

J.P. Sureka Vs Coal India Ltd.

Court: Calcutta High Court

Date of Decision: May 11, 1992

Citation: (1992) 2 ILR (Cal) 175

Hon'ble Judges: Bhagabati Prasad Banerjee, J

Bench: Single Bench

Advocate: S. Paul, for the Appellant; S.N. Barterjee, for Coal India Ltd., for the Respondent

Judgement

B.P. 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. Shanker Engineering and Trading Co. Calcutta, and Central Coalfields

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, are 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 mm. 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 the

earnest money of Rs. 2000 had to be deposited along with the offer by demand draft in favor of the 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 Coalfields Limited and that your Petitioner was informed that such

acceptance by the senior Purchase Officer, of the 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 the Central

Coalfields Ltd. to take delivery of one truck of balls from the Petitioner under reference No. KTW dated November 1, 1985. In pursuance of the

said letter 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, pertaining to consigner's challan No. HO/23/85-86 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, Giridhi, 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 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 in the order dated October 11, 1985. By the said letter dated December 16, 1985, the amendments to the material

specification and the mode of dispatch were made on January 3, 1986. 180 bags of forged steel balls were dispatched to the Purchase Officer,

Jatgara 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. 78,936 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. 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 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 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 letter dated April 6, 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/3660 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 letter dated April 8, 1986, the Petitioner was,

however, informed that the recommendation of the Petitioner for extension of the delivery period had been processed through Central Coalfield

Ltd., Purchase Department; as necessary in that regard. On April 20, 1986, the Petitioner was further informed by letter KTW/525/3886 by the

Project Officer, Kathara Washeries, requested the Petitioner to arrange for further dispatch of forged steel balls to lorry No. BRY 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 order dated October 11, 1986, was previously extended up to May 30, 1986, and pursuant to the said letter

dated April 20, 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 was also given 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 guaranteed period from the date of supply and also submit 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 had 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 analyses 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 C.C.L. While the complete enquiry is in progress, C.M.D., C.C.L. has taken a decision to

suspend business dealings of C.C.L. 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 Engg. and Trading

Co./86(34)/690 dated 15.5.86 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 No. 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.B. 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 effect that M/s. Shankar Engineering and Trading Co. were supplying sub-

standard steel balls to the Washery Department against the purchase order No. Wary/Pur/1/1263/36/6072, dated October 11, 1985, worth Rs.

2,28,650, the C.V.O. got collected the samples from the supplies made by the first against aforesaid purchase order. The physical as well as

chemical tests conducted by the National Insurance of Foundry and Forge Technology (NIFFT) a specialized Government agency in 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 and Trading Co. in conspiracy with Shri R.P. Upadhyaya, Sr. Executive Engineer dishonestly or

fraudulently induced the authorities of C.C.I 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

November 14, 1985.

3. 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. Upadhyaya 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 ball on the visual inspection only as the cast steel balls contains 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 the firm again against sub-standard supply made by him.

4. 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.

5. 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 at 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 establishment Ranchi

Branch by an Inspector of C.B.I, Ranchi and, as such, this Court have no territorial jurisdiction over this matter.

6. 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 subjected 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 has jurisdiction. It was further submitted that black-

listing was made in respect of 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 the case of Union of India (UOI) and Others

Vs. Hindustan Aluminium Corporation Limited and Another, wherein Murari Mohan 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

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 writ 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, it 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 less 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 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 the 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.

7. A cause of action means every fact, which are 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 is 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

performs 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 correspondences 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 F.I.R. the search and seizure took place within the jurisdiction of this Court.

8. The 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 Ltd. (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 issued 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.

9. 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 blacklisting has the effect of preventing a person from the privilege and the advantage had been

entering into lawful relationship with the Government for the 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 having a right to trade 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.

10. 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 confirm with the quantity or quality within the guarantee period of 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 the 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., are 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 any 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 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.

11. 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 the 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. 1301 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

the decision should be based on fair play, equity and consideration of an institution like Public Sector Undertaking and must act fairly.

12. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, it was held that the Constitution did not envisage or permit, unfairness

of 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 assuming 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 the

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 file of the contract it is too late in the day to content 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.

13. 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 sub-standard steel balls or, in other words, the steel balls that were supplied were 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 had 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.

14. 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 no point of time it was 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,

the 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 conform 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.

15. 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. did not disclose any commission of cognizable offence the High

Court was justified in quashing investigation. That judgment of the Supreme Court in the State of West Bengal v. Swapan Kumar Guha in the case

of State of Haryana and others Vs. Ch. Bhajan Lal and others, wherein the Supreme Court have 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 incontroverted 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 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.

16. 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 20, 1986, which is Annex. "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 indicated above. There will be no order as to costs. The learned Advocate appearing for the

Respondents pray for stay of operation of the operative part of the judgment for four weeks from date.

17. Such prayer is granted.

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

Application succeeds.