

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 16271 of 2023

**Auroma Coke Limited and another
Vs.
Coal India Limited and others**

For the petitioners : Mr. Ratnanko Banerjee,
Mr. Saurodip Banerjee,
Mr. Nemaï Chandra Saha

For the respondent
Nos.1 & 2 : Mr. Snehashis Sen

Hearing concluded on : 19.07.2023

Judgment on : 24.07.2023

Sabyasachi Bhattacharyya, J:-

1. The present writ petition pertains to a challenge against the refusal of the Coal India Limited (CIL), the respondent no.1 herein, to allow the petitioner no.1-Company to participate in any of its tenders. The refusal is on the premise of a blacklisting/suspension of the petitioner in the year 2011. Such blacklisting was done upon a communication from the Central Bureau of Investigation (CBI) which has been investigating a matter, where the petitioner no.1-Company is also involved. A charge-sheet with regard to the investigation was filed in the year 2012.
2. Learned senior counsel for the petitioners submits that in view of the promulgation of a new Scheme in November 2022, the maximum

period of such blacklisting has already expired and the petitioner ought to be granted an opportunity to participate in the tenders floated by the CIL. Such contention is controverted by the respondent-Authorities.

- 3.** It is admitted by both parties that the petitioners previously moved a writ petition challenging a tender on the ground that the eligibility conditions prescribed by the Authorities were arbitrary. The said conditions, *inter alia*, disqualified a person against whom any legal proceeding is pending for wrongful utilization/misutilization/diversion of coal. In another Clause, a bidder who is convicted for wrongful utilization/misutilization/diversion of coal by any court of law was disqualified. A contradiction between the two was argued by the petitioners. During the course of the hearing before a co-ordinate Bench, it was recorded that there was no impediment in the petitioners submitting their bid in terms of the tender process. Accordingly, the writ petition, bearing WP No.11349 (W) of 2019, was disposed of by observing that there was no such impediment in the petitioners submitting their bid, which, if submitted, would be evaluated in terms of the tender conditions in accordance with law.
- 4.** It was further observed that the order would not prevent the parties from taking appropriate decision with regard to the bid of the petitioners in accordance with the terms and conditions of the tender process and in accordance with law.
- 5.** However, when the petitioners submitted the bids, on September 7, 2020, the petitioner no.1 was informed that it had flouted the

conditions mentioned under the Eligibility Clause of the scheme document and was liable for penal action. Accordingly, the bid security submitted by the petitioner no.1 was forfeited. The reason cited by the respondent-Authorities was that the petitioners flouted the basic eligibility condition stipulated in Clause 4(a) of the tender, which provided that no legal proceedings are pending against the bidder in any court of law for wrongful utilization/misutilization/diversion of coal. Such case was pending in the Dhanbad local court at the behest of the CBI.

6. It is contended by the petitioners that pursuant to a subsequent scheme of November 2022, the petitioners could not be debarred from participating in any further tender floated by the CIL or its subsidiaries.
7. Upon hearing learned counsel for the parties, the moot question which falls for consideration is whether, on a proper interpretation of the Scheme Document dated November 4, 2022, the petitioners' blacklisting can be said to continue in respect of participation in tenders floated by the Coal India Limited and its subsidiaries.
8. The Document-in-question is a scheme document for auction of Coal Linkages of coking coal in the Others sub-sector.
9. Annexure-IV of the same contains modalities for banning/blacklisting of NRS consumers (under which the petitioner no.1 falls) for misutilization/misdirection of coal.
10. Clause A speaks about the major circumstances of banning/blacklisting for misutilization/misdirection of coal. The

same, under two separate heads, provides for two situations for such banning - the first, communication from statutory authorities like the CBI, Police, Court of law etc.; second, finding of instance of misutilization of coal internally by the coal company.

- 11.** Clause B provides the guiding principles regarding banning/blacklisting of consumers. The second bullet point thereunder specifies that the period of suspension/banning shall be for a period of 5 years. In case the reason of such suspension is mitigated earlier, the suspension would stand accordingly withdrawn.
- 12.** The next point provides that wherever the reason of suspension is not completely mitigated (because of reasons like pendency of trial or no clearance given by enforcement authority etc.) the period of suspension “to be extended” till the time of acquittal or a direction/clearance is given by enforcement authorities/Court or maximum period of banning, as imposed, whichever is earlier.
- 13.** However, participation in linkage auction shall not be restricted as long as charge-sheet is not filed against the consumer.
- 14.** The most important provision, however, is Clause C, containing the detailed guideline regarding period of suspension/banning covering the aspects of supply of coal under FSA (Fuel Supply Agreement) and participation in linkage auction.
- 15.** The first sub-clause thereunder deals with complaint regarding misutilization of coal received from statutory authorities/CBI/Investigating agencies, which covers the present case.

16. Sub-clause 2 contemplates misutilization of coal as per findings of coal company, which does not apply to the present case, since the blacklisting of the petitioner no.1-Company took place on a complaint received from the CBI.
17. Sub-clause 1, pertaining to complaints from CBI, is sub-divided into two categories. Sub-clause 1(i) deals with supply of coal under FSA and, again, is not applicable to the present case.
18. The petitioners fall under sub-clause 1(ii), which deals with participation under NRS Linkage auction. Since the entire adjudication in the present case revolves around the said sub-clause, the same is quoted below:

“ii. Participation under NRS Linkage auction:

- a. *On receipt of communication from statutory authority, the consumer put under suspension will be eligible to participate in the NRS Linkage auction till charge sheet is filed. However, in case the charge sheet is filed, the unit will not be eligible to participate in any auction and/ or to sign the FSA till his acquittal/clearance.*
- b. *In case charge sheet is not issued within 6 months of completion of auction of the relevant subsector (where the unit has participated) FSA shall be signed and supply shall be commenced. However, such supply shall be guided by the procedure mentioned at 1(i) above.*
- c. *In case charge sheet is issued within 6 months of completion of auction of the relevant subsector (where the unit has participated), the bid shall not be converted to FSA and relevant bid security shall be forfeited.*

d. If found guilty/convicted, banning for participation will continue for a period of 5 years effective from date of commencement of last suspension/date of conviction, whichever is earlier.”

- 19.** A careful scrutiny of the same reveals that such banning/suspension in respect of participation under NRS linkage auction has been subdivided into several stages. The first stage is pre-filing of charge-sheet, during which period the consumer, even if suffering suspension, will be eligible to participate in the NRS linkage auction. However, as soon as the charge-sheet is filed, the unit will not be eligible to participate in any action and/or sign the FSA till its acquittal/clearance.
- 20.** If charge-sheet is not issued within six months of completion of auction, FSA shall be signed and supply shall be commenced, subject to the procedure mentioned in sub-clause 1(i), which pertains to supply of coal under Fuel Supply Agreement. If, however, charge-sheet is issued within six months after completion of auction, the bid shall not be converted to FSA and bid security shall be forfeited.
- 21.** The crucial Clause, in the present context, is sub-clause 1(ii)(d), which provides that if found guilty/convicted, banning from participation will continue for a period of 5 years effective from *date of commencement of last suspension/date of conviction, whichever is earlier*. Thus, on an appropriate reading of the said sub-clause, we find that if a unit is convicted in a criminal proceeding, the banning will continue for five years, the commencement of which would be the date of commencement of last suspension *or* the date of conviction, *whichever*

is earlier. Hence, taking a hypothetical case where a unit is convicted later, the date of commencement of last suspension will be the starting point of the five years' ban. In the event the date of conviction is earlier, the outer limit of banning would be five years from the date of banning.

- 22.** In the present case, the suspension of petitioner no. 1 happened in the year 2011 and the charge-sheet was filed in 2012.
- 23.** Even eleven years subsequent to such filing of charge-sheet, the trial has not reached its conclusion.
- 24.** If, for argument's sake, it is assumed that the trial was over and the conviction took place after five years of the filing of charge-sheet (in 2012), the conviction would take place then in 2017. In such case, the ban would, at the most, continue for five years from the date of such conviction (although the last date of suspension in 2011 would be earlier, which would end the suspension in 2016). If that be so, if the conviction took place upon conclusion of criminal trial in 2017, the ban of the petitioner no.1-Company would be over by the year 2022, which is before filing of the present writ petition.
- 25.** However, in the present case, such trial is still continuing, due to no fault of the petitioner. It cannot be gainsaid that the accused unit has no control whatsoever over the conclusion of the trial. No delay on the part of the petitioner in the trial has even been pleaded or proved. Hence, the petitioner no.1-Company, in such a scenario, would still be suffering from the ban, which would exceed the maximum period for

which the ban could persist even if the petitioner no.1-Company was convicted by a court of law.

- 26.** There are two possible interpretations of sub-clause 1(ii)(a). The first is that, in case the charge-sheet is filed, the unit would not be eligible to participate in any auction till acquittal/clearance, which would be the literal construction of the said sub-clause. However, such an interpretation would be absurd, since it would necessarily imply that the period of banning in case of an undertrial unit may then exceed the period of ban suffered by a company which is finally convicted.
- 27.** Such an interpretation, being absurd, ought to be abhorred.
- 28.** To harmonize sub-clauses 1(ii)(a) and 1(ii)(b), we have to fall back upon the provisions of Clause B of Annexure-IV, which contain the broad guidelines on banning/suspension and extend not only to suspensions at the behest of the coal authority but also on the complaint of investigating agencies. The second paragraph thereof provides that the period of suspension/banning shall be for period of five years. The third, on the other hand, stipulates that where the reason of suspension is not completely mitigated, because of reasons like pendency of trial, etc., the period of suspension is to be extended till the time of acquittal or a direction/clearance is given by enforcement authorities/court *or maximum period of banning, as imposed, whichever is earlier.*
- 29.** It is relevant to reiterate here that the guiding principles regarding banning/blacklisting of consumers of misutilization/misdirection of coal, embodied in Clause B, is common to sub-clauses 1 and 2 of

Clause C, which respectively deal with banning on complaint from statutory authorities or investigating agencies like the CBI and as per findings of the coal company itself.

- 30.** Hence, the detailed guidelines regarding complaint from the CBI under Clause C(1)(ii), relating to participation under NRS linkage auction, is also governed by the broad guiding principles embodied in Clause B. Thus, in order to harmonize sub-clauses (a) and (b) of Clause C(1)(ii), one has to draw a commonality between the two from the third bullet point of Clause B, which is a general guiding principle.
- 31.** Thus, the only possible reasonable interpretation of the relevant provisions is that, even in case of participation under NRS linkage auction at the behest of investigating agencies like the CBI, the broad principle of Clause B is to be imported. Hence, in case the reason of suspension/banning is not completely mitigated because of reasons like pendency of trial, the suspension can, at the most, stand extended till the time of acquittal or maximum period of banning, whichever is earlier. Going by such standard, the maximum period of banning, which is 5 years, has long expired. Since the last suspension of the petitioner no.1 was in 2011 and the maximum period of five years has expired twice over since then, it cannot be said that the petitioners are still under suspension/banning.
- 32.** The words “suspension” and “banning” have been used interchangeably throughout the scheme. Taking into account such factor, the above interpretation is the only logical and rational interpretation which can be attributed to the Scheme.

- 33.** In this context, the observations in *Jai Mangala Fuels Pvt. Ltd. Vs. Central Coalfields Ltd.*, reported at 2021 SCC OnLine Pat 228 are also relevant. There, the learned Single Judge of the Patna High Court quoted a portion of paragraph 25 of *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project, Bharat Sanchar Nigam Limited*, reported at (2014) 14 SCC 731. In the said judgment, the Supreme Court had observed that “debarment” is recognized and often used as effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentation, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable, the Supreme Court went on to observe, is that “debarment” is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.
- 34.** In tune with the said judgment, the Patna High Court also observed that the disposal of criminal cases is not dependent only on the cooperation of the petitioner. In the said case, the CBI had lodged FIR in the year 2012, but even after lapse of eight years, the criminal case is still pending.
- 35.** In such context, learned counsel for the CIL submits that, in the Patna case, the Jharkhand High Court had passed an order of stay of all further proceedings of the criminal case, for which the same was not proceeding, whereas in the present case there is no such stay. However, nothing hinges on the said factor insofar as the ratio laid

down in the report is concerned. The fact that, in the present case, the charge-sheet itself was filed in the year 2012 and the criminal case is pending over eleven years till date, even in the absence of any stay order by a superior forum, speaks volumes about the pace of progress of the said criminal case, which does not inspire confidence that the same would be over any time soon.

- 36.** Hence, the ratio laid down by the Supreme Court and the Patna applies all the same, since the petitioners cannot wait indefinitely for disposal of the criminal case, being restrained in the meantime from participation in any tender floated by the CIL or its subsidiaries, which operates adversely against the goodwill and the business of the petitioners.
- 37.** Hence, there is no scope of sustaining the operation of the ban/suspension against the petitioners.
- 38.** Accordingly, WPA No.16271 of 2023 is allowed, thereby declaring that the ban/suspension, imposed against the petitioner no.1 in the year 2011 has already spent its force. The respondent-authorities shall allow the petitioner no.1 to participate in its tenders, irrespective of and undeterred by the said ban of the year 2011, deeming the petitioner to be an otherwise eligible candidate for participation in the tenders floated by the CIL, of course, subject to the petitioner complying with other tender conditions criteria apart from the ban of 2011.
- 39.** There will be no order as to costs.

40. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.**)