**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**W.P.(C) No. 2818 of 2022**

Gautam Coal Works Private Limited, a company incorporated under the Companies Act, 1956, having its Industrial Unit at Tape, Ormanjhi, Ranchi through its Managing Director, Manendra Kumar Singh son of Mithilesh Kumar Singh, resident of Flat No.403-B, Ganesh Apartment, Ashok Vihar, PO PS Argora, District Ranchi. **... Petitioner.**

**-Versus-**

1. Central Coalfields Limited (CCL), through the Chairman-cum-Managing Director, Darbhanga House, Gonda, Ranchi.
2. The Chairman-cum-Managing Director, CCL, Darbhanga House, Gonda, Ranchi.
3. The General Manager (Marketing and Sales), CCL, Darbhanga House, Gonda, Ranchi.

**... Respondents**

**CORAM : SRI SANJAYA KUMAR MISHRA, C.J.**
**SRI ANANDA SEN, J.**

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**For the Petitioner: Mr. Vimal Kirti Singh, Sr. Advocate.**
**For Respondent- CCL: Mr. Amit Kumar Das, Advocate.**

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**C.A.V. On 08.12.2023** **Pronounced on: 21 / 12 /2023**

**J U D G M E N T**

***Per Ananda Sen, J.*** In this writ petition, the petitioner has prayed for quashing the office order dated 28.5.2022 contained in reference No. CCL/HQ/C-4/2022-23/1142 (Annexure-19) whereby the respondent reiterated their decision to terminate the Fuel Supply Agreement dated 30.4.2008 and also to forfeit the security deposit. A further prayer has also been made to direct the respondents to not to treat the order of termination of agreement and order of forfeiture of security deposit as stigma upon the petitioner.

**2.** We have heard learned counsel appearing for the petitioner through Video Conferencing and learned counsel for the respondent- CCL, who was present in the Court. The learned lawyers had no objection with regard to the proceeding, which has been held through hybrid mode on 08.12.2023. They had no complaint in respect to the audio and video clarity and quality.

**3**. During course of argument, learned counsel for the petitioner submits that his client is only interested in refund of the security deposit, which has been illegality forfeited and his client does not seek revival of the Fuel Supply Agreement.

**4.** To consider whether petitioner is entitled for the refund of security deposit or not, we have to decide whether termination of the Fuel Supply

Agreement is justified or not. If the termination is unjust, then only the petitioner is entitled for the relief.

**FACTS OF THIS CASE.**

**5.** The petitioner is in the business of manufacturing of Special Smokeless Fuel situated in the Industrial Unit at Tape, Ormanjhi, in the District of Ranchi. One of the raw materials of the petitioner is coal, which was supplied to the petitioner by Central Coal Fields Limited (hereinafter to be referred as CCL), a subsidiary of Coal India Limited. By virtue of agreement known as Fuel Supply Agreement (hereinafter to be referred as FSA), which was entered into between the parties pursuant to the Coal Distribution Policy of 2007 of Coal India Limited, which was framed in the light of judgment passed by the Hon'ble Supreme Court of India. A Survey under Section 133(A)(2A) of the Income Tax Act 1961 was conducted in the premises of the petitioner. During the said survey, it was alleged by the Income Tax Department that the petitioner-company only had a capacity to process 0.05% of the total quantity of coal, sold by CCL to the petitioner. A communication to that effect was also issued by the Income Tax Department. Pursuant to the aforesaid communication dated 31.10.2017, M/s CCL suspended supply of the coal to the petitioner on the ground of violation of the various clause of FSA. Be it noted that there is a clause in the agreement that Fuel, which is being supplied to the unit pursuant to the agreement, cannot be diverted. After supply of coal was suspended, the petitioner represented before the Income Tax Department, who clarified that they had not directed for stoppage of supply of coal and the same can be resumed, at the discretion of M/s CCL.

**6.** The petitioner thereafter represented before the CCL. CCL sought clarification from the Income Tax Department, but no clarification was provided. M/s CCL requested the General Manager, Directorate of Industries, Govt. of Jharkhand and sought clarification about the operational status of the petitioner unit. The General Manager informed, that the factory is in working condition. Supply of coal was resumed on 23.2.2018 but on 24.4.2018 in the 40$^{th}$ meeting of the Regional Economic Intelligence Council (REIC), it was resolved that the supply of coal to the Company using Form 27 be stopped and asked the members of Central Bureau of Investigation (CBI) and Enforcement of Directorate (ED) to investigate into the matter.

**7.** Vide letter dated 19.5.2018, the Income Tax Department, considering the aforesaid resolution of 40$^{th}$ meeting of REIC, directed M/s CCL to suspend the supply of coal to the petitioner. Consequently, the coal supply

of the petitioner under the FSA was terminated. The petitioner challenged the aforesaid order of termination of FSA in writ petition, WPC No. 2886 of 2018. The said writ petition was disposed of directing the CCL to make an independent enquiry on the allegation levelled against the petitioner, in view of specific clause 4.4 of the FSA and take a final decision thereof. The respondent-CCL sought for several documents, which according to the petitioner, were supplied. On 7.11.2019, considering all those documents, the claim of the petitioner was rejected and the FSA was terminated and the security deposit which the petitioner had deposited was forfeited holding that the petitioner is not a *bona fide* user of the coal. Challenging the said rejection order, the petitioner again preferred a writ petition, WPC No. 6998 of 2019, which was also disposed of on 12.4.2021. The learned Single Judge quashed the impugned order giving a liberty to M/s CCL to issue fresh notice to the petitioner to verify the use of coal strictly in accordance with law and the conditions laid down under Clause 4.4 of the FSA. After the aforesaid order was passed, the petitioner approached the respondents for release of Bank Guarantee and made a request to resume the coal supply. M/s CCL initiated a fresh inquiry to verify the allegation of coal diversion. The petitioner was asked to explain the queries raised by the respondent, which the petitioner replied.

**8.** Several information/documents like electricity bills, transport details, invoices etc. were sought for which was also submitted. Ultimately again on 28.5.2022 by the impugned order in this writ petition, the respondent-CCL rejected the claim of the petitioner terminating the FSA and forfeiting the security deposit.

**ARGUMENTS OF THE PETITIONER.**

**9.** Counsel for the petitioner submitted that the action of the respondent is not only arbitrary but is *mala fide*. The respondent has not only ignored the conditions laid down in the FSA but has also ignored the direction passed by the learned Single Judge in earlier two rounds of litigations. Without making any physical inspection of the petitioner's unit, the respondent could not have arrived at conclusion that the coal, which was supplied to the petitioner under the FSA, was diverted by the petitioner. It was further argued that the Directorate of the Industries had already informed the respondent that the Unit of the petitioner was functional and there was machinery and all other equipments, installed there in the factory. When the authority of the State had issued such certificate, the respondent could not have ignored the same and could not conclude that the company is not functional and the coal was

diverted. He also submitted that the documents, which the petitioner had furnished before the respondent authority, were not appreciated in correct perspective. He submitted that there is some discrepancies in recording the vehicle numbers through which the materials were transported, but the element of human error in recording such numbers by the gate-man, watchman and guard of the company should have been considered by the respondents. He further argued that the respondents have considered some periods where there was no electricity supply and came to a conclusion that the petitioner was not functioning rather diverting coal, which could not have been done, as the petitioner very well operated his industrial unit by using private generator set without banking upon the electricity connection from the electricity suppliers. The reasons put forth to reject the claim of the petitioner, according to the petitioner, is non est. He further submitted that the company had even produced the GST Returns, which would suggest that the petitioner had sold their finished products, which is a sufficient proof that the company was in the process of manufacturing and was supplying finished products. He argued that admittedly the supply of quantity of coal, which was being supplied from time to time, pursuant to FSA, was much less than the required quantity, thus the electricity which was being consumed, commensurates with the quantity of coal supplied by CCL. It is also submitted that the coal, which was supplied was being accumulated over a period of time and thereafter the manufacturing process starts, thus there was discrepancies in electricity consumption, which has not been taken note of by the respondents authority. So far as EPF and ESI Challan are concerned, the counsel for the petitioner submitted that the workers were outsourced and were engaged by Agency, but according to them all documents were handed to the respondents. He also took this Court through two orders passed by learned Single Judge of this Court and argued that without conducting physical verification, it cannot be concluded that the petitioner's Unit was functional or not and ultimately when there was no physical verification made by CCL, the order impugned holding diversion of coal, is liable to be set aside and the security deposit be directed to be refunded to the petitioner.

**ARGUMENTS OF THE RESPONDENTS**

**10.** Counsel for the respondents submitted that admittedly the coal is a very scarce minerals, which should not be allowed to be misused. To prevent misuse and black-marketing, in FSA a clause has been incorporated which provides that if the coal, sold under FSA, is being diverted and used for

the purpose other than for which the coal has been given, the coal company reserves the right to cancel the agreement. He also submitted that in this case, the coal company after independent enquiry came to a conclusion that the coal was being diverted by the petitioner-company, thus it was decided to cancel the agreement and forfeit the earnest money deposit. He further submitted that the documents and the situations clearly suggest that the coal was being diverted by the petitioner- company. He also argued that as per Clause 4.4 of the FSA, it is not mandatory to visit the premises of the petitioner to come to a conclusion that any unit is diverting coal or not. As per the learned counsel, the only requirement is that there should be a satisfaction that the coal is being diverted, on the basis of documents. Even if a unit is functioning, there are possibilities that the coal is being diverted by them. In the case of the petitioner, after going through the electricity consumption, it is apparent that the coal, which the petitioner lifted was not being used in the unit, as for consumption of the said coal, the quantity of unit of electricity which was necessary was not being consumed by the petitioner. He further argued that the petitioner could not also furnish the GST numbers of the persons, who had purchased the finished product from the petitioner and in absence of GST numbers in many of the cases, it was concluded that the coal which the petitioner had lifted, as per the FSA, was being diverted without consuming the same. He also argued that some vehicle numbers were verified and it was found that the same were of two wheelers and cars and no finished product can be transported by any two wheelers or cars, which clearly suggests that the petitioner was diverting the coal. Thus the action taken by the respondent cannot be challenged. He lastly argued that all the procedure has been followed and after complying with the principle of natural justice, the order has been passed. This Court exercising jurisdiction under writ of certiorari should not interfere with the order, when there is no illegality, irregularity or arbitrariness.

## FINDINGS

### A. *Whether it is mandatory to physically verify the Factory before coming to conclusion as to whether the coal has been diverted or not in terms of Clause 4.4 of FSA?*

**11.** The main defence of the petitioner is that they are not diverting the coal, which was being supplied to them, vide the Agreement (FSA). Their further grievance is that despite the provision in the Agreement that the factory premises had to be physically inspected as per Clause 4.4 of the FSA and also

since there was an order of learned Single Bench of this Court in the earlier round of litigation, to comply Clause 4.4 of FSA, thus, by not physically inspecting the premises, the respondent- CCL has committed grave illegality in terminating the agreement and forfeiting the security deposit. Their case is also that without physically inspecting the factory, the respondent- CCL could not have concluded that the petitioner had diverted the coal.

**12.** The issue is mainly dependent on interpretation of Clause 4.4 of the FSA. The Fuel Supply Agreement provides that if the coal is being diverted, the agreement will be terminated and the earnest money deposit will be forfeited. For better appreciation, it is necessary to quote clause 4.4 of the FSA, which reads as follows;

> ***"4.4 The total quantity of coal supplied pursuant to this agreement is meant for use at the SSF of at Village-Tape, Ormanjhi, P.O. Pallu, Ranchi as listed in schedule I. The purchaser shall not sell/divert and/or transfer the coal for any purpose whatsoever and the same shall be treated as material breach of Agreement. In the event that the purchaser engages or plans to engage into any such release or trade, the seller shall terminate this Agreement forthwith without any liabilities or damages, whatsoever, payable to the purchaser. It is expeditiously clarified that the Seller shall reserve the right to verify including the right to inspect/call for any document from the Purchaser and physically verify the end-use of coal and satisfy itself of its authenticity. The purchaser shall have the obligation to comply with the Seller's directions/extend full co-operation in carrying out such verification/inspection."***

**13.** Admittedly, herein no physical verification of the petitioner's premises was conducted. Now the question is whether it is mandatory for the respondents, in terms of Clause 4.4 of the FSA, to physically verify the factory premises of the purchaser or whether Clause 4.4 compulsorily mandates physical verification of the factory premises of the purchaser unit, before arriving at a conclusion whether the Company is diverting coal. The principal line of clause 4.4 of the FSA, which is being harped upon by the learned counsel for the petitioner, in support of his contention that it is mandatory to make physical inspection of the factory of the purchaser, is culled out from the said clause herein-below;

> ***"It is expeditiously clarified that the Seller shall reserve the right to verify including the right to inspect/call for any document from the Purchaser and physically verify the end-use of coal and satisfy itself of its authenticity."***

**14.** The contention of the learned counsel for the petitioner is that the word **'and'** used therein mandates that the respondent had to physically verify

the end use of coal, meaning thereby, the factory, mandatorily, had to be inspected.

**15.** We do not agree with the said contention.

**16.** The Hon'ble Supreme Court in the case of ***Renaissance Hotel Holdings Inc. versus B. Vijaya Sai*** reported in ***(2022) 5 SCC 1*** has held that textual interpretation of statute should match with contextual interpretation. At paragraph 66 of the said judgment, the Hon'ble Supreme Court has held as under: -

> ***"66. It is thus trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place…"***

**17.** The simple reading of Clause 4.4 does not, in any manner, suggests that physical verification of the factory is mandatory. The only requirement is that there should be satisfaction, from the inspection of the documents or from the physical verification of end use of coal, to conclude that the coal is being diverted. There is no whisper that the factory had to be mandatorily physically inspected. Even for the sake of argument, for once, if we accept that the physical verification of "end use" of coal means physical verification of the factory, then also we are of the firm view that it is not a mandatory provision.

**18.** The Clause 4.4 of the FSA clarifies that the seller reserves the right to verify including the right to inspect/call for any document from the purchaser and physically verify the end-use of the coal and satisfy itself of its authenticity. This cause gives option to the seller i.e. CCL to verify by inspection and call for documents and also gives an option of physical verification of end use. The clause does not make physical verification of factory mandatory. The only requirement is that there should be satisfaction from the inspection of the documents or from the physical inspection of the factory. Thus the physical verification, according to us, is not mandatory.

**19.** The sentence used in the agreement, which has been quoted above and heavily relied upon by the counsel for the petitioner, reserves the right of the seller to verify the end use. The two modes are provided to verify the same, which includes the right to inspect / call for any document from the

purchaser and physically verify the end use of coal and satisfy itself of its authenticity.

**20.** The word 'and' conjoins two situations i.e. the right to inspect /call for any document from the purchaser and physically verify the end use of coal. The mode of right to verify is by calling for document from the purchaser and physically verify the end use of coal. These are two specified modes in the clause. These two are the inclusive clauses because the provision provides that the seller shall reserve the right to verify including these two modes. This clearly satisfies that these two modes are merely illustrative and not exhaustive. There may be other modes also to verify and satisfy the seller about the end use of coal. This means the seller has the right of verification by different mode including (i) right to inspect/call for documents from the purchaser, and (ii) physically verify. This cannot be interpreted as the seller will have to verify the record and will also have to physically inspect to satisfy itself about the end use of coal. The word 'and' herein cannot be said to be conjuncting these two modes. The word 'and' thus is related with the word 'including'. The right to inspect and physically verify, these are two independent modes to come to any conclusion. Thus, the word 'and' can not be used as conjuncting the two modes while interpreting the said clause.

**21.** Further, inspection of the factory premises cannot be made mandatory, as a situation may arise where even if the plant which is consuming coal and is functional, can divert coal or part of it, which is being supplied under the FSA. In that case, even if the unit is functional, there can be case of diversion. Functioning of a unit is not by itself an evidence or proof that the coal obtained under the FSA is not being diverted and is entirely being used in the plant. Whether the coal is entirely used by the plaint or not or is being diverted can be found out from the ancillary records and documents, which is the GST challan, electricity bills, payment of labourers, sale invoices, coal stock registers etc, which record the registration numbers and nature of the vehicles by which the finished goods are being transported.

**22.** Further it is not also possible to verify physically the factory premises, in some cases, as a situation may arise (as like in the instant case), where the factory has remained closed for years, in this case for four years. After four years, no useful purpose would be served to inspect the factory for coming to a conclusion, what actually was the situation four years ago. Non verification of the unit physically, by itself, cannot lead to an inevitable conclusion that the coal was not being diverted. If the documents furnished

and the ancillary record suggest that the coal is not fully used in the plant, and there are high probability of it being diverted, then there will be no hesitation, even to hold without physical verification of the plant, CCL can come to a conclusion that there is diversion of coal.

**23.** Any provision of a document cannot be read in isolation. The document must be looked at as a whole and it needs to be discovered what is the purport of the document or a clause is meant and designed to say as to fit the intent of context. In the similar manner, to know the intent of 'and' in Clause 4.4 of the FSA, we must read the agreement as a whole and on reading the same, we are of the opinion that the right to verify is an optional right vested with CCL.

**24.** From the aforesaid analysis we hold that it is not mandatory to physically inspect any factory premises under Clause 4.4 of FSA to come to a conclusion that the coal is being diverted or not. The coal company reserves their right whether to inspect the factory premises physically considering the peculiarity of each and every case.

## B. *Whether the impugned order can be interfered with by invoking jurisdiction under Writ of Certiorari?*

**25.** After holding that physical verification is not mandatory, we have to adjudicate as to whether the impugned order stands the test of reasonableness or it is arbitrary or malafide.

**26.** This is a writ of certiorari. The jurisdictional scope of certiorari is limited. While exercising the jurisdiction of certiorari under Article 226 of the Constitution of India, the Court does not sit in an appeal over the order passed by the authority. The jurisdiction is supervisory and not appellate. Evidence cannot be re-appraised. Certiorari jurisdiction can be exercised only to correct the error of jurisdiction. The Hon'ble Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences Vs. Bikartan Das**, reported in **(2023) SCC OnLine SC 996** in paragraph 51 has held as under;

> ***51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being***

> ***a high prerogative writ, should not be issued on mere asking.***

**27.** In the case of **Director General of Police, Railway Protection Force and Others vs Rajendra Kumar**, reported in **2020 SCC Online SC 954**, the Hon'ble Supreme Court has also in pargraph-34 has held as under;

> ***34. These principles were further reiterated in the State of Andhra Pradesh v. Chitra Venkata Rao. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.***

**28.** In the case of **Pratap Mehta Vs. Sunil Gupta**, reported in (**2019) 13 SCC 558**, the Hon'ble Supreme Court in pargraph 35 has held that *a writ of certiorari can be issued for correct errors of jurisdiction committed by inferior courts or tribunals. It was further held that jurisdiction of the High Court under Article 226 to issue a writ of certiorari is a supervisory jurisdiction and the High Court exercising it is not entitled to act as an appellate court*.

**29.** In the case of **Rengali Hydro Electric Project Vs. Giridhari Sahu**, reported in **(2019) 10 SCC 695**, the Hon'ble Supreme Court in pargraph 28 has further held that *the jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of certiorari will not don the cap of an appellate court. It will not re-appreciate evidence. The writ of certiorari is intended to correct jurisdictional excesses.* The Hon'ble Supreme Court further held that *once a decision is rendered by a body amenable to certioriari jurisdiction, certioari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being in interfered with by a writ of certiorari.*

**30.** There are numerous other judgments on this issue fortifying this principle, which we are not reproducing here, to minimize repetition.

**31.** In the earlier round of litigation in WPC No. 2886 of 2018 in paragraph-28, the learned Single Judge directed the respondent-CCL to make an independent inquiry on the allegation levelled against the petitioner in view of specific power conferred under Clause 4.4 of the FSA and to take a final decision after providing reasonable opportunity of the hearing to the petitioner's representative expeditiously without being influenced by the observations of the REIC and the Income Tax Department. Thereafter the CCL took a decision, which was also challenged in WPC No. 6998 of 2019, in which the learned Single Judge again set aside the order holding that the physical verification of premises of the petitioner is mandatory to come to a conclusion. The learned Single Judge has also held that it is for the CCL to satisfy itself regarding the end use of coal, by calling for/inspecting the documents and by physical verification. It was further held that the CCL was required to make physical verification.

**32.** As we have already held that physical verification is not mandatory, now we test the order passed by the authority on the touchstone of the principle of applicability of the Writ of Certiorari, the principles whereof have been noted hereinabove.

**33.** In this case, admittedly, an opportunity of hearing was given to the petitioner and the documents were sought for by the CCL which was considered and the order was passed cancelling the agreement and forfeiting the security deposit. The order is well reasoned. The respondent-CCL has concluded that the petitioner was diverting coal. The said conclusion is backed by reasons based on analysis of documents. The impugned order takes note of the fact that from inspection of record it was found that 8 – 10 ton of finished products were dispatched to end consumers by vehicle, which were in fact a car and motorcycle. In the impugned order it has been mentioned that a vehicle bearing No. JH 09S 9351 has been shown as motorcycle for dispatches made on 07.08.2017, while the same vehicle number was shown as truck for dispatches made on 08.09.2017 and 28.10.2017. Further, it was revealed that on the same date, one vehicle was shown to have dispatched finished products to several firms, which is not possible. Further, the vehicle numbers mentioned in the GST Invoices in relation to dispatch does not match the vehicle number recorded in the sale register. The invoices were considered and the reasons for doubting the invoices has also been

mentioned as there are two types of invoices containing different invoice numbers and different entries. Pre GST era invoices were also not submitted. The impugned order also records the analysis derived from records that there is much variation in electricity consumption and the billed units are not corroborative with the coal consumption. The impugned order notes that the petitioner mentioned that the electricity billing had been done erroneously by the department and they have made excess payment, but the unit has not submitted any documentary proof regarding any communication made by them to the electricity department in protest for variation in units billed, inspite of repeated opportunity. In the impugned order, some monthwise chart has been shown, based on which the respondents arrived at a conclusion that the coal was not being consumed by the factory rather diverted. The diesel bills, which were also produced was doubted by the respondents as in the bills name of the firm was also not mentioned. In some printed diesel bills, manually name has been incorporated. In some bills, it was shown that diesel were filled in vehicles owned by the company. Thus, the contention of the respondents that diesel was being used to run the factory was negated.

**34.** There were irregularities found in engagement of workers and non-compliance of statutory forms. In their analysis made in the impugned order, it is evident that employees were shown as “left service” in Labour, PF and ESI Challans, whereas in the attendance sheet those persons were shown as working. The number of actual employees employed and the number as per PF and ESI Challans, differs. All these anomalies led to the conclusion that the factory was not actually consuming the coal, which they were lifting under FSA, rather the same was being diverted.

**35.** Further, reason has been reflected for not conducting physical inspection of the factory. Though the same is not mandatory, yet the reasons mentioned is justified, as the factory has remained closed for four years, no useful purpose would have been served in physical inspection.

**36.** As a Court dealing with certiorari jurisdiction, we are not to substitute the views of the authority, when the said view is probable. Even if there is an alternate view, if the view taken by the authority is probable, the said view cannot be substituted by any alternative views. We are not the Appellate Authority. In the instant case, the view which has been taken by the Central Coalfields Limited cannot be said to arbitrary, illogical or perverse. The said view is probable. When the said view is probable, this Court cannot substitute the same by exercising certiorari jurisdiction conferred under Article

226 of the Constitution of India. Moreover the question whether the coal is being diverted or not is an essential question of fact, involving complicated question of fact, which cannot be decided by a Writ Court.

**37.** Thus, we find no ground to interfere with the impugned order. Since the impugned order of termination is not being interfered with by us, there is no occasion to give direction to refund of the security deposit of the petitioner. This writ petition is thus, dismissed.

**38.** There shall be no orders as to costs.

**39.** Pending interlocutory applications, if any, stand disposed of.

**40.** Urgent certified copies of this order shall be issued as per Rules.

**(Ananda Sen, J.)**

***Per Sanjaya Kumar Mishra, C.J. : I agree***

**(Sanjaya Kumar Mishra, C.J.)**

**High Court of Jharkhand, Ranchi**
**Date, the 21st December, 2023.**

Kumar/Cp-02