

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 2723 of 2018

Adhunik Power & Natural Resources Limited, having its registered office at 14, N.S. Road, 2nd Floor, Kolkata 700001, West Bengal P.O. and P.S. Ballygary through Eshan Singh aged about 27, s/o Sri V.P. Singh, authorised representative of the petitioner at present residing in Bariatu P.O. P.S. Bariatu, Dist. Ranchi Petitioner

Versus

1. Jharkhand State Electricity Regulatory Commission, 2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar, Main Road, P.O. and P.S. Hindpiri, Ranchi-834001, Jharkhand through its Secretary
2. Jharkhand Bijli Vitran Nigam Limited, Engineering Building, HEC, P.O. and P.S. Dhurwa, District- Ranchi 834004, Jharkhand through its Chief Engineer
3. Ministry of Coal, Government of India, Rajpath Area, Central Secretariat, P.O. Baroda House & P.S. Barakhamba Road New Delhi, 110001, through its Secretary
4. Coal India Limited, Coal Bhawan Premise No. 04 MAR, Plot No. AF-III, Action Area-1A, Newtown, Rajarhat, P.O. and P.S. Newtown Kolkata-700156, through its Chairman-cum-Managing Director
5. Ministry of Power, Room No. 415, 4th Floor, Shram Shakti Bhawan, Rafi Marg, P.O. Baroda House & P.S. Barakhamba Road, New Delhi-110001, through its Secretary Respondents

With

W.P. (C) No. 2765 of 2018

M/S. Inland Power Ltd. a company incorporated under the provisions of Companies Act, 1956, having its Registered Office at P-221/2, Strand Bank Road, Kolkata-700001, through its Authorised Signatory Sri M.L. Khetan son of Late C.P. Khetan resident of Shree Apartment, 121 B/2 Moti Lal Nehru Road P.O. and P.S.- Lake Town, Town & District-Kolkata (West Bengal) Petitioner

Versus

1. Jharkhand State Electricity Regulatory Commission, 2nd Floor, Rajendra Jawan Bhawan-cum-Sainik Bazar, Main Road, P.O. and P.S. Hindpiri, Ranchi-834001, Jharkhand through its Secretary
2. Jharkhand Bijli Vitran Nigam Limited, Engineering Building, HEC, P.O. and P.S. Dhurwa, District- Ranchi 834004 Jharkhand through its Chief Engineer
3. Coal India Limited, Coal Bhawan Premise No. 04 MAR, Plot No. AF-III, Action Area-1A, Newtown, Rajarhat, P.O. and P.S. Newtown Kolkata-700156, through its Chairman-cum-Managing Director
4. Ministry of Coal, Government of India, Rajpath Area, Central Secretariat, P.O. Baroda House & P.S. Barakhamba Road New Delhi, 110001, through its Secretary
5. Ministry of Power, Room No. 415, 4th Floor, Shram Shakti Bhawan, Rafi Marg, P.O. Baroda House & P.S. Barakhamba Road, New Delhi-110001, through its Secretary Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioners : Mr. Sumeet Gadodia, Advocate
 Mr. Shadab Eqbal, Advocate (In 2723/2018)
 Mr. Nitin Pasari,
 Ms. Ranjana Mukherjee, Advocates
 (In 2765/2018)

For the JSERC : Mr. Indrajit Sinha (In both cases)

For the UOI : Mr. Prashant Kumar Singh, Advocate

For the JBVNL : Mr. Ajit Kumar, Sr. Advocate
 Mrs. Aprajita Bhardwaj, Advocate

11/24.08.2018

1. Heard Mr. Sumit Gadodia and Mr. Nitin Pasari, counsel appearing on behalf of the petitioners.
2. Heard Mr. Anoop Kumar Mehta, counsel appearing on behalf of respondent Central Coalfields Ltd.
3. Heard Mr. Indrajit Sinha, counsel appearing on behalf of respondent no. 1.
4. Heard Mr. Prashant Kumar Singh, counsel appearing on behalf of respondent Union of India.
5. Heard Mr. Ajit Kumar, Sr. Advocate assisted by Mrs. Aprajita Bhardwaj, counsel appearing on behalf of respondent Jharkhand Bijli Vitran Nigam Ltd.
6. These writ petitions have been filed for the following reliefs:-

(W.P. (C) No. 2723 of 2018)

 - a. *To direct the Respondent No. 1/JSERC to approve the amended PPA dated 15.02.2018, before 19.06.2018 (Annexure-9)*
 - b. *In the alternative, direct as follows:*
 - (i) *Direct Respondent Nos. 3 and 4 to extend the deadline of 19.06.2018, for submission of the approved PPA by the petitioner along with execution of Fuel Supply Agreement with regard to the Letter of Intent dated 21.12.2017, till the amended PPA dated 15.02.2018 (Annexure-8) is approved by the Respondent No. 1/JSERC;*
 - (ii) *Direct Respondent Nos. 3 and 4 to sign/execute a provisional Fuel Supply Agreement with the petitioner, pending approval of the PPA by the Respondent No. 1 Commission; and*
 - c. *Extend the deadline of 19.06.2018 for submission of the approved amended PPA by the petitioner and execution of Fuel Supply Agreement with regard to the Letter of Intent dated 21.12.2017, till the*

pendency of the present petition. (Annexure-8).

(W.P. (C) No. 2765 of 2018)

A. For issuance of direction upon the Respondent-Jharkhand State Electricity Regulatory Commission to show cause as to what is the necessity of public hearing under the law, so far it relates to approval of Power Purchase Agreement between the Generating Company and Distribution Company is concerned, owing to which the process of execution of agreement, and the benefits/privilege arising out of such execution of agreement is being held up, concerning purchase of Coal.

B. Consequent upon showing the cause, if any, and on being satisfied that there is legally/technically no requirement of public hearing for giving approval to the Power Purchase Agreement, necessary directions be issued upon Jharkhand State Electricity Regulatory Commission to approve the draft Power Purchase Agreement submitted by the petitioner with the Respondent No. 1.

C. For issuance of an appropriate Order(s), Direction(s) directing the Respondent No. 3 to provisionally execute the Fuel Supply Agreement with the petitioner pending approval of the Power Purchase Agreement by the Respondent No. 1, Jharkhand State Electricity Regulatory Commission.

D. For issuance of direction upon the Respondent No. 3 and 4 to keep the last date for submission of approved Power Purchase Agreement with the Coal Company in abeyance, till the amended Power Purchase Agreement is duly approved by the Jharkhand State Electricity Regulatory Commission.

7. Short facts of W.P. (C) No. 2723 of 2018

The petitioner has entered into a long term power purchase agreement (PPA) on 28.09.2012 for sale of power to be made available to the State from its coal based power plant for a period of 25 years from the date of commercial operation at the tariff to be determined by the appropriate commission for which appropriate steps were taken. In the meantime, Government of India, Ministry of Coal introduced a new mode of coal allocation policy for power sector in the year 2017 namely SHAKTI vide letter dated 22.05.2017 and SHAKTI scheme dated 16.08.2017 was issued by Coal India Ltd. wherein terms and conditions of auction of coal linkages of independent power producer was provided. The petitioner duly participated in the coal linkage

allocation under the SHAKTI scheme and after being declared as provisional successful bidder the respondent Coal India Ltd. issued Letter of Intent dated 21.12.2017 declaring the petitioner as provisional successful bidder.

Pursuant to issuance of letter of intent, the petitioner was required to execute the supplementary/amended Power Purchase Agreement in order to incorporate the necessary changes in the said Power Purchase Agreement executed between the petitioner and Respondent No. 2. Accordingly the petitioner entered into an amended Power Purchase Agreement dated 15.02.2018 with the Respondent No. 2. It is stated that as per the terms of SHAKTI Scheme, upon grant of linkage of coal, the petitioner is required to pass on the discount in tariff. Accordingly, the petitioner has offered a discount of 3 paise per unit to the Respondent No. 2 for the electricity to be supplied to Respondent No. 2 by using the coal supplied under SHAKTI Scheme, which has been duly recorded in the amended Power Purchase Agreement entered into by the petitioner and Respondent No. 2.

It is pertinent to mention that pursuant to the said amended Power Purchase Agreement dated 15.02.2018, the Respondent No. 2 herein approached the Respondent No. 1 Commission for approval of the same which was registered as Case No. 3 of 2018 by the said Commission.

It is submitted that the petitioner was required to accept the said letter of intent dated 21.12.2007 within a period of 45 days from the date of its issuance, however, Coal India Limited vide corrigendum, dated 03.02.2017, 27.02.2018, 19.03.2018, 20.04.2018 extended the deadline of submitting the approved Power Purchase Agreement & signing of the fuel supply agreement thereby enabling the petitioner to comply with the requirements of SHAKTI Scheme for securing the linkage of coal.

It is further submitted that vide corrigendum dated 19.05.2018 the coal India Limited further extended the deadline for signing of the fuel supply agreement and now the petitioner is to sign the fuel supply agreement before 19.06.2018.

In respect of the petitioner's another Power Purchase Agreement with TANGEDCO, the Hon'ble Central Electricity Regulatory

Commission has been pleased to approve the amendments to the Power Purchase Agreement carried out in pursuance of SHAKTI Scheme vide order dated 18.05.2018 in Petition No. 84/MP/2018.

It is stated that irrespective of the fact that the Respondent No. 1 being fully aware of the fact that the petitioner is required to sign the fuel supply agreement before 19.06.2018, suddenly and without any reasonable justification came out with the impugned letter dated 21.05.2018, thereby directing the Respondent No. 2 to issue public notice for approval of the both the main and the supplementary Power Purchase Agreement, leaving no option but to move this court in this writ petition for the aforesaid reliefs.

8. SHORT FACTS OF THE CASE OF WPC NO. 2765 of 2018

The petitioner in order to establish the Thermal Power Plant in the State of Jharkhand, entered into a Memorandum of Understanding (MoU) with the Government of Jharkhand through its Principal Secretary, Energy Department, vide MoU dated 18.10.2011 for establishment Coal based Thermal Power Plant.

Having entered into the MoU, the then Jharkhand State Electricity Board, vide its agreement dated 23.02.2012, entered into a Power Purchase Agreement with the petitioner for purchase of energy from 1st Unit for 25 years.

In the meantime, Government of India, Ministry of Coal introduced a new mode of coal allocation policy for power sector in the year 2017 namely SHAKTI vide letter dated 22.05.2017 and SHAKTI scheme dated 16.08.2017 was issued by Coal India Ltd. wherein terms and conditions of auction of coal linkages of independent power producer was provided. The petitioner duly participated in the coal linkage allocation under the SHAKTI scheme and after being declared as provisional successful bidder the respondent Coal India Ltd. issued Letter of Intent dated 21.12.2017 declaring the petitioner as provisional successful bidder.

Pursuant to the issuance of the LoI, the petitioner was required to execute the supplementary/amended Power Purchase Agreement in order to incorporate the necessary changes in the said PPA executed between the petitioner and Respondent No. 2, in pursuance of which the petitioner herein entered into an amended Power Purchase Agreement dated 13.02.2018 with the Respondent No. 2 and the Respondent No. 2

herein approached the Respondent No. 1 Commission for approval of the same by the Jharkhand State Electricity Regulatory Commission.

The petitioner was required to accept the said letter of intent dated 21.12.2007 as per its terms and conditions within a period of 45 days from the date of its issuance. However, Coal India Limited vide corrigendum, dated 03.02.2017, 27.02.2018, 19.03.2018, 20.04.2018 extended the deadline of submitting the approved Power Purchase Agreement & signing of the fuel supply agreement thereby enabling the petitioner to comply with the requirements of SHAKTI Scheme for securing the linkage of coal. Vide letter dated 12.06.2018, the Coal India Limited has informed the State of Jharkhand as also Procures/bidders that the deadline beyond 19.06.2018 shall not be extended although the matter regarding approval of Power Purchase Agreement was still pending before the Jharkhand State Electricity Regulatory Commission and in the meantime an order regarding public hearing for giving approval to the amended Power Purchase Agreement was passed by the respondent commission leaving no option but to move this court in this writ petition for the aforesaid reliefs.

9. Counsel submits that as per the provisions of SHAKTI Scheme (Scheme for Harnessing and Allocating Koyla Transparently in India), coal linkages on notified price on auction basis for power producers already concluded long term Power Purchase Agreements and as the petitioner already had long term power purchase agreements , the petitioners were qualified to participate in the auction and having become the provisional successful bidders, as per the SHAKTI scheme itself , the power purchase agreement was to be amended or supplemented mutually between developer and procurer to pass on the discount to the procurer and the approval of the appropriate Commission was required to be obtained, as per the provisions of power purchase agreement or the regulations. Counsel submits that for the purpose of coal linkages in connection with the already concluded Power Purchase Agreement there was no time period prescribed for the purpose of approval of the amended Power Purchase Agreement. However the Coal India Ltd. had communicated vide clause dated 3.6.8. that each provisional successful bidder would require to submit the document mentioning therein and information within 45 days of issuance of letter of intent to such provisional successful

bidder. Accordingly Coal India Ltd. had issued letter of intent dated 21.12.2017 and pursuant to this letter of intent dated 21.12.2017 the petitioner was required to be executed supplementary/amended power purchase agreement in order to incorporate the necessary changes in the existing power purchase agreements and the amended power purchase agreements were entered into between the petitioners and respondent no. 2 and thereafter respondent no. 2 approached respondent Commission for approval of the same. Counsel submits that condition precedent for coal linkage was that the power purchase agreements with necessary changes was required to be approved by the Commission and as per the terms and conditions issued by the Coal India Ltd., the same was to be deposited with them within 45 days from issuance of Letter of Intent. He submits that although the application for approval was filed before respondent no. 1-Commission and the matter was pending before the said authority, the prayer made in the petition filed before the Commission was being actively considered, but no final order was passed and considering these circumstances respondents had issued corrigendum dated 03.02.2018, 27.02.2018, 19.03.2018 and 20.04.2018 and extended the deadline for submission of the approved Power Purchase Agreement. However, vide last corrigendum dated 19.05.2018 approved PPA was to be submitted before 19.06.2018 and respondent Coal India Ltd clearly communicated that there would be no further extension of time.

10. Counsel submits that at this stage, prior to expiry of deadline i.e. 19.06.2018 the petitioners moved before this court for aforesaid relief. That pursuant to the order dated 27.06.2018 and upon counsel appearing on behalf of the respondent no. 1 as well as respondent no. 2, it was directed that the respondent no. 2 would submit response to the queries made by the respondent no. 1 within a period of three days and on the reply being filed, the respondent no. 1 was directed to take final decision within a period of two weeks thereafter. The matter was ultimately expedited vide order dated 27.06.2018 and ultimately in **W.P. (C) No. 2723 of 2018** respondent no. 1 vide order dated 18.07.2018 held that the Jharkhand State Electricity Regulatory Commission has no jurisdiction in the matter and it was Central Electricity Regulatory Commission who has jurisdiction. Pursuant to such order, the petitioner in W.P.(C) No. 2723 of 2018 immediately approached the Central Regulatory Commission and

ultimately Central Regulatory Commission approved the Power Purchase Agreement during the pendency of this case vide order dated 10.08.2018. Thereafter the petitioner has taken necessary steps with respondents Coal India Ltd. for the purpose of entering into fuel supply agreement for declaration of being a successful bidder for the execution of fuel supply agreement. Counsel for the petitioners submits that he satisfies all other conditions and has completed all other formalities and only in view of the fact that the time line which has been prescribed for the purpose of submission of approved Power Purchase Agreement by 19.06.2018 has expired during the pendency of this case, appropriate order is required to be passed. He submits that interim order was granted in favour of the petitioners by this court.

11. So far as **W.P. (C) No. 2765 of 2018** is concerned, pursuant to the order dated 27.06.2018, respondent no. 1 has ultimately approved Power Purchase Agreement vide order dated 18.07.2018 and counsel submits that necessary formalities for the purpose of its declaration as successful bidder for the execution of fuel supply agreement with the respondent Coal India Ltd. has been taken by the petitioners, but on account of the expiry of the time line for the purpose of submission of approved Power Purchase Agreement i.e. 19.06.2018 during the pendency of this case, appropriate order is required to be passed in this case. Counsel for the petitioners further submits that on 24.07.2018 it was observed by this court that pendency of this case will not come in the way of declaration of petitioners as successful bidder and for execution of fuel supply agreement, but in spite of this, respondent Coal India Ltd. has not taken any final decision in the matter which is apparently on account of the pendency of this writ petition.

12. Counsel submits that the matter regarding delay in approval of the amended Power Purchase Agreement of the petitioners was also taken up by Government of India, Ministry of Power, Central Electricity authority as contained in Annexure-25 to the writ records and submits that after considering the entire facts and circumstances following observation was made:-

“ The original time line of 45 days provided in the scheme document for submission of the mentioned documents was extended by CIL to 150 days through four extensions which got expired on 20.05.2018. This timeline

has been further extended by CIL to 180 days recently on 19.05.2018 through Corrigendum XVI to Scheme Document which is scheduled to expire on 19.06.2018”

and it was suggested that considering the fact that the respondent no 1 is taking time in approval, the time for execution of fuel supply agreement may be extended by Coal India Ltd.

- 13.** He submits that although the timeline for the purpose of submission of approved Power Purchase Agreement was 45 days but the same was extended by Coal India Ltd. which indicates that time itself was not essence of the contract and Coal India Ltd. While considering the difficulties had given time by extending the date of submission of approved PPA from time to time. He submits that there was legitimate expectation on the part of the petitioner from Coal India Ltd. to act reasonably. Considering the fact that the entire situation was beyond the control of the petitioners and they were at the hands of respondent no. 1, under such circumstances, the Power Purchase Agreements having been ultimately approved by the competent authority, respondent should be directed to consider the same without being prejudiced by their decision not to extend the time for submission of approved Power Purchase Agreement. Counsel for the petitioners while arguing that they had legitimate expectation and accordingly he submits that mandamus can be issued in such circumstances under Article 226 of the Constitution of India and in support of his argument, counsel has referred to the following decisions.:-

(2016) 11 SCC 31 in the case of Lalram And Others versus Jaipur Development Authority And Another paragraph nos. 135,136,137,151;

(2004) 4 SCC 342 in the case of State of Rajasthan and Others versus Anil Kumar Sunil Kumar & Party and another paragraph no. 7; (2005) 1 SCC 191 paragraph 5 l

(2004) 9 SCC 619 in the case of Managing Director, Army Welfare Housing Organization versus Sumangal Services (P) Ltd. paragraph nos. 110 and 111.

- 14.** Counsel for the petitioners further submits that for the purpose of power purchase agreement, there was statutory restriction under Electricity Act 2003 that the same has to be approved by the concerned Commission and whatever time is elapsed in connection with the same,

the same is required to be relaxed by the respondent Coal India Ltd. as approval of Power Purchase Agreement was a condition precedent for entering into Fuel Supply Agreement pursuant to the petitioners being declared as successful bidder.

15. Counsel appearing on behalf of the respondent Coal India Ltd. on the other hand submits that large number of documents are required to be submitted for the purposes of declaring the provisional successful bidder as successful bidder and for the purpose of execution of Fuel Supply Agreement. He submits that it is the exclusive prerogative of the Coal India Ltd./subsidiary of Coal India Ltd. to take an ultimate decision in the matter and there is no decision as such, therefore in such circumstances it is premature to issue any direction to the respondents Coal India Ltd. or its subsidiary companies for execution of Fuel Supply Agreement. He submits that the situation which existed at the time of filing of the writ petition as of now has changed and ultimately the Power Purchase Agreement has been approved by the competent authority, but that *ipso facto* does not entitle the petitioners to get the Fuel supply Agreement executed and get themselves declared as successful bidder. He also submits that considering the difficulties of the petitioners and other similarly situated persons, the respondent Coal India Ltd. had given number of extensions for submission of approved Power Purchase Agreement. According to the respondents, reasonable time has already been granted to the petitioners for submission of approved Power Purchase Agreement. He submits that the communication was issued to the petitioner vide letter dated 21.04.2018 wherein it was clearly communicated that as reasonable period has already been given for the submission of required documents, last extension dated 20.04.2018 may be treated as final timeline to submit all the required documents and it was also communicated vide communication dated 21.04.2018 that if the amended Power Purchase Agreement and its approval by appropriate commission within the aforesaid timeline is not submitted, necessary action as per the terms of the Scheme document may be taken. He submits that extended period expired on 19.06.2018 and the petitioners have not been able to stick to the timeline provided by the respondents. He submits that now the matter has been crystalized in favour of the respondents and accordingly no mandamus can be issued for the purpose

of execution of Fuel Supply Agreement and declaration of petitioners as successful bidder. He reiterates that the entire consideration as to whether the petitioners shall be declared as successful bidder, as to whether Fuel Supply Agreement has to be executed or not is in exclusive domain of the respondents and no writ of mandamus can be issued in such commercial matters and the petitioners have not been able to show any corresponding right for the purpose of issuance of writ of mandamus. Counsel for the respondent has relied upon the judgment passed by the Hon'ble Supreme Court reported in

(2004) 9 SCC 786 paragraph nos. 15,16 and 17;

(2008) 2 SCC 280 paragraph 12 ;

(1977) 4 SCC 145 paragraph 15.

16. Counsel further refers to the counter affidavit filed by the respondent Coal India Ltd. wherein he has referred to paragraph no. 14 and has submitted that taking into account the fact that Coal India Ltd. has given reasonable period of 180 days for document submission and considered the request of the petitioners for extension of time line for more than one occasion, Coal India Ltd. has no other option but to take recourse to the provisions of scheme. He has also mentioned the difficulty of Coal India Ltd. that quantity of coal booked under e-auction cannot be left un-delivered for an indefinite period of time as this disrupts the production and dispatch plan. He submits that this affidavit was filed vide affidavit dated 8.8.2018 and at that point of time, necessary approval of Power Purchase Agreement was not granted by any of the competent authority and approval has been given only on 10.08.2018. He submits that approval having been given during the pendency of this writ petition and the matter regarding entering of Fuel Supply Agreement and declaring the petitioners as successful bidder has not yet been examined by the respondent Coal India Ltd. or from subsidiary company. No decision has been taken as such by the Coal India Ltd. or subsidiary company of Coal India Ltd. and in such circumstances, no mandamus be issued upon the respondents for declaring the petitioners as successful bidder or for entering into Fuel Supply Agreement. However, counsel for the respondent during the course of argument also submitted that respondent Coal India Ltd. has given reasonable time to the petitioners for getting the Power Purchase Agreement approved.

17. After hearing the parties and after considering the materials on record this court finds that admittedly the parties are covered and governed by the SHAKTI Scheme as long term Power Purchase Agreement as back as in the year 2012 . As per the said scheme, the parties like the petitioners who had entered into long term agreements prior to coming into force of the SHAKTI Scheme, were also entitled to enter into Fuel Supply Agreement if they become successful in the e-auction of coal linkage to be floated by the respondent Coal India Ltd. and its subsidiary company. As per the SHAKTI Scheme itself, the benefit in terms of money was to be passed on and for that purpose Additional Power Purchase Agreement was required to be executed. As per the provisions of the SHAKTI Scheme supplementary Power Purchase Agreement was also required to be approved by the appropriate electricity regulatory commission. Further as per e-auction Scheme floated by the Coal India Ltd., which is involved in the present writ petitions , period for getting supplementary Power Purchase Agreement executed and approved by the appropriate electricity regulatory commission was prescribed to be 45 days.
18. The petitioners and many others had participated in the e-auction and were declared as provisional successful bidder and Letter of Intent was also issued to the several persons after completing necessary formalities. They had to submit all the necessary documents before the Coal India Ltd. including the approved supplementary Power Purchase Agreement. The time period for submission of approved supplementary Power Purchase Agreement was extended for all such persons including the petitioners considering the delay in getting the approval of supplementary Power Purchase Agreement from the appropriate electricity regulatory commission . All other persons except the petitioners could get the required approval within the prescribed extended time limit.
19. So far as these two writ petitioners are concerned, admittedly, the petitions for approval for additional Power Purchase Agreement was filed before the respondent no. 1 by Jharkhand Urja Vikas Nigam Ltd., but inspite of best of efforts , no final order was passed by the said authority, although the said authority was actively considering and was taking up the matter.

20. Admittedly the respondent Coal India Ltd ,considering the fact that the matter regarding approval of amended Power Purchase Agreement is pending considered, found it reasonable to extend the period for submission of approved amended Power Purchase Agreement and extended time by not less than five extensions, total period being 180 days. But in spite of that when the respondent Coal India Limited found that no final decision was coming from respondent no. 1, respondent was of the opinion that reasonable time has been granted to the petitioners for doing the needful and submitting the amended and approved Power Purchase Agreement and therefore the authority thought it proper that no extension beyond 19.06.2018 shall be granted.
21. In such circumstances, petitioners filed these writ petitions before this court before expiry of the extended period i.e before 19.06.2018 and the matter regarding disposal of the case before respondent no. 1 for approval of the amended power purchase agreements was expedited vide order dated 27.06.2018.
22. Ultimately in **W.P. (C) No. 2723 of 2018** respondent no. 1 held that they had no power to approve the amended Power Purchase Agreement and thereafter the petitioners immediately approached the Central Electricity Regulatory Commission and in turn Central Electricity Regulatory Commission has approved the amended Power Purchase Agreement vide order dated 10.08.2018 thereafter the petitioner has approached the Coal India Ltd. for doing needful and for declaring it as successful bidder and for entering into Fuel Supply Agreement.
23. In respect of the petitioner in **W.P. (C) No. 2723 of 2018** another long term Power Purchase Agreement with TANGEDCO is involved in this case and the Central Electricity Regulatory Commission has been pleased to approve the amendments to the Power Purchase Agreement carried out in pursuance of SHAKTI Scheme vide order dated 18.05.2018 in Petition No. 84/MP/2018, which is admittedly prior to the extended date , i.e 19.06.2018 ,but the respondent Coal India Limited has not taken any final decision with respect to this also.
24. In the writ petition being WPC No. 2765 of 2018 the amended power purchase agreement has been approved by the respondent no 1 during the pendency of this case and they have also approached the respondent coal India Limited for declaration as a successful bidder.

25. It appears that there is no order by Coal India Ltd. extending the time any further beyond 19.06.2018 which expired during the pendency of this case.
26. This court further finds that Coal India Ltd. by considering the fact that the matter is pending before the respondent no. 1 for the purpose of approval of amended Power Purchase Agreement considered it appropriate to give reasonable time to the petitioners for getting the same approved and for producing it before the Coal India Ltd.
27. This court also finds that the entire situation was beyond the control of the petitioners in as much as approval of the amended Power Purchase Agreement by respondent no. 1 remained subjudice before the said authority and the petitioners did whatever they could do and ultimately filed these writ petitions in order to expedite the matter.
28. From the conduct of the respondent Coal India Ltd. ,who had considered the difficulties of the petitioners in getting the amended Power Purchase Agreement approved within the time period, extended the time line repeatedly , it appears that time of 45 days prescribed in the e-auction notice for submission of the approved Power Purchase Agreement was never treated to be an essence of contract by the respondent Coal India Limited themselves. It further appears that even in the SHAKTI Scheme, although there was requirement of approval of the amended Power Purchase Agreement by the electricity commission , but no time period was provided. This court further finds that the aforesaid does not mean that the approved Power Purchase Agreement could be submitted by the petitioners beyond reasonable time and what would be the reasonable time will certainly depend on the facts and circumstances of the case. This court finds that the very fact that entire situation was beyond the control of the petitioners, there was legal disability on the part of the petitioners to produce the required document. This court further finds that respondents were themselves of the view that reasonable time should be granted to the petitioners and accordingly this situation should be considered by the respondents while taking any final decision in the matter. This court further finds that the writ petition having been filed prior to the extended dated i.e. 19.06.2018, the respondent Coal India Limited has not yet taken a final decision in the matter and the counsel appearing for the Coal India Limited has argued

that no mandamus can be issued directing the Coal India Limited to enter into fuel supply agreement with the petitioners as the same falls within the exclusive domain of the respondent Coal India Limited and / or its subsidiary companies and the matter arises out of a contract. This court finds that the circumstances that the subsequent development which has been taken place during the pendency of this case and the fact that amended Power Purchase Agreement has already been approved is required to be considered by the authority while taking a final decision in the matter which certainly falls within the exclusive domain of the respondent Coal India Limited and / or its subsidiary companies and the matter arises out of a contract . However, the fact remains that the final decision in the matter is yet to be taken. The fact that the entire situation was beyond the control of the petitioners, cannot be lost sight of and accordingly cannot be ignored. The respondent Coal India Limited being an instrumentality of State is under a legal obligation to Act reasonably and fairly so as to satisfy the requirement of Article 14 of the Constitution of India while considering the documents submitted by the petitioners and is certainly required to consider the legal disability which was faced by the petitioners in not being able to get the amended Power Purchase Agreement approved within time line which was provided to them .

29. This court fully agrees with the submission of the respondent Coal India Ltd. that large number of documents are required to be submitted for the purposes of declaring the provisional successful bidder as successful bidder and for the purpose of execution of Fuel Supply Agreement and that it is the exclusive prerogative of the Coal India Ltd./subsidiary of Coal India Ltd. to take an ultimate decision in the matter and there is no decision as such, therefore in such circumstances it is premature to issue any direction to the respondents Coal India Ltd. or its subsidiary companies for execution of Fuel Supply Agreement. This court also agrees with his submission that the situation which existed at the time of filing of the writ petition, as of now, has changed and ultimately the Power Purchase Agreement has been approved by the competent authority, but that *ipso facto* does not entitle the petitioners to get the Fuel supply Agreement executed and get themselves declared as successful bidder .

30. The judgements which have been relied upon by the counsel

appearing for the respondent Coal India Limited are as follows:-

National Textile Corpn. Ltd. v. Haribox Swalram, (2004) 9 SCC 786, it has been held that "it is well settled that in order that a mandamus be issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. The present is a case of pure and simple business contract. The writ petitioners have no statutory right nor is any statutory duty cast upon the appellants whose performance may be legally enforced. No writ of mandamus can, therefore, be issued as prayed by the writ petitioners."

Oriental Bank of Commerce v. Sunder Lal Jain, (2008) 2 SCC 280, it has been held that "in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant Bank to declare their account as NPA from 31-3-2000 and apply RBI Guidelines to their case."

In Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh, (1977) 4 SCC 145, it has been held as follows:

"15. Re: Contention 3: This contention is also well founded and must prevail. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. (See *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer*⁸, *Rai Shivoendra Bahadur Dr v. Governing Body of the Nalanda College*⁹ and *Umakant Saran Dr v. State of Bihar*¹⁰). In the instant case, it has not been shown by Respondent 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent 1 was not entitled to apply for grant of a writ of mandamus ¹⁵³under Article 226 of the Constitution and the High Court was not competent to issue the same."

31. Considering the facts and circumstances of this case and the aforesaid judgements cited by the respondents, this court is not inclined to issue any mandamus or direction upon the respondent Coal India Limited to execute fuel supply agreement with the petitioners or to declare the petitioners as successful bidders from their status as provisional successful bidders.

32. Admittedly the respondent Coal India Limited has not taken any final decision in this regard. This is also apparent from the fact that with respect to Power Purchase Agreement with TANGEDCO

which is involved in this case , the Central Electricity Regulatory Commission has been pleased to approve the amendments to the Power Purchase Agreement carried out in pursuance of SHAKTI Scheme vide order dated 18.05.2018 in Petition No. 84/MP/2018, which is admittedly prior to the extended date , i.e 19.06.2018 ,but the respondent Coal India Limited has not taken any final decision with respect to this also.

33. This court finds that as the respondent Coal India Ltd. has yet to take a decision in the matter in the changed circumstances which has taken place during the pendency of these writ petitions that the amended Power Purchase Agreement has now been approved . This court is of the considered view that the final decision is required to be taken by the respondent Coal India Ltd. as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order, as much delay has already occurred as is apparent from the submissions of both the parties . It is expected that the authorities of respondent Coal India Limited themselves will act fairly and reasonably so as to satisfy the mandate of Article 14 of the Constitution of India and with particular consideration of the fact that this court has already held that the petitioners were under legal disability in submitting the amended Power Purchase Agreements on account of the reasons beyond their control and one of the amended power purchase agreements (out of two) involved in WPC NO 2723 of 2018 was already approved by the concerned regulatory commission much prior to 19.06.2018 but no final decision has been taken so far in connection with this also .
34. It is made clear that this writ petition is confined to the issue regarding delay in submission of amended Power Purchase Agreements and has no concern with the other obligations of the parties arising out of the e-auction involved in these cases.
35. These writ petitions are disposed of with aforesaid observations.

(Anubha Rawat Choudhary, J.)

