

C.F-2006

1

IN THE HIGH COURT OF CHHATTISGARH AT BILASPURWRIT APPEAL No. 127 OF 2012

(Arising out of judgment dated 13/02/2012 passed by the Hon'ble Single Bench of this High Court in WP(C) No. No.7413/2011)

APPELLANTS:

1. South Eastern Coalfields Limited, through its Chairman/Managing Director, Seepat Road, P.O. SECL, Bilaspur (C.G.). (**Respondent No. 2 in the Writ Petition**)

R.No. 127/12
Presented by Shri V. Singh
dated 2/3/12

2.

Chief General Manager (S&M), South Eastern Coalfields Limited, Seepat Road, P.O. SECL, Bilaspur (C.G.). (**Respondent No. 3 in the Writ Petition**).

VERSUSRESPONDENTS:

1. Prakash Industries Limited, Champa through its Authorised Representative, Champa, District: Janjgir-Champa (C.G.).
2. Union of India, through Secretary, Ministry of Coal, Shastri Bhawan, Government of India, New Delhi-01. (**Respondent No. 1 in the Writ Petition**).



**WRIT APPEAL UNDER RULE 2 (1) OF THE CHHATTISGARH
HIGH COURT (APPEAL TO DIVISION BENCH) RULES, 2006**

Being aggrieved by the judgment dated 13/02/2012



85

HIGH COURT OF CHHATTISGARH, BILASPUR

CORAM:

**HON'BLE SHRI YATINDRA SINGH, C.J. &
HON'BLE SHRI SUNIL KUMAR SINHA, J**

W.A.No.127/2012

APPELLANTS

South Eastern Coalfields
Limited and Another.

Versus

RESPONDENTS

Prakash Industries Limited
and Another.

**WRIT APPEALS UNDER SECTION 2 (1) OF THE CHHATTISGARH HIGH
COURT (APPEAL TO DIVISION BENCH) ACT, 2006**

Appearance:

Mr. Jagdeep Dhankar, Senior Advocate with Group Captain Karan Singh Bhati, Mr. P.S. Koshy and Mr. Vaibhav Shukla, Advocate for the Appellants.

Mr. Chetan Sharma, Senior Advocate with Mr. Alck singh and Mr. Ayaz Naved Ali, Advocates for Respondent-1.

Mrs. Fouzia Mirza, Assistant Solicitor General for Union of India.

ORDER

(31st of January, 2013)

THE FACTS

1. Prakash Industries Limited (the Prakash-Industry) is a public company registered under the Companies Act. It has setup a plant for production of sponge iron and has also setup the two captive power plants (the CPPs) in District- Champa (C.G.) of 50 MW and 15 MW.
2. The Prakash-Industry also entered into two coal supply agreements (the Agreements) with South Eastern Coal Field Ltd. (the SECL) on 31.07.2008 for supply of coal for the CPPs.
3. The Prakash-Industry was also allocated Chotia Coal block by Government of India in the year 2003. One another coal block was recommended to be



jointly allocated with SKS Ispat at Vijay Central and their allocations were also fixed.

4. The Prakash-Industry claimed that it should be given higher allocation in Vijay Central Coal Block. In this respect, the Prakash-Industry filed a writ petition No. 6449 of 2008 before the Delhi High Court.

5. During pendency of aforesaid writ petition before the Delhi High Court, some complaints were made by SKS-Ispat against the Prakash-Industry that it is misusing the coal, excavated from its allocated Chotia Coal Block.

6. The Delhi High Court initially granted an order of status-quo in Writ Petition No. 6449 of 2008 and ultimately on 23.03.2011 directed that the claim of the Prakash-Industry be considered by the Ministry of Coal.

7. The Ministry of Coal appointed an Inter Ministerial Committee (the IMC) to assess the capacity of Prakash-Industry. The IMC submitted its report dated 08.09.2011, in which certain observations were made against the Prakash-Industry.

8. On the basis of the aforesaid report, the Ministry of Coal passed an order on 14.10.2011 and sent the copy of the order to the SECL for information and necessary action.

9. On the basis of the order, the SECL suspended the Agreements on 09.11.2011. The Prakash-Industry filed W.P. No. 7413/2011 against this suspension order. It was allowed on 13th of February, 2012. Hence the present appeal by the SECL.

SUBMISSIONS OF THE APPELLANT

10. We have heard counsel for the parties. The counsel for the SECL has placed reliance on Sushila Chemicals Private Limited And Another –Vs- Bharat Coking Coal Limited and Others, (2010) 10 SCC 388 (the Sushila case), and Coal India Limited and Others –Vs- Alok Fuels Private Limited Through Director and Others, (2010) 10 SCC 157 (the Coal India case) (see below for ruling relied by counsel for the Prakash Industries)¹. The counsel for the SECL submits that:

¹ It is relevant to point out that the counsel for the Prakash-Industry has placed reliance on the following judgments (see foot note)¹ while supporting the judgment of the Single Judge:-
Nazir Ahmad v. King – Emperor AIR 1936 Privy Council 253 (2); Hukam Chand Shyam Lal v. Union of India and Others, (1976) 2 SSC 128; Commissioner of Income Tax, Mumbai v. Anjum



967

- Under clause 14 of the Agreements, there is power of suspension;
- It is not limited to the event when the purchaser fails to pay any amount including the interest; and
- The Single Judge committed an illegality in holding otherwise.

THE DECISION

11. Clause 14 is titled as Suspension of Coal Supplies. It has four sub-clauses. The relevant clause is clause number 14.1. It is as follows:

- 14.1 Notwithstanding other provisions of this Agreement, in the event the Purchaser fails to pay any amount including any interest, due to the Seller under this Agreement within a period of thirty (30) days of the same falling due, the Seller shall have the right to resort to any one or more of the following:
- (a) Adjust the outstanding amount against the Security Deposit or by invoking the Security Deposit BG maintained in terms of Clause 3 or such portion of it as available; and/or
 - (b) Invoke the Financial Coverage Bank Guarantee or any cash deposit towards Financial Coverage to the extent available and necessary to meet the outstanding dues; and/or
 - (c) Suspend supplies of Coal to the Purchaser.

12. The main part of clause 14.1 describes the contingency and thereafter it provides three different actions {mentioned in sub-clauses (a), (b) and (c)} that might be taken:

- The first one namely (a) relates to adjustment of outstanding amount against the security amount;

M.H. Ghaswala and Others, (2002) 1 SCC 633; Captain Sube Singh and Others v. Lt. Governor of Delhi and Others, (2004) 6 SCC 440; J & K Housing Board and Another v. Kunwar Sanjay Krishan Kaul and Others, (2011) 10 SCC 714; Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others, 1991 Supp (1) SCC 600; Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another, (1986) 3 SSC 156; Union of India and Another v. Tulsiram Patel, (1985) 3 SCC 398; D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259; Jaswantsingh Mathurasingh and Another v. Ahmedabad Municipal Corporation and Others, 1992 Supp (1) SCC 5; Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I and Another, (2008) 14 SCC 151; Dev Dutt v. Union of India and Others, (2008) 8 SCC 725; State of U.P. v. Neeraj Awasthi and Others, (2006) 1 SCC 667; Union of India v. Chajju Ram (Dead) by LRs and Others, (2003) 5 SCC 568; Rajesh Kumar and Others v. Dy. CIT and Others, (2007) 2 SCC 181; Hafiz Ataullah Ansari v. State of U.P. and Ors., Manu/Up/2925/2010=2011 (3) ADJ 502; and Union of India and Others v. Mohd. Ramzan Khan, (1991) 1 SCC 588.



988

- The second one namely (b) relates to invoking the bank guarantee; and
- The third one namely (c) relates to suspension.

13. A reading of the main clause of 14.1 and its sub-clauses indicates that the suspension is not an independent power; the power of suspension can be invoked, but is dependent on the main contingency namely non-payment of any amount including the interest. However, according to the counsel for the Appellant, it has been held otherwise in the Sushila case and the Coal-India case

14. It is not clear from the Sushila or the Coal-India cases as to what was the provision that was interpreted in these cases. The law laid down in these cases cannot be applied in the present case unless it is shown that provision was similar.

15. Nevertheless, even if it is taken that the provisions in this case and the aforesaid two cases are similar and the Agreements can be suspended for the reasons mentioned in the succeeding paragraphs, we see no justification to set aside the order of the single judge setting aside the suspension order.

16. In the aforesaid cases, there was allegations that the persons, who were supplied subsidised coal under the agreement were selling the coal in the open market at profit instead of utilising it themselves thus, causing loss of crores of rupees to the Government companies supplying coal at the subsidised rate. This is not a case here.

17. There is no allegation anywhere that the Prakash-Industry has sold any coal in the open market. The IMC report is also on the record of the case. Paragraph 8.0 of the report is titled 'Conclusion and Recommendations'. The only observation against the Prakash-Industry is as follows:

'IMC observed that though Chotia coal block was allotted exclusively for meeting DR plant requirement, a significant part of Chotia coal production is being utilised to captive power plant within the same complex at Champa.'

18. At the most, the Prakash-Industry could be said to have used the coal from Chotia Coal Block in the CPPs. There is no allegation that the Prakash-Industry has sold the coal in the open market for illegal benefit. Even if the conclusion of the IMC is taken to be correct, the coal has been used for production of electricity that was used for production of sponge iron.



89

19. On production of sponge iron, the Prakash-Industry gives excise duty, Income tax, commercial tax as well as provides employment to thousands of people. It has used to coal for good use and not diverted it illegally to obtain unfair gain; no action on this account was warranted.

20. Even, if it is taken that there was any technical mistake then it was in respect of Chotia Coal Block. This block was not allocated by the SECL. It was allocated to the Prakash-Industry by the Government of India. It was the Government of India that could take any action and not the SECL.

21. The Government of India had issued a notice dated 09.11.11 to the Prakash-Industry asking it to show cause why Chotia coal block be not de-allocated. The Prakash-Industry has replied the same on 22.11.11 and 05.09.2011. We are informed by Ms. Fouzia Mirza, Assistant Solicitor General that no decision has been taken on the above show cause notice.

22. Considering the circumstances of the case, even if it is taken that there was power of suspension then it was not a fit case, where the suspension order ought to have been passed. Had the Prakash-Industry diverted the coal to the open market by selling it for a benefit then the matter would have been different. In view of this, there is no justification to set-aside the order passed by the single judge, quashing the order of suspension.

23. We are informed that the Prakash-Industry was not supplied coal from 1st of October, 2011 till today and contempt application No.420/2011 is pending for wilful disobedience of the order passed by the single judge.

24. The counsel for the Prakash-Industry informs that during the aforesaid period, the Prakash-Industry has purchased coal from E-auction from coal India Ltd. However, it was for the price higher than it had to pay under the Agreements. In view of same, we deem appropriate that the SECL be directed to restore the supply of coal from the January, 2013. So far as, claim relating to past period from October, 2011 to December, 2012 is concerned, it will not be necessary for the SECL to supply the coal, but it has to compensate the Prakash-Industry.

25. The compensation will be the difference in price between the coal purchased by the Prakash-Industry in E-auction and the price on the same quantity of coal under the Agreements. This compensation will be determined under clause number 15 of the Agreements that provides for settlement of



90

dispute. The Prakash-Industry will also be entitled to get 6% interest on the compensation from 1st of July, 2012 till payment.

26. Considering that the order that we have passed today, the single Judge may drop the contempt proceeding.

27. With the aforesaid observations, the writ appeal is disposed off.

Sd/-
Chief Justice

Sd/-
Sunil Kumar Sinha
Judge