

(1992) 05 CAL CK 0019

Calcutta High Court

Case No: Matter No. 2341 of 1987

J.P. Sureka, Proprietor, Shankar
Engineering and Trading Co.

APPELLANT

Vs

Coal India Ltd.

RESPONDENT

Date of Decision: May 11, 1992

Citation: (1992) 2 ILR (Cal) 492

Hon'ble Judges: Bhagabati Prasad Banerjee, J

Bench: Single Bench

Advocate: Samiaraditya Pal, for the Appellant; Samar Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Bhagabati Prasad Banerjee, J.

This is an application under Article 226 of the Constitution of India, the Petitioner had challenged an order of black-listing by which all business dealing by and between the Petitioner, M/s. Shankar Engineering and Trading Co., Calcutta, and Central Coalfield Ltd. had been suspended by Inspector-General and Chief Vigilance Officer of Central Coalfield Ltd. by orders dated May 15 and June 4, 1986, as well as filing of a F.I.R. alleging an offence Under Sections 120B and 420 of the Indian Penal Code against the Petitioner by the Inspector, C.B.I. Ranchi, and an investigation initiated on the basis of the said F.I.R.

2. The facts of this case in short is that the Petitioner is carrying on the business in electrical, mechanical and fabrication engineers, having its office at No. 2, Ganesh Chandra Avenue, 5th to 8th Floor, Calcutta, and workshop at 121 J.N. Mukherji Road, Ghosuri, Howrah, in the State of West Bengal. That in pursuance of an advertisement inviting tenders for supply of 4 steel balls of the specification of 80, 60 and 40 m.m. published on May 19, 1984, the Petitioner submitted tender for supply of the said items and that, accordingly, to the general terms and conditions of the tender the Petitioner was required to quote firm prices on F.O.R. destination basis. The said general terms and conditions further stipulated that earnest money

of Rs. 2000 is to be deposited along with the offer by demand draft in favour of Central Coalfield Ltd., Ranchi, on State Bank of India, Ranchi Branch. Pursuant to the said notice inviting tender the Petitioner submitted a tender and that the Petitioner's tender was accepted on the basis of his quotation on May 22, 1985, for supply of the said items of forged steel balls as specified in the said tender. The said offer made by the Petitioner on May 22, 1985, was, however, accepted by the Central Coalfield Ltd. and that your Petitioner was informed that such acceptance by the Senior Purchase Officer, Central Coalfield Ltd., Darbhanga House, Ranchi. In view of such acceptance of offer given by the Petitioner under quotation dated May 22, 1985, the Petitioner, however, remained liable for repair or replacement of the articles supplied during the period of one year from the date of supply in case of manufacturing defects. It is stated that for the purpose of effecting supply of forged steel balls the Petitioner got the same done through another firm and that before supply of the same the Petitioner got necessary certificate of analysis from the Industrial Quality Controller, a Government registered Industrial Testing and Analytical Laboratory. As the Central Coalfield Ltd. was in urgent need of supply of forged steel balls, wrote a letter to M/s. Choudhury Carrying Corporation, the transport agent of Central Coalfield Ltd. to take delivery of one truck of balls from the Petitioner under reference No. KTW dated November 1, 1985, the said M/s. Choudhury Carrying Corporation took delivery of 100 packages of forged steel balls from the Petitioner under consignment note dated November 8, 1985, In pursuance of the said letter dated November 1, 1985, pertaining to consigner's challan No. HO/23/85-56 dated November 8, 1985, and on November 9, 1985, the Petitioner again gave a guarantee certificate in respect of the said manufactured goods and once again guaranteed that in case of any manufacturing defects during the period of one year, the Petitioner would replace the same free of cost, and in respect of the said supply so made by the Petitioner under challan dated November 8, 1985, the Petitioner raised bill against the Project Officer, Central Coalfield Ltd., Kathara, Giridih on November 9, 1985, for a sum of Rs. 87,360. By the said bill it was categorically pointed out that the supply vis-a-vis the payment in regard thereto was subject to Calcutta jurisdiction. Again on October 3, 1985, the Petitioner was asked by the Coal India Ltd. to arrange for immediate supply of the balance quantity of forged steel balls against supply order dated October 11, 1985, under reference No. KTW/Steel Ball/7170 dated December 3, 1985, issued by the Purchase Officer, Central Coalfield Ltd. Kathara Washeries. In reply to the said letter dated December 3, 1985, the Petitioner by the letter dated December 9, 1985, informed the Project Officer, Central Coalfield Ltd., that already one truck load of balls had been dispatched and the balance quantity was under process of manufacturing and would be dispatched as soon as the same could be made ready. Thereafter, on December 16, 1985, the Senior Purchase Officer, Central Coalfield Ltd., by his letter intimated the Petitioner about certain amendments in the order dated October 11, 1985. By the said letter dated December 16, 1985, the amendments to the material specification and mode of dispatch were made. On January 3, 1986. 180 bags of

forged steel balls were dispatched to the Purchase Officer, Kathara Washeries of the Central Coalfield Ltd. and also submitted a guarantee certificate dated January 3, 1986, that the Petitioner would replace the articles free of cost in case of any manufacturing defects within the guarantee period of one year from the date of supply on the same date. The Petitioner submitted a bill for Rs. 73,936 to the Project Officer, Central Coalfield Ltd., Kathara Washeries, Giridih, Bihar. In the said bill also it was specifically mentioned that the same was subject to Calcutta jurisdiction. In view of the amendments brought about by the letter dated December 16, 1985, the Petitioner requested the Deputy Materials Manager (P), Central Coalfield Ltd., for extension of delivery period so that no liquidated damages were imposed upon the Petitioner under letter dated January 17, 1986. The Petitioner again by letter dated April 4, 1986, requested the Deputy Materials Manager (P)(VI), Central Coalfield Ltd., for extending the delivery period up to June 15, 1986, without imposing any liquidated damages. The Project Officer by his telegram dated March 26, 1986, asked the Petitioner to effect immediate dispatch of the balance quantity of steel balls against supply order dated October 11, 1985.

3. It is the case of the Petitioner that while the Petitioner was persistently asked to effect delivery of forged steel balls by installment, the Petitioner was never informed that the goods already supplied were defective or were not in accordance with the standard tender specification. Again on April 6, 1986, the Project Officer, Kathara Washeries, informed the Petitioner that in view of the urgency one Mr. B.K. Sinha of Kathara Washeries was being deputed for dispatch of materials through the authorized transporter against supply order dated October 11, 1985. The Petitioner was further requested to extend all help to the said Shri Sinha by the letter dated April 16, 1986. It is stated that the Petitioner came to learn on or about April 7, 1986, by a wireless message issued by the Project Officer, Kathara Washeries, under memo. No. KTW/1660 addressed to the Chief Central Manager (WS), Central Coalfield Ltd. by the said wireless message extension of time as prayed for by the Petitioner, was requested to be given by the concerned Project Officer. By the letter dated April 8, 1986, the Petitioner was, however, informed that the recommendation of the Petitioner for extension of the delivery period was been processed through Central Coalfield Ltd., Purchase Department, for necessary amendment in that regard. On April 20, 1986, the Petitioner was further informed by letter dated KTW/525/3886 by the Project Officer, Kathara Washeries, requested the Petitioner to arrange for further dispatch of forged steel balls to the lorry driver of lorry No. DRY 2394. By the letter dated April 16, 1986, issued by the Assistant Materials Manager (P), Central Coalfield Ltd., the Petitioner was informed that the delivery period of supply order covered by the order dated October 11, 1986, was provisionally extended up to May 30, 1986, and pursuant to the said letter dated April 30, 1986, the Petitioner supplied the balance quantity of forged steel balls under challan No. HO/02/86-87 dated April 25, 1986, against supply order dated October 11, 1985. On April 26, 1986, the Petitioner also gave a guarantee certificate in respect of supply

effected under challan dated April 25, 1986, inter alia, guaranteeing that the case of any manufacturing defects the Petitioner would replace the same within a guarantee period from the date of supply and also submitted a bill for Rs. 61,152. Even though the supply of the forged steel balls were made by installments under the said supply order, at no point of time there has been any objection against the quality and quantity of the article supplied by the Petitioner and that without intimating any reason and/or ground the Petitioner was served with an order by the Deputy Materials Manager (P) dated June 3, 1986, stated that in view of the anomalies in your supplies to Central Coalfield Ltd. your registration is hereby withdrawn and that this was followed up by a circular dated May 15, 1986, under No. Vig./Black List/Shankar Engg. and Trading Co./86(34)/690 wherein it was stated that during an enquiry it has been prima facie revealed that M/s. Shankar Engg. and Trading Co. Calcutta, has supplied sub-standard steel balls for use in one of the Washeries of CCL. While the complete enquiry is in progress. CMD, CCL, has taken a decision to suspend business dealings of CCL with M/s. Shankar Engineering and Trading Co. Calcutta, with immediate effect. General Managers of all areas and project officers of all Washeries are requested to ensure that all business dealings with M/s. Shankar Engineering and Trading Company, Calcutta, are suspended forthwith.

This was followed up by another circular No. Vig./Black List/Shankar Engg. and Trading Co./86(34)/776 dated June 4, 1986, wherein it was stated that in modification of earlier circular No. Vig./Black List/Shankar Engr. and Trading Co./86(34)/690 dated May 15, 1986 it is brought to the notice of all that business dealing with M/s. Shankar Engineering and Trading Company, Calcutta, regarding supply of steel balls will remain suspended. Other business dealings may continue. It is stated that after black listing the Petitioner, the office premises of the Petitioner at No. 2, Ganesh Chandra Avenue, Calcutta, and the workshop at 121, J.N. Mukherji Road, Ghosuri, Howrah, were searched by the officers of the C.B.I., Ranchi and Calcutta, on October 21, 1986. It was stated that in course of such search nothing incriminating could be found excepting a file containing a test certificate and factory copy of the test report and certain bills. Thereafter, one Shri D.P. Singh, Inspector of C.B.I. Ranchi, lodged a F.I.R. on August 29, 1986, alleging an offence under Sections 120B/420 of the Indian Penal Code against the Petitioner. In the said F.I.R. it was stated as follows:

On receipt of an information by the IG/CVO, CCL, Darbhanga House, Ranchi, to the effect that M/s. Shankar Engineering and Trading Co. were supplying substandard steel balls to the Washery Department against the purchase order No. Wary/Pur/1/1263/36/6072 dt. 11.10.85 worth Rs. 2,28,650, the CVO got collected the samples from the supplies made by the first against aforesaid purchase order. The physical as well as chemical tests conducted by National Insurance of Foundry and Forge Technology (NIFFT) a specialized Govt. agency is testing forged steel items revealed that M/s. Shankar Engineering and Trading Co. did not supply the forged steel balls as specified in the purchase order, instead the firm had supplied cast

steel balls which are not suitable for the job as well as their cost of production is also lower by 15 to 20% to that of forged steel balls. M/s. Shankar Engineering Trading Co. in conspiracy with Shri R.P. Upadhyaya, Sr. Executive Engineer, dishonestly or fraudulently induced the authorities of CCI to make payment to M/s. Shankar Engineering on the basis of false inspection certificate. In this connection Shri R.P. Upadhyaya had accepted the balls supplied by M/s. Shankar Engineering and Trading Co on the basis of his visual inspection as well as on the basis of test certificate No. 26953 enclosed by the firm purportedly issued by M/s. Industrial Quality Controllers, Calcutta, on 14.11.85.

Shri R.P. Upadhyaya in conspiracy with the aforesaid firm again accepted another lot against the same test certificate bearing No. 26953 issued by M/s. Industrial Quality Controllers, Calcutta, in which some alternations has been made to impress upon the authorities of C.C.L. that the 40 mm. size balls were also got tested whereas the original certificate furnished by the firm clearly indicates that 40 mm balls were never tested by M/s. Industrial Quality Controllers. Although Shri R.P. Unadhyaya had full knowledge of the alternation even then he passed the substandard steel balls supplied by M/s. Shankar Engineering and Trading Co. and hence the payment was made to the party. Besides, it was possible to identify the cast steel balls to those of forged steel balls on the visual inspection only as the cast steel balls contain ridge marks whereas forged steel balls do not have these ridge marks. Shri R.P. Upadhyaya had accepted a total quality of 10 M.T. substandard steel balls costing Rs. 1,60,000 approx. which have been paid to firm again against sub-standard supply made by him.

The above facts disclose a prima facie case against Shri R.P. Upadhyaya and M/s. Shankar Engineering and Trading Co., Calcutta, u/s 120B/420 of Indian Penal Code and investigation is taken up.

4. On behalf of the Respondents, Mr. Samar Banerjee, learned Counsel, raised preliminary point with regard to the maintainability of the writ application before this Court. According to him the cause of action had arisen outside the jurisdiction of this Court and, as such, this Court cannot entertain the writ application and cannot grant any relief. It was submitted that the Orders were placed from Bihar on a Calcutta party and that the order of black listing was also issued by an officer who was posted in Bihar and, as such, the cause of action could not be said to have been arisen within the jurisdiction of this Court. It was further submitted that the F.I.R. was also submitted before the Delhi Special Police establishing Ranchi Branch by an Inspector of C.B.I., Ranchi, and as such, this Court has no territorial jurisdiction over this matter.

5. Mr. Samaraditya Pal, learned Counsel appearing on behalf of the Petitioner, contended that in any event a part of cause of action had arisen within the jurisdiction of this Court inasmuch as the office and the Workshop of the Petitioner are situated within the jurisdiction of this Court and further pursuant to the

acceptance of tender the order was placed on the Petitioner whose office was situated at Calcutta and that goods were supplied by the Petitioner who was within the jurisdiction of this Court and pointed out that when the goods were supplied and the bills were issued it was made specifically clear that the same was "subject to Calcutta jurisdiction", and this was printed on all the bills and that at no point of time the Respondents have disputed this point that this was not subject to the Calcutta jurisdiction. It was further submitted by Mr. Pal that in the field of the contract the parties had liberty to agree to jurisdiction of any Court and in this particular case where the parties had agreed that for litigation purpose the same would be subject to Calcutta jurisdiction and accordingly this Court had jurisdiction. It was further submitted that black listing was made in respect of the party whose office and the workshop was situated within the jurisdiction of this Court and the orders were communicated to a party who was within the jurisdiction of this Court and it was further submitted by Mr. Pal relying upon a Division Bench judgment of this Court in case of [Union of India \(UOI\) and Others Vs. Hindustan Aluminium Corporation Limited and Another](#), wherein Murarimohan Dutt J. (as His lordship then was) has held that the question whether a High Court has territorial jurisdiction to entertain a writ petition has to be decided on the basis of the allegations made in the petition. The truth or otherwise of the allegations is immaterial at that stage. In that case the impugned orders fixing the selling price and the retention price of the Aluminium was fixed by Central Government at Delhi, the factory of the Petitioner was located outside West Bengal. However, the Head Office was situated at Calcutta, in that case the Petitioner Company had alleged that it had suffered losses in business at Calcutta as the direct consequence of the impugned orders. It was held that the cause of action arose at Calcutta and, therefore, the Calcutta High Court had territorial jurisdiction to entertain the petition. In para 24 the Division Bench had observed:

Under Article 226(2) of the Constitution the High Court may exercise its power conferred by Clause (1) of Article 226 to issue, directions, orders or writs if the cause of action, wholly or in part, arises within the territory over which it exercises jurisdiction. It is now well-settled that "cause of action" means every fact which the Plaintiff should prove, if traversed, in order to succeed in the suit. HINDALCO has come with a case that in view of the impugned orders, it has been suffering loss in its business in the sale of aluminum and its products produced and manufactured by it in Calcutta where its principal office is situate. If there had been no allegation of incurring of any loss as a result of the impugned orders, we are afraid, there would not have given rise to any cause of action either wholly or in part, in Calcutta. Normally no person institutes any suit or proceeding unless his right is jeopardized or prejudiced in consequence of any action of a private individual or of the Government. In the writ petition, there has been a categorical averment of the suffering of loss by HINDALCO by the sale of aluminum and aluminum products in Calcutta: We are now not concerned with the truth or otherwise of the allegation as

the question of jurisdiction is to be determined on the basis of the allegation made in the writ petition. If there was no such allegation of any loss suffered by HINDALCO in Calcutta, the High Court would not entertain the writ petition, however, illegal the impugned orders may be. A writ petition is not entertained unless the Petitioner comes with a case that he has been prejudiced by any action of the Government or a statutory body or authority. So, in our opinion, the writ petition, prima facie, discloses that a part of cause of action arose in Calcutta within the jurisdiction of this Court.

6. A cause of action means every fact, which if traversed, it would be necessary for the Petitioner to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of fact which taken that the law applicable to them gives the Petitioner a right to relief against the Respondents it must also include some act done by. The Respondents since in the absence of such an act no cause of action can possibly arise. A cause of action arose at any of the following places, i.e. (a) the place where the contract was made, (b) the place where the party perform or performance would be completed, (c) the place where any performance of the contract in money in which the suit relates was expressly or impliedly payable. Of course parties can agree to the jurisdiction and in the instant case all the bills that were raised by the Petitioner, it was printed that this was subject to jurisdiction of Calcutta and that in the absence of any protest and objection raised on behalf of the Respondents by any of the correspondence it must be held that by implication it must be accepted that the Respondents have accepted that any dispute relating to the same could be decided by any Court in Calcutta. The goods were supplied from Calcutta and the orders were placed at Calcutta by the Respondents. The goods were supplied from Calcutta office and the money was payable at the Calcutta office. Further on the basis of the first information report the search and seizure took place within the jurisdiction of this Court.

7. Supreme Court in the case of [Smt. Bismillah Vs. Janeshwar Prasad and Others](#), it was held that the question of jurisdiction depends upon the allegation in the plaint and not merit on the result of the suit. On the basis of the materials on record and in view of the Division Bench judgment of this Court in Union of India v. Hindusthan Aluminium Corporation (Supra) it is clear that the effect of the order of black listing was felt within the, jurisdiction of this Court. Further, in the F.I.R. the persons who were named as accused are all permanently residing within the jurisdiction of this Court and that their addresses in the F.I.R. also shown are within the jurisdiction of this Court. On the basis of the F.I.R. the search and seizure took place within the jurisdiction of this Court and that on the basis of the process is sued by the Criminal Court the same had to be executed within the jurisdiction of this Court and, accordingly, in view of the principle laid down in the above case it must be held that at least a part of the cause of action had been arisen within the jurisdiction of this Court and, accordingly, the writ petition is maintainable before this Court, and accordingly, the preliminary objection raised by the Appellant stands rejected.

8. The next question is whether the black listing could be made without giving any notice and/or opportunity of being heard to the Petitioner concerned is now concluded by several decisions of the Supreme Court. In [Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another](#), it was held by the Supreme Court that black listing has the effect of preventing a person from the privilege and the advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of black listing indicates that the relevant authority is to have an objective satisfaction that the person concerned should be given an opportunity to represent his case before he is put on the black list. It was further held that the State has a right to trade and has also the duty to observe equality. The Government cannot choose to exclude persons by discrimination. The order of black listing denies equality of opportunity in the matter of public contract. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into the contract with any person it chooses. No person has a fundamental right to insist that the State Government must enter into the contract with him. A citizen had a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. Where the black listing order involves civil consequences it casts a slur. It creates a barrier, between the persons black-listed and the Government in the matter of transactions. The black-lists are "instruments of coercion". Hence, a person must be given an opportunity of hearing before his name is put on the black list. This case of the Supreme Court was followed in a large number of cases and it is not necessary to multiply the cases on this point inasmuch as this principle is now well-settled.

9. In this case the Petitioner under a contract had supplied certain materials with a specific guarantee in writing that in case it is found that the goods in question do not conform with the quantity or quality, within the guarantee period or a period of one year from the date of supply/arrival on site, in case of any manufacturing defect is found within the aforesaid period of one year the Petitioner would be liable to replace the same free of cost. But, in the instant case, even though goods have been dispatched on a number of occasions by installments but no exception was taken by the Respondents regarding the quality of the goods and/or whether the goods were sub-standard or not. If it was found within the period of one year that the goods were defective in that event under the guarantee the Petitioner was bound to replace the goods which were found to be goods not according to proper standard and quality. The registration of the Petitioner with the Central Coalfield Ltd. as suppliers were cancelled by an order dated June 3, 1986 without disclosing any reasons and/or grounds and/or without giving any hearing and/or opportunity of being heard. Copy of this order was forwarded and circulated to several such officers of the Central Coalfield Ltd. situated in Calcutta, Dhanbad and Ranchi. The

Inspector-General and Chief Vigilance Officer of Eastern Coalfield Ltd., Ranchi, issued a circular whereby it was alleged that prima facie it revealed that the Petitioner had supplied sub-standard goods and that accordingly a decision was taken suspending the business dealing with the Petitioner. The Respondents, Central Coalfield Ltd., is admittedly an instrumentality of the State within the meaning of Article 12 of the Constitution. As an authority under Article 12; it does not appear to be neither fair nor proper to take such decision without raising any objection as to the quality and quantity of the goods supplied at no point of time and that in any event such an order could not have been passed without giving the Petitioner any opportunity of being heard. In view of the certificate of guarantee submitted by the Petitioner it was not drawn to the notice of the Petitioner that the goods did not confirm with the specification as per the order in that event the Petitioner could have replaced the materials and at least the Petitioner must be given an opportunity to show that he has supplied sub-standard forged steel balls of the quantity of the specific field of the contract.

10. The old view of the Supreme Court with regard to the power of the writ petition in so far as the contractual obligations are concerned has been departed from. The view of the Supreme Court has been changed and there has been a massive expression of judicial review by the writ Court in respect of contractual matters are concerned given in case of cancellation of the lease by the Government it is open to the writ Court to examine the decision making process, in a case where the lease was cancelled and lessee had claimed to have made much investment in the land in question and it was held that the statutory authority should afford a personal hearing to the lessee after the issue of a show-cause notice setting out the precise grounds: see [State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others](#), Subsequently, in the case of Mahabir Auto v. Indian Oil Company AIR 1990 S.C. 130 it was held that fairness should be there to the parties concerned before treating the contract as cancelled and. the affected party against whom action was sought to be taken under the contract should be taken into confidence and decision should be based on fair play, equity and consideration of an institution like Public Sector Undertaking and must act fairly.

11. In [Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others](#), it was held that the Constitution does not envisage or permit, unfairness or unreasonableness in such actions in any sphere of the activity contrary to the professed ideals in the preamble. Exclusion of Article 14 in the contractual matter is not permissible in constitutional scheme, scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of the total exclusion. Even as summing that it is necessary to import the concept of presence of some public element in such an action to attract Article 14 and permit judicial review, it cannot be said that ultimate impact of all action of the State or Public Body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. Therefore, it

would be difficult and unrealistic to exclude such actions in contractual matters after contract has been made from the purview of judicial review to test its validity on the anvil of Article 14. Thus, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power. In that case the State had power to terminate the service of Government Pleader etc. at any time and without assigning any cause. It was held that without assigning any cause means without communicating the cause but this cannot be equated that "without existence of any cause" it does not mean that at the sweet will of the Government Service can be terminated any time and without the existence of any cogent reason. Their non-suitability has to be decided on the basis of existence of materials. In view of the law laid down by the Supreme Court in the field of the contract it is too late in the day to contend that the Central Coalfield Ltd. had an unfettered power to terminate or suspend the business at will and that before the black-listing is made it is obligatory on the part of the authorities concerned to pass such an order only after disclosing reasons and after giving an opportunity of being heard and that in such matter the reasons must be disclosed so that the Petitioner could make effective representation before the Respondents concerned. Accordingly, the order for black-listing cannot be sustained.

12. Now, with regard to the F.I.R. is concerned on perusal of the same it is crystal clear that the allegations was at best that the Petitioner has supplied goods substandard steel balls or in other words the steel balls that was supplied was not up to the specification. The goods were supplied under a contract and when the party has undertaken by giving a guarantee that, event within a period of 12 months from the date of supply the goods if the goods were found to be not confirming with the quantity or the quality, the Petitioner will be liable to take it back and replace the same according to proper specification. In the instant case, it was alleged in the F.I.R. that the Petitioner has committed an offence of cheating as defined u/s 420 of the Indian Penal Code:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

13. On reading the contents of the F.I.R. and the provision of Section 420 of the Indian Penal Code it does not appear that the Petitioner has committed any offence u/s 420 of the Indian Penal Code. On the basis of the facts disclosed in the F.I.R. at best it can be said that the Petitioner had supplied goods not according to the specification, but at any point of time it was not pointed out that the goods were not according to the specification and no opportunity was given to the Petitioner to replace the goods which according to the guarantee as furnished by the Petitioner,

Petitioner was liable to replace. The supply was governed by a contract and according to the contract it was for the Respondents to check the material and to reject the material if it is found that the goods in question did not confirm with the quantity or quality as specified, but in the instant case it was not so repeatedly the Petitioner was asked to go on supplying the goods as the Respondents were in urgent need of the same. It cannot be said that supplying of sub-standard steel balls amounts to an offence u/s 420 of the Indian Penal Code inasmuch as it is a mere civil dispute and the essential ingredients of Section 420 of the Indian Penal Code are wholly absent in the instant case.

14. On behalf of the Petitioner reliance was placed to the decision of the Supreme Court in the case of [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), wherein it was observed that when the F.I.R. does not disclose any commission of cognizable offence High Court was justified in quashing investigation. That judgment of the Supreme Court in the State of West Bengal v. Swapan Kumar Guha had been considered in a recent decision of the Supreme Court in the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), wherein the Supreme Court has laid down several categories of cases where the High Court in exercise of the powers under Article 226 of the Constitution of India may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, the power should be exercised sparingly and that too in the rarest of rare cases. The said categories are as follows:

- (a) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (b) Where the allegations in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by Police officer u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (c) Where the uncontroversial allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (d) Where the allegations in the F.I.R; do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.
- (e) Where the allegations made in the F.I.R. or complaints are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a Specific Provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(g) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. This is a clear case where all the allegations made in the F.I.R. even they are taken at their face value and accepted in its entirety do not prima facie constitute any offence or make out a case against the accused and the Petitioners and further the allegations in the F.I.R. did not constitute any cognizable offence but constitute certain civil offences, if any, for committing breach of contract one may be liable for damages but on the basis of this fact disclosed in the F.I.R. no investigation could be continued and consequently all actions taken on the basis of the said F.I.R. are all on the face of it illegal. Accordingly, the said F.I.R. dated August 29, 1986 which is Annexure "X" to the petition including the investigation and/or any case started thereon, stands quashed. The order of suspension of business and the black listing made by the order dated June 3, 1986 issued by the Deputy Material Manager (P), Central Coalfield Ltd., the order of black listing issued by the Inspector General/Chief Vigilance Officer of Central Coalfield Ltd. dated May 15, 1986, and June 4, 1986, also stands quashed. This order is without prejudice to the rights of the Respondents to pass a fresh order of black listing only upon disclosure of reason and only after issuing a show-cause notice and giving a hearing to the Petitioner. The writ petition succeeds to the extent as stated above. There will be no order as to costs. The learned Advocate appearing for the Respondents prays for stay of operation of the operative part of the judgment for four weeks from date.

16. Such prayer is granted.

17. Let all parties to act on the xerox copy of the judgment to be signed by the Court Officer on the usual undertaking.

Writ petition allowed.