Apex Court in the case of L. Chandra Kumar Vs. Union of India and others, ; Om Prakash Srivastava Vs. Union of India (UOI) and Another, ; Rajendran Chingaraveju v. R.K. Mishra, Additional Commissioner of Income Tax & Ors. [(2010) 1 SCC 457]. He submitted that the Apex Court has authoritatively laid down that location of registered office or isolated acts cannot be a determining factor to decide the issue of jurisdiction of a High Court under Article 226 of the Constitution of India and it is the "bundle of facts" giving rise to the cause of action which has to be taken into account to maintain a writ application in a particular High Court. He submitted that in fact the writ application filed before the Jharkhand High Court was a mistake and ill-advised. Hence, the same was withdrawn from there and this fresh writ application has been filed in this Court. He submitted that after the I.A. was filed for withdrawal of the writ application from Jharkhand High Court, under legal advice, a decision was taken to file this writ application in this Court, instead of filing fresh writ application in the Jharkhand High Court with the correct name of the petitioner. Hence, he submitted that the present writ application is maintainable in this Court and fit to be entertained on merits.

4. After the hearing concluded, this Court requested the learned counsels to make this Court available a copy of the IA No. 5345/13, filed on behalf of the

petitioner before the Jharkhand High Court in its matter there. In response, learned counsel for the petitioner has made a copy of the I.A. available and learned counsel for the respondents has made copies of all the I.As. filed in the case available to this Court..

5. Let the said photocopies of order-sheet of the Jharkhand High Court in the writ application of the petitioner and the copies of the I.As. produced by learned counsels for the parties be kept on record.

6. Having heard learned counsels for the parties and having perused the I.As., filed on behalf of the petitioner before the Jharkhand High Court in W.P.(C) No. 3449 of 2013 of the petitioner, this Court is of the view that this writ application is fit to be dismissed on the sole ground of unfair conduct, concealment and misrepresentation of facts by the petitioner before the Jharkhand High Court itself, besides having indulged into "forum shopping". The order-sheet of the Jharkhand High Court shows that the writ application of the petitioner was filed on 14.6.2013. Soon thereafter I.A. No. 3829/13 was filed in the matter for stay of operation of the impugned letter dated 30.5.2013, as contained in Annexure-13 in the present writ application, which appears to have been taken up on 26.6.2013 by the Jharkhand High Court and one week time was allowed to learned counsel for the respondents to file reply. Another I.A. No. 4800/13 was filed in the matter for impleading the Branch Manager of Allahabad Bank as party respondent. With the said I.A., an order of this Court dated 4.7.2013 passed in C.W.J.C. No. 12020/13 was enclosed as Annexure-16. Thereafter another I.A. No. 5127/13 was filed in the matter for correction/amendment of the petitioner's name in the cause title. Finally I.A. No. 5345/13 was filed for withdrawal of the writ application so that fresh writ application with the correct name of petitioner's unit could be filed. It was stated in the petition that this application was bona fide and in the interest of justice. The statements made in paragraph 4 and 6 of the I.A. No. 5345/13 are fit to be reproduced hereinbelow in this case for proper appreciation:--

4. That it is stated that since the name of the petitioner's unit has been wrongly mentioned in the cause title of the instant writ application, therefore, the petitioner seeks permission from this Hon'ble Court for withdrawal the instant writ application bearing W.P.(C) No. 3449/13 so that he can file a fresh writ application with correct name of the petitioner's unit.

....

....

6. That this application is being made bonafide and in the interest of justice.

7. As noticed earlier, this I.A. was taken up on 29.7.2013 by the Jharkhand High Court and was disposed of on that date and the writ application was dismissed as withdrawn with liberty to the petitioner to file another writ application with original name. In view of this order, the earlier three I.As. were also dismissed by

the Court. Coming to the records of this case, this Court finds that the present writ application was filed in the stamp report section of the Court on 29.7.2013 with 17 annexures, altogether running into 110 pages. Paragraph 48 of this writ application shows that the writ application had been made ready for filing in this Court much before the pending writ application in the Jharkhand High Court which was allowed to be withdrawn. Still this fact was suppressed from the Jharkhand High Court and an impression was created upon the Court that another writ application was intended to be filed with the correct name of the petitioner in that Court itself. This Court fails to appreciate that, if I.A. No. 5127 of 2013 had already been filed in the matter before the Jharkhand High Court "for correction/amendment the petitioner's name in the cause title" and it was still pending, what was the occasion for filing of the said I.A. No. 5345 of 2013 for withdrawal of the writ application by the petitioner "so that he can file a fresh writ application with correct name of the petitioner's unit." This Court also fails to appreciate that when the respondents had not raised any objection before the Jharkhand High Court in respect of the maintainability of the writ application there, or to the prayer of the petitioner to file a fresh writ application with correct name, what prevented the petitioner in filing a fresh writ application there as per the liberty granted, instead of filing this writ application in this Court. Obviously, when the petitioner could not get interim relief in the Jharkhand High Court in terms of the order dated 4.7.2013 passed by this Court in C.W.J.C. No. 12020 of 2013, produced with I.A. No. 4800/13 there, it decided to indulge into "forum shopping". In the I.A. statement was that the application was being made bona fide and in the interest of justice. But sequence of events and the actions on behalf of the petitioner show that the I.A. No. 5345 of 2013 was filed before the Jharkhand High Court in the matter by the functionaries of the petitioner lacked bona fide and only with a purpose to mislead the Court and keep it in dark about their real intentions. Hence, this Court is of the considered opinion that, besides indulging into "forum shopping", the petitioner has gone one step ahead and in fact is guilty of indulging into attempts of misrepresentation and fraud with the Jharkhand High Court. The writ application is accordingly dismissed with a cost of Rs. 50,000/- (Rupees Fifty Thousand) which the respondents shall be at liberty to realize from the petitioner in the manner permissible under law. The interim order passed in this case on 1.8.2013 shall stand vacated.