

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8944/2005

Reserved on: 3rd March 2010

Decision on: 16th April 2010

CENTRAL COLLIERIES COMPANY LTD. Petitioner
Through: Mr. Ravi Gupta, Sr. Advocate with
Mr. Rishi Kapoor, Advocate

versus

UNION OF INDIA & OTHERS Respondents
Through: Mr. P.P. Malhotra, ASG with
Mr. Ravinder Agarwal, CGSC for UOI
Mr. Rahul Khurana, Advocate for
Ms. Subhangi Tuli, Advocate for R-2 & 3

CORAM: JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
16.04.2010

1. The challenge in this writ petition is to an order dated 3rd November 2004, passed by the Additional Secretary, Ministry of Coal and Mines, acting as the Revisional Authority under Section 30 of the Mines and Mineral (Development and Regulation) Act, 1957 [hereinafter referred to as the “MMDR Act”]. Also challenged in this petition is an order dated 30th October 2002, passed by the Coal Controller, Ministry of Coal and Mines, Government of India whereby the Petitioner was directed not to dispose of/supply the coal mined from the leased area of its captive coal mine to any agency or party other than its proposed power plant.

Background Facts

2. The Petitioner Central Collieries Company Ltd. (hereinafter referred to “CCCL”) having its office at Nagpur and engaged *inter alia* in the business of mining applied on or around 4th July 1996 to Ministry of Coal for grant of a captive coal mining block for their proposed washery-cum-power generation project. It is stated that on 29th May 1998 the Screening Committee, an in-house mechanism set up by the Ministry of Coal, identified coal blocks which could be granted to CCCL. This was communicated to CCCL by a letter dated 29th May 1998 of the Director, Ministry of Coal. CCCL felt that these coal blocks were inadequate to sustain a power project and indicated this to the Ministry of Coal by its letter dated 16th June 1998. In terms of Section 5(2) of the MMDR Act, CCCL prepared a mining plan, and this was approved by the Central Government on 2nd September 1999.

3. On 15th October 1999, the Government of Maharashtra forwarded the proposal for grant of mining lease to the Central Government. The proposal was for grant of mining lease for coal over an area of 271.00 hectares in village Bellora–Jena Takli, South Part, Tehsil: Bhadravati, District Chandrapur for a period of thirty years. It was proposed that the lease should be granted on the terms and conditions along with three additional conditions:

- “i) No mining operation should be started in any area which is not prospected by State Government or by the company.
- ii) Minerals extracted from the above mines should be used as a captive source of raw material for their own plant only.
- iii) The coal should not be used for commercial and trading

purpose.”

4. At this stage it requires to be noticed that under Rule 27(3) of the Mineral Concession Rules, 1960 (MCR) as it then stood, the power to impose such conditions was with the State Government. By a separate letter dated 15th October 1999, the State Government sought approval of the Central Government for the grant of mining lease in terms of Section 5(1) of the MMDR Act as coal was a mineral listed under Schedule I to the Act. Therefore, there were two distinct approvals sought by the state government from the central government: (i) under Section 5(1) of the MMDR Act and (ii) the other for the grant of lease with certain conditions imposed as contemplated by Rule 27(3) of the MCR.

5. In terms of the mining plan of the Petitioner which was approved by the Central Government, the mine was to reach its optimum capacity of 0.45 million tonnes per annum in the 6th year of operation. The power plant was scheduled to become operational by the 6th year so as to synchronize the availability of adequate coal. CCCL was aggrieved with the condition proposed by the State Government that it should not dispose of the coal which would be mined in the first six years. The proper development of the mine would require that the coal mined in smaller quantities in the first six years had to be disposed of. It is stated in the petition that an earlier proposal of the Petitioner to have the mine reach its optimum capacity in two years was rejected by the Central Government as not being technically feasible. CCCL submits that under Section 3(3) of the Coal Mines (Nationalisation) Act, 1973 [hereinafter referred as “CMNA”]

as amended by the Coal Mines (Nationalisation) Amendment Act, 1993 [hereinafter referred as “the amended CMNA”] washing of coal obtained from mine was recognized as a permissible end-use for granting mining lease of coal to a private entrepreneur. In the above circumstances, CCCL wrote to the State Government on 10th November 1999 drawing its attention to the difficulties that it would have to encounter if it was not permitted to dispose of the coal that was mined till the sixth year. In response to this representation, the State Government wrote to the Petitioner on 21st December 1999 whereby it informed the Petitioner that the additional conditions mentioned in its letter dated 15th October 1999 to the Central Government, as extracted hereinbefore, were being waived.

6. By a letter dated 28th December 1999 the Central Government approved the State Government’s proposal for the grant of the mining lease to the Petitioner and it also accorded approval to the imposition of the three conditions as mentioned by the State Government in its letter dated 15th October 1999. On 29th January 2000, the State Government passed an order granting mining lease to the Petitioner without the additional conditions which had already been waived by it as communicated to the Petitioner by its letter dated 21st December 1999. On 17th February 2000 a mining lease was executed in favour of the Petitioner in terms of which the Petitioner was to commence developing the mine within one year.

7. In the process of seeking permission for opening the mine in terms of the Colliery Control Order (CCO), the Petitioner furnished to the Coal Controller along with its letter dated 8th February 2000 a copy of the order

dated 29th January 2000 of the State Government granting it the lease. A copy of the said order was also sent to the Joint Secretary, Ministry of Mines and Minerals (Department of Coal) on 18th February 2000. By its letter dated 28th February 2000, the Ministry of Coal granted permission to CCCL under Clause 9 of the CCO to open the mine. Pursuant thereto CCCL commenced mining operations.

8. CCCL has in para 20 of the writ petition detailed the steps taken by it to make the power project operational. It is stated that the permission from the Maharashtra State Electricity Board (MSEB) under Section 44 of the Electricity Supply Act, 1948 could be obtained only on 29th September 2001. Although CCCL applied to the Collector, Chandrapur on 4th October 2000 for acquisition of additional land under the Land Acquisition Act, 1894 for the power project at village Tulana, Tehsil Warora, Dist. Chandrapur, steps were not taken by the authorities in that regard up to the date of the filing of the present petition.

9. On 9th July 2001, CCCL wrote to the State Government seeking permission to split up the project in two phases. It proposed to set up a washery in Phase-I while in Phase-II it would set up the power plant. This was accepted and permission was granted to CCCL by the State Government by a letter dated 31st July 2001. CCCL was allowed to dispose of the washed coal as waste which in any event was a permissible end-use in terms of CMNA as amended in 1993.

10. It is stated that on 13th July 2001 the Ministry of Coal, Government of

India wrote to the State Government that it should cancel the lease of CCCL as it had violated the lease conditions. In the said letter, it is mentioned that soon after the grant of the mining lease, CCCL had started “looking to sell” the coal extracted from the said captive mine block as was borne out from CCCL’s letter dated 14th August 2000 to the MSEB. It also referred to a report dated 4th September 2000 received from the Western Coalfields Ltd. to the effect that the coal mining activities had already commenced in the said block by CCCL as was evident from the huge overburden dumps and movement of heavy earth moving machineries etc. whereas no activity for installation of the captive power plant was visible. Further, the Officer on Special Duty (OSD) in the Coal Controller’s Organisation, Nagpur undertook an inspection of CCCL’s captive coalmine block on 3rd July 2000 and found that the mine was working in full swing and the excavated portion was thereby overburdened to the tune of 1.9 lakh cubic metres having been removed till 30th June 2000. Yet no physical activity was visible for setting up the washery to wash the coal and for installing the power plant. It is stated that these observations were conveyed to the Petitioner by the OSD by the letter dated 3rd July 2000.

11. In the letter dated 13th July 2001 of the Ministry of Coal, reference was also made to a letter dated 12th May 2000 addressed to it by CCCL stating that since coal production was to commence shortly, it had tied up with various steel and cement parties to dispose of the coal extracted from the captive mine. Further on 7th August 2000, CCCL informed the Ministry that it had obtained the clearance from the Ministry of

Environment and Forest (MOEF) and was proceeding with the disposing of the coal as indicated in the previous letter dated 12th May 2000. According to the Ministry of Coal all these factors showed that CCCL was engaged in the disposal of the coal mined from the captive mine, which was in violation of the lease conditions. The said communication dated 13th July 2001 from the Central Government to the State Government also mentioned that CCCL had been served with the show cause notice dated 17th October 2000 and the response thereto from CCCL was not found satisfactory. It was in the above circumstances that the recommendation was being made to the State Government to cancel the lease.

12. Acting on the above communication, a notice was issued by the State Government to CCCL on 4th December 2001 asking it to show cause, why the mining lease should not be cancelled under Section 4A (1) of the MMDR Act. CCCL submitted a reply on 13th December 2001, pointing out that the lease did not contain any captive use condition and that such a condition had been waived by the State Government by its communication dated 21st December 1999. After considering the said reply, the State Government by a letter dated 18th March 2002 informed the Central Government that on going through the explanation received from CCCL and the inspection report of the Directorate of Geology and Mining, Nagpur, it had been decided to withdraw the show cause notice issued to CCCL. It appears that two further letters were written by the Central Government to the State Government in this connection on 11th April 2002 and 14th May 2002. In response thereto, the State Government wrote to the Central Government on 30th July 2002 informing it that the State

Government had permitted CCCL to split up its project in two phases and that it had been permitted in the first phase to install a washery and dispose of the washed coal. The State Government is stated that consequently “in larger interest of minerals and mineral based industries, it will not be possible for Government of Maharashtra to cancel the mining lease granted in favour of M/s Central Collieries Company Ltd and also to prevent them from extraction of coal from their mine”.

13. The Central Government did not take kindly to the above response of the State Government. By a communication dated 27th August 2002 addressed to “The Division Bench, Provisional Authority, Department of Coal” it requested the Revisional Authority to take *suo motu* notice of the violation of the conditions of the lease by CCCL and revise the order dated 29th January 2000 of the State Government granting mining lease to CCCL as well as the mining lease dated 17th February 2000 executed pursuant thereto. Enclosed with the said communication were “(i) facts of the case, (ii) chronology of events and (iii) a set of photocopies of documents relied upon”. In the last paragraph of the said communication dated 27th August 2002 a request was made to the Revisional Authority to pass suitable orders in the case “including due incorporation of the exclusive use condition in the lease grant order (u/s. 10(3) of MMDR Act) and the consequent lease deed”.

14. In the statement of facts of the case enclosed with the above communication dated 27th August 2002, it was stated that the decision of the State Government not to include the exclusive use condition in its

order for grant of mining lease and the subsequent lease deed violated Section 5(1) of the MMDR Act read with Rule 27(3) of the MCR as “the said condition is a part of the prior approval of Central Govt. u/s. 5(1) instanced by the Central Govt. as an additional condition u/R.27(3)”. Consequently, it was submitted that the order of the State Government granting mining lease as well as the lease deed was void and of no effect under Section 19 of the MMDR Act.

15. The Central Government also prayed for interim relief of stay of the operation of mining lease by the Revisional Authority. Consequent thereto a notice dated 4th September 2002 was issued to CCCL by the Revisional Authority asking it to show cause why the interim relief should not be granted. CCCL submitted a detailed reply dated 9th December 2002.

16. By a communication dated 28th January 2003, the Revisional Authority informed the parties that it had decided to hear the *suo motu* revision petition itself finally rather than issuing an interim order. The Revisional Authority comprised of the Joint Secretary, Ministry of Coal and the Joint Secretary, Law and Judiciary heard the revision petition on 3rd March 2003. The Joint Secretary, Coal held that the order dated 29th January 2000 passed by the State Government and the consequent lease executed on 17th February 2000 were not sustainable in law. Consequently he directed the State Government to issue a fresh lease containing the additional conditions and left the issue of interim disposal of the coal to be decided by the Ministry of Coal within a reasonable time. The other Member, i.e., the Joint Secretary, Law and Judiciary differed and by his

WP(C) No.8944/2005

opinion dated 4th September 2003 held that the State Government's order dated 29th January 2000 and the mining lease dated 17th February 2000 could not be held to be void.

17. By a letter dated 3rd September 2004, CCCL was informed by the Ministry of Coal that the *suo motu* proceedings against an order dated 29th January 2000 initiated by the State Government were once again placed before the Additional Secretary, Department of Coal, New Delhi. It is submitted by CCCL that this procedure was contrary to law as the revision petition ought to have been referred to a third member to decide the difference of opinion between the two Members who constituted the Revisional Authority. There was no power under Section 30 of MMDR Act to have the same matter decided afresh by another Revisional Authority.

18. The newly constituted Revisional Authority, i.e., the Respondent No. 4 herein heard the parties on 22nd and 23rd September 2004 and by an order dated 3rd November 2004 held that the order dated 29th January 2000 of the State Government and the consequent lease dated 17th February 2000 in favour of the Petitioner were void under Section 19 of the MMDR Act.

Present petition and orders

19. The present petition was filed on 21st May 2005. When it came up for hearing on 25th May 2005, this Court was informed that the Petitioner had received a show cause notice dated 20th April 2005 from the Central
WP(C) No.8944/2005

Government on 13th May 2005. In that view of the matter, an application (CM No. 7277 of 2005) was filed seeking to amend the writ petition to the challenge the said show cause notice. This was allowed by an order dated 30th May 2005.

20. In the same order, this Court noted the submission that the said notice required CCCL to show cause against proposed penal action by the Central Government. The Court also noted that without prejudice to its rights and contentions, CCCL stated that it was willing to give an undertaking to the effect that it will not effect any mining activity from the coal mine in question, and also not dispose of or part with the coal which has already been mined from the mine in question. Subject to the said undertaking being filed within ten days, this Court directed that the Union of India would not take any penal action against CCCL.

21. By a further order dated 27th July 2006, CCCL was permitted to amend the writ petition to incorporate subsequent facts. By the aforementioned amendment, CCCL brought on record the facts concerning the steps taken by it to obtain permissions and approvals for its power project. It also brought on record the guidelines issued by the Central Government for disposal of the coal mined during the development phase of the mine. These guidelines were posted on the website of the Ministry of Coal. CCCL also brought on record a copy of the letter dated 16th June 2005 written by the State Government to the Central Government referring to a circular dated 29th November 2002 directing the State Governments to revise the mining lease including all

the captive use conditions approved by the Central Government. In accordance with the said circular the State Government had decided to revise the mining lease granted by its order dated 29th January 2000 to CCCL, incorporating the conditions. With its letter dated 16th June 2005, the State Government enclosed a copy of the revised lease deed incorporating the said conditions.

22. It must be mentioned here that CCCL has categorically stated before this Court during the arguments as well as in its written submissions that it is open to the very same conditions being incorporated in the lease deed and it is only aggrieved by the cancellation of the lease itself. It is pointed out that CCCL has since taken effective steps for making the power project operational. CCCL has made heavy investments to acquire 250 hectares of land and more than Rs. 15 crores have already been spent by it on the project. It is stated that the holding cost of the project is Rs. 2.5 crores every year. CCL refers to certain other instances where the leases were not declared void for non-inclusion of the conditions but an order was passed requiring inclusion of such conditions. It is accordingly prayed that CCCL should not be discriminated against in this regard.

Stand of the Central Government

23. The reply of the Central Government to this petition in defence of its impugned orders is that the non-inclusion by the State Government of the captive use conditions approved by the Central Government in its order dated 28th December 1999 in the lease deed was in violation of the CMNA; that the order dated 29th January 2000 passed by the State

Government granting the lease in favour of the Petitioner and the consequent lease deed dated 17th February 2000 were null and void under Section 19 of the MMDR Act. While it is not denied that the two-member Revisional Authority had “failed to arrive at a consensus in their judgment”, the Central Government treats this as “a no decision” following which powers were delegated to the Additional Secretary to “decide the case afresh”. According to the Central Government, the Additional Secretary was a Single Bench Revisional Authority who considered the written submissions made before the two Member Revisional Authority, and further written submissions filed before him and “passed the impugned order dated 3rd November 2004”. It is asserted that the said order has been passed lawfully after following the due procedure.

24. In reply to the averment in para 14 of the writ petition that the State Government had sent a copy of its letter dated 21st December 1999 waiving the conditions to the Ministry of Coal, the Central Government states that the State Government “never wrote to the Central Government expressing their intention to withdraw the conditions and such withdrawal was never perhaps with reference to the letter dated 15th October 1999 wherein it proposed additional conditions”. In reply to the assertion made in para 18 of the writ petition that it had supplied to the Coal Controller a copy of the lease deed, it is stated that in para 12 of the counter affidavit that “the Petitioner deliberately did not forthwith submit a copy of the lease deed which did not contain the additional conditions till May 2003”.

It is asserted likewise in para 13 of the counter affidavit as well. The stand

of the Central Government as regards the Rule 27(3) of the MCR is that once the Central Government issues an order directing the incorporating of conditions in a lease deed in terms of Section 5(1) of the MMDR Act, the State Government cannot thereafter waive the conditions on the ground that they were not required. That would be in conflict with the approval given by the Central Government and therefore such withdrawal could not be unilateral and without consultation/prior approval of the Central Government.

25. What is significant is that in response to para 22 of the writ petition, which refers to the letter dated 13th July 2001 written by the State Government to the Central Government, it is stated in para 16 of the counter affidavit as under:

“16. The submission of the petitioner in para 22 of the petition brings to fore the collusion of the petitioner and someone in the State Government of Maharashtra in waiving the additional conditions proposed to be imposed, without the approval of the Central Government. With the incorporation of the additional conditions in the lease deed, it would not have been possible for the petitioner to sell coal subsequently in the market in violation of the provisions of law.”

Stand of the State Government

26. In its reply affidavit dated 19th September 2005, the Government of Maharashtra states that prior to making any change in the conditions, it was mandatory for the State Government to have obtained the approval of the Government of India which was, however, not done. It is factually not denied that the Government of Maharashtra issued the letter dated 31st

July 2001 permitting CCCL to split up the project into two phases and also dispose of the washed coal. In para 13 it is stated as under:

“13. That I say and submit that based on above background while reverting back to contentions made in the notice given by the RA the Government of Maharashtra had consulted the Advocate General and categorically accepted that the following actions taken by the officials of Government of Maharashtra without consultation with Government of India amounted to gross irregularity committed by concerned State Government officers:-

- (i) waiver of additional conditions and captive use conditions prescribed by Government of India under their letter dated 28.12.1999.
- (ii) grant of Mining lease as well as execution of Lease Deed with M/s. CCCL, Nagpur excluding the additional conditions and captive use conditions prescribed by Government of India as mentioned in clause (i) above.
- (iii) To approve the request of M/. CCCL, Nagpur to split their project in two phases viz. Coal Washery and Power Generation.

Thus, the Government of Maharashtra vide Government letter, Industries Energy and Labour Department No. MMN-1895/7642-II/IND-9 dated the 15th February, 2003 accepted before the RA that concerned officers of the State Government should not have taken the above actions without consulting with Government of India.”

27. Thereafter in para 14 it is stated that although it had in fact written the letter dated 16th June 2005 to the Central Government proposing issuance of a fresh lease deed incorporating conditions it had since been decided not to pursue the recommendation and also withdraw its request for

waiver. Thereafter in para 15 it is stated as under:

“15. That I say and submit that as mentioned earlier, the concerned State Government Officers have committed gross irregularities in the matter. Therefore, the State Government is examining the issue of fixing accountability/responsibility for this mess and take suitable action against the erroneous officers as per prescribed Rules at the earliest.”

28. It is significant that in Annexure-VI to the counter affidavit of the State Government, a copy of the letter dated 21st December 1999 written by the State Government to CCCL is enclosed which clearly shows that a copy of the said letter was forwarded for information to the Ministry of Coal, Government of India with a reference to “office letter of even No. dated 15th October 1999”.

Petitioner’s rejoinder

29. In the rejoinder, it is pointed out by CCCL that during the course of hearing before the Revisional Authority on 23rd December 2002, the Central Government had in fact admitted that the copy of the communication dated 21st December 1999 of the State Government was received by them. Further, it is pointed out that the State Government in its reply dated 15th February 2003 before the Revisional Authority had clearly stated that a copy of the lease deed was marked to the Central Government Office, namely, the Indian Bureau of Mines and the Chief Inspector of Mines, Dhanbad and that this was in accordance with the Rule 57 of the MCR. It is accordingly denied that the said letter was not submitted to the Central Government earlier. The allegation made in the

counter affidavit that there was collusion between someone in the State Government and CCCL, has been denied as being preposterous. As regards the counter affidavit of the State of Maharashtra, the stand taken is denied as being fallacious. It is pointed out that the waiver of the additional conditions took place prior to the issuance of the letter dated 28th December 1999 of the Central Government, and that inclusion of such conditions was to no effect thereafter.

Orders by this Court

30. It may be mentioned that on 19th March 2007, this Court passed an order recording the statement of the Senior counsel of the Petitioner that CCCL would be willing to inclusion of the conditions of captive use of the mined coal into the lease deed. Pursuant thereto an affidavit was filed on 10th September 2007 by CCCL where apart from enclosing copies of letters exchanged with the State Government regarding CCCL's supplying material to the Maharashtra Power Generation Company, a copy of the letter dated 17th July 2007 written by the State Government to the Central Government on the alleged irregularities committed by the officers of the State Government was enclosed. By the said communication dated 17th July 2007 the State Government conveyed to the Central Government that:

“The concerned State Government Officers have taken decisions in the interest of the State and the Senior Officers have supported the same. In any case, the Government of India has cancelled the said Mining Lease and also the matter is ‘**subjudice**’ before the Hon’ble High Court, New Delhi.”

31. Thereafter this Court passed a detailed order on 15th January 2008 where after noticing some facts, it was directed that the Respondents should take a relook and place the direction/decision on affidavit before the Court.

32. Pursuant thereto, on 3rd March 2008 the State Government filed an affidavit stating that in its view after the impugned order dated 13th November 2004 was passed by the Revisional Authority, “the existence and validity of the order granting mining lease in favour of the Petitioner came to an end”. Thereafter a letter dated 4th December 2005 was written by the State Government to the Central Government to reserve certain coal blocks, including those granted to CCCL on lease, for the Maharashtra Power Generation Company. It was stated that the State Government would abide by the decision of the Court.

33. The Central Government filed an affidavit dated 1st September 2008 conveying that it was not inclined to accept the proposal of CCCL for incorporation of the conditions into the lease, “since it is fraught with dangerous consequence as it would set a wrong precedent and others may get encouraged to resort to such malpractices”.

Submissions of counsel

34. This court has heard the submissions of Mr. Ravi Gupta, the learned Senior counsel appearing for CCCL and Mr. P.P. Malhotra, the learned Additional Solicitor General of India (ASG), appearing for the Central Government.

34a. Apart from reiterating the submissions orally made as reflected in the pleadings referred to hereinbefore, it is submitted by Mr.Gupta that the Central Government has not correctly understood the scope of the powers of the State Government under Rule 27(3) of the MCR prior to its amendment. It is pointed out that the amended provisions came into effect only on 17th January 2000 after the waiver of the conditions by the State Government. The amended provision which enabled the Central Government to impose conditions was only prospective. Further the lease itself did not incorporate the conditions and therefore there was no question of violation of the terms of the lease deed. As regards action under Section 4-A of the MMDR Act, it is submitted that the issuance of the show cause notice by the State Government to CCCL on 4th December 2001 and its subsequent letter dated 18th March 2002 dropping the show cause after receiving CCCL's reply brought a closure to that action. That decision had become final and could not be legally permitted to be reopened on the same cause of action. Thirdly, it is pointed out that it was not as if the Central Government was unaware that the lease deed had been executed incorporating the conditions. A copy of the lease deed without the conditions had been furnished to the Central Government in February 2007. Fourthly, it is pointed out that even in the communication dated 27th August 2002 from the Central Government to the Revisional Authority seeking *suo motu* notice the request was for incorporation of the conditions in the lease deed and not for its cancellation. This is also plain from the statement of the facts placed before the Revisional Authority.

The said Revisional Authority could not have granted relief beyond what

was prayed for by the Central Government. Reliance is placed in this connection on the decisions in *V.K. Majotra v. Union of India AIR 2003 SC 3909* and *C. Krishnan v. Kistammal 2008 (12) SCALE 631*.

35. Commenting on the procedure adopted by the Revisional authority it is submitted by Mr. Gupta that an unusual procedure was adopted by the Central Government in not referring the difference of opinion between the two Members of the Revisional Authority to a third member but placing the entire matter afresh before another single bench Revisional Authority. In the considered view of this Court, this was wholly illegal and was not contemplated by Section 14 of the MMDR Act. The narrow area of difference between the two members who constituted the Revisional Authority was whether the lease deed should be executed afresh incorporating the conditions. Neither of the two members of the Revisional Authority had recommended the cancellation of the lease deed. In the circumstances, the reference thereafter to a single member Revisional Authority was a procedure unknown to the MMDR Act and the earlier practice of that Authority itself.

36. It is submitted that the single Member Revisional Authority exceeded the scope of the proceedings and decided the matter *de novo*. Even on merits, the decision of the Revisional Authority was unsustainable. The mining plan proposed by CCCL and approved by the Central Government itself showed that for at least six years after the mine became operational, the quantity of coal mined could not be sufficient for being used by the power plant. As long as this mining plan was found acceptable, the waiver

of the conditions of the captive use by the State Government could not be said to be unreasonable. This was also consistent with the provisions of the CMNA as amended as well as the State Mineral Policy. Consequently, if none of the additional conditions suggested earlier were incorporated in the lease deed in favour of CCCL, it did not vitiate the lease. CCCL had also taken steps to get its power plant going. There was therefore no contravention of any of the provisions of the MMDR Act or the MCR.

37. Mr. P.P. Malhotra, the learned ASG reiterates the submissions made in the counter affidavit. According to him, the submission that the imposing of additional conditions under Rule 27(3) of the MMDR Act was the sole prerogative of the State Government was incorrect. He submits that in exercise of its powers under Section 5(1) of the MMDR Act, the Central Government could impose such conditions as it thought fit. It is further submitted that even if this argument is not accepted, once the conditions suggested by the Central Government to the State Government were made part of the approval for grant of mining lease, non-inclusion of the same in the lease deed would render the lease deed void under Section 19 of the MMDR Act.

38. In the written submissions on behalf of the central government, there is a separate heading “The Petitioner has in collusion with some officials of the State Government has played a fraud upon the Central Government”. In support of this, reference is made to the statement in the counter affidavit of the State Government to the effect that it has itself

admitted fault of its officers both before the Revisionary Authority and before this Court. It is stated that “subsequent refusal of the State Government to initiate action against the delinquent officers on the ground that the same was not in the interests of the State and that because the issue was sub-judice, cannot change the admitted position”. The main objection raised by the Central Government is that the State Government unilaterally and without prior permission of the Central Government withdrew the captive use conditions and that it did not communicate the same to the Central Government. Reference is made to the findings returned by the Revisional Authority in the impugned order. It is submitted that “under mysterious circumstances the Petitioners had got the mining plan altered”. Again a reference is made to the impugned order to point out that “despite specific direction copy of the lease deed not supplied to the Central Government”.

39. Lastly, it is submitted by the central government that the State Government unilaterally on 31st July 2001 permitted CCCL to split the project into two phases and granted permission to sell the washed coal, which is contrary to law. While it is not denied that the Central Government approved CCCL’s mining plan, a reference is made to the inspection conducted on 3rd July 2000 by the OSD where he referred to the fact that the full capacity of the coal mine was about to be reached but there was no physical activity for setting up either the washery or the power plant. It is submitted that the rated capacity of the mine was 4.5 lakhs tonnes per year whereas the actual requirement of the power plant was 7 lakhs tonnes. Therefore “even at the rated capacity the supply of

coal was to be augmented from the open market”. As regards the circular dated 29th November 2002, it is submitted that the circular is prospective and was issued “by way of abundant caution to avoid undesirable situations, as have emerged in the present case”.

40. Reliance is placed by the learned ASG on the judgment of a learned Single Judge of this Court in *Satna Power Co. P. Ltd. v. Union of India [in WP(C) No. 2477 of 2006 delivered on 2nd May 2006]* where it was emphasized that the company which has been permitted to carry out coal mining operations for captive use would use the coal “solely for the purpose of generation of power”. Any practice to the contrary would not have any efficacy. Reliance is placed on the decision in *Mannalal Khetan v. Kedar Nath Khetan (1977) 2 SCC 424* to emphasize that “where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give its effect”.

Validity of the grant of lease to the petitioner

41. The next question to be considered is whether the order dated 29th January 2000 granting lease in favour of the Petitioner, passed by the State Government and the subsequent lease deed dated 17th February 2000 without incorporating the conditions as stated in the letter of the Central Government dated 28th December 1999 was null and void in terms of Section 19 of the MMDR Act. Under Section 5(1) of the MMDR Act, the prior approval/permission of the Central Government granting lease is undoubtedly mandatory. However, under Rule 27(3) of the MCR, prior to its amendment, it was for the State Government to indicate if certain

conditions were required to be incorporated.

42. In the instant case, the record shows that it was the State Government that initially proposed along with its letter dated 15th October 1999 that the condition regarding non-disposal of the coal mined by CCCL be incorporated in the lease deed. This was consistent with Rule 27(3) of the MCR which prior to its amendment reads as under:

“The State Government, if it is of the opinion that in the interest of mineral development it is necessary so to do, may, in any case, with the previous approval of the Central Government, impose such further conditions as it thinks fit”.

43. It is not possible to agree with the submissions of the learned ASG that in the instant case, when by the order dated 28th December 1999, the Central Government incorporated certain conditions for grant of the lease, it was doing so independently in exercise of its powers under Section 5(1) of the MMDR Act. A plain reading of the letter shows that it refers to the State Government’s letter dated 15th October 1999. Further, the conditions suggested by the central government are no different from those that had been proposed by the State Government in its letter dated 15th October 1999. Para 2 of the said letter dated 28th December 1999 states that the previous approval of the Central Government “under Rule 27(3) of the Mineral Concessions Rule is also accorded for incorporation.....” Rule 27(3) as extracted hereinbefore as it stood on that date did not envisage any such prior approval of the central government. The power in this regard was with the State Government. When this is contrasted with Rule 27(3), as amended with effect from 17th January 2000, it becomes

apparent that the submission of the Central Government is untenable. The amended Rule 27(3) of the MCR reads as under:

“The State Government may, either with the previous approval of the Central Government or at the instance of the Central Government, impose such further conditions as may be necessary in the interests of mineral development, including development of atomic minerals.”

44. The essential difference between the unamended and the amended rule is that under the unamended rule, the prerogative was with the State Government as to the conditions which it could impose whereas under the amended provisions even the Central Government can require the State Government to impose such conditions.

45. The fact of the matter is that even before the Central Government issued an order conveying its approval on 28th December 1999, the State Government had waived the conditions by its letter dated 21st December 1999. The central government has maintained that the said letter dated 21st December 1999 was in fact not communicated to it. A copy of the said letter as enclosed as Annexure-VI with the counter affidavit of the Government of Maharashtra in the present case indicates that a copy of the said letter was indeed marked to the Central Government. The denial by the Central Government in this regard is not very convincing. What is significant is that the State Government does not say that the copy of the said letter was not sent to the Central Government. Be that as it may, when the order dated 29th January 2000 granting lease in favour of CCCL was passed by the State Government, the said conditions as suggested by

the central government in its letter dated 28th December 1999 were not incorporated. A lease deed was executed thereafter on 17th February 2000 without incorporating the said conditions. A copy of this lease deed was given to the Central Government. While even here there is a dispute raised whether the copy of the lease deed was in fact given to the Central Government, it appears from the pleadings that an affidavit was filed by the State Government before the Revisional Authority admitting to the fact that a copy of the lease deed was in fact sent to the Central Government through the Indian Bureau of Mines and the Chief Inspector of Mines, Dhanbad. This was in accordance with the Rule 57 of the MCR. The central government does not deny these averments. In the considered view of this Court, therefore, the reply dated 15th February 2003 filed by the State Government before the Revisional Authority admitting to the above fact should be held to clinch the issue. The resultant position is that the Central Government knew throughout that the lease had been executed without incorporating the additional conditions suggested by it.

46. The fact remains that there was no condition in the lease deed dated 17th February 2000 prohibiting CCCL from disposing of the coal mined up to the sixth year. An additional factor in this regard also requires to be noticed. CCCL had submitted a detailed mining plan which showed that at least up to the sixth year after the mine was opened, it would not get sufficient quantity of coal for being used in the power plant. This mining plan was approved by the Central Government, a fact that is not denied by the Central Government. Therefore, it is not as if the Central Government

was not aware that the coal extracted from the mine would have to remain

as an overburden. It would be lying unutilized if not permitted to be disposed of. There is no satisfactory reply by the Central Government to why it approved such a mining plan if it was of the view that the coal extracted from the mine would be of sufficient quantity to be used in the power plant even before the completion of the sixth year of opening the mine. It may be noticed here that there is no denial by the central government of the assertion of CCCL that when it had submitted an alternative plan to the Central Government for extracting the optimal quantity of coal within a shorter period, the Central Government rejected it as not being feasible.

47. The upshot of the above discussion is that the Central Government was aware that in the lease deed executed on 17th February 2000 by the State Government the conditions as suggested by it in its letter dated 28th December 1999 were not incorporated. Under Rule 27(3) of the MCR prior to its amendment it was the prerogative of the State Government to impose the conditions. Equally the State Government had the prerogative to waive such conditions. There was no requirement under the unamended Rule 27 (3) for the State Government to take prior approval of the central government for waiving such conditions. That came only under the amended Rule 27 (3) MCR. The understanding of the central government of the legal position in this regard was incorrect. From CCCL's point of view it could not be blamed if the central government failed to understand the correct legal position as regards incorporation of the conditions in the lease deed. Additionally, the amended provisions of the CMNA Act permitted washing of coal as a permissible end-use. Even if one were to

assume that the Central Government had not been made aware by the State Government of the waiver of the conditions, then again CCCL cannot be made to suffer the consequences.

48. If as on the date of the order dated 29th January 2000 of the State Government as well as the date of the lease deed, i.e. 17th February 2000, the conditions earlier suggested by it stood waived, there was no illegality committed in not incorporating such conditions in the said order and the subsequent lease deed.

The effect of the proceedings under Section 4A MMDR Act

49. As regards the allegation that the CCCL was found extracting and selling coal in the open market, it has been pointed out by CCCL that there was no prohibition in the lease deed on selling such coal and this again was consistent with the mining plan approved by the Central Government. Consequently, CCCL wrote to the State Government for permission to split the project into two phases, i.e., the project for a washery in the first stage and thereafter for power plant in the second stage. It must be noticed here that even in this initial letter dated 4th July 1996 to the Ministry of Coal along with its application for opening a coal mine for captive use CCCL had indicated that this would be for the purpose of captive use of coal for “Washery and Power Generation”. The State Government by its letter dated 31st July 2001 did grant an approval to the splitting up of the project in two phases.

50. The letter dated 13th July 2001 from the Central Government to the State Government only shows that the coal mining activities had already started and that CCCL “had started looking to sell the coal extracted”. There was no allegation that in fact CCCL had begun selling the coal extracted from the mine. Therefore, if by that date CCCL had already written on 9th July 2001 to the State Government seeking permission to sell the washed coal it cannot be stated to have committed any illegality. Thereafter if CCCL proceeded in accordance with the permission granted on 31st July 2001 by the State Government, it again cannot be faulted for violating any regulation or condition.

51. In the circumstances, the issuance of a show cause notice to CCCL on 4th December 2001 by the State Government under Section 4 A MMDR Act incorporating the allegations contained in the letter dated 13th July 2001 written to it by the Central Government, the reply thereto by CCCL and the subsequent decision dated 18th March 2002 of the State Government dropping the show cause notice are significant. The State Government appears to have taken a conscious decision that no condition of the lease was violated by CCCL. This was reiterated by it in its subsequent communication dated 31st July 2002 to the Central Government. The above orders have neither been withdrawn by the State Government nor recalled. The proceedings initiated under Section 4 A at the instance of the central government on the above allegations should be held to have attained a closure.

52. In the above background, it is inexplicable that in an affidavit filed

before this Court, the State Government has contended that its officers committed “gross irregularities” in not incorporating the additional conditions in the lease. This again was contradicted by the subsequent letter dated 17th July 2007 written by the State Government to the Central Government that after deliberating on the issue it had decided not to initiate with any proceedings against the officers involved as it was not in the interests of State. This Court is constrained to observe that the State Government has been vacillating on the stand it should be taking in the matter. On the one hand at one stage it stood its ground and informed the Central Government by its letter dated 30th July 2002 that its officers had acted in the best interests of the State consistent with the State Mineral Policy and had permitted CCCL to split the project into two phases and also permitted it to sell the coal till such time its power plant became operational in terms of the approved mining plan. Subsequently, however, after the impugned order dated 3rd November 2004, it appears to have changed its stand and accused its own officers of having committed irregularities. In July 2007, the State Government again changed its stand and decided that no action was required to be initiated against its officers since they had acted in the best interests of the State.

53. In light of the prevaricating stands of the State Government, this Court fails to appreciate how CCCL can be held to have committed any illegality. To say the least, the inference sought to be drawn by the Central Government in its written submissions from the above correspondence that CCCL was acting in “collusion” with the officials of the State Government is without basis. There is nothing in the affidavits filed by the

State Government or in the correspondence exchanged by the State Government with the CCCL to show that CCCL colluded with any official of the State Government. Even while it purportedly admitted to 'irregularities' as committed by its officers, the State Government did not point a finger at CCCL. It is not understood on what basis the Central Government is making a sweeping allegation that CCCL practised a "fraud" upon the Central Government. This deserves to be rejected.

54. In the considered view of this Court, since there was no condition of non-disposal of the coal extracted from CCCL's mine it could not be stated to have acted in breach of the lease deed dated 17th February 2000. Consequently there was no justification for the Central Government to have invoked Section 30 MMDR Act to ask the Revisional Authority to suo motu revise the State Government's order dated 29th January 2000 on the basis that the grant of lease to CCCL was violative of Section 19 of the MMDR Act.

Procedure before the Revisional Authority

55. This court finds that in the instant case the procedure adopted by the central government in the proceedings before the Revisional Authority is indeed strange. Where there was a difference of opinion between the two members constituting the Revisional Authority, then the difference ought to have been referred to a third member. The procedure of again placing the proceedings before another single Member Revisional Authority for *de novo* proceedings was unknown to law.

56. Further in the reference made to the Revisional Authority by its letter dated 27th August 2002 the central government asked the Revisional Authority to pass appropriate orders to “include due incorporation of the exclusive use condition in the order and the consequent lease deed”. If that was the scope of the revisional proceedings, the final order passed by the Revisional Authority that the lease executed was violative of Section 19 of the MMDR Act was in excess of the relief sought by the Central Government. This court finds that even in the statement of facts appended to the above communication dated 27th August 2002 in the final paragraph 17, it is stated as under:

“17. It is accordingly submitted that the Revisional Authority constituted in the Department of Coal to exercise the powers of revision of the Central Govt. u/s. 30 of the MMDR Act, 1957 take into revision the said defective lease grant/sanction order and the consequent lease deed and pass suitable orders thereupon which may, inter-alia, include due incorporation of the exclusive use condition in the order and the consequent lease deed.”

57. The above prayer of the Central Government was also consistent with its own circular dated 29th November 2002 which is not denied by it. This required State Governments to revise the lease deeds already executed to incorporate the conditions imposed by the Central Government if that had not been done by that date. In the present case, CCCL has been stating that it is agreeable to the conditions being incorporated in the lease deed. The State Government had also written to the Central Government on 16th June 2005 to this effect. The Central Government however refused to reconsider the matter on the ground that it would set a bad precedent. In

light of the preceding discussion this apprehension of the central government must be held to be unfounded.

58. The impugned order passed by the single member Revisional Authority, was entirely without jurisdiction. Even if one were to treat the proceedings before the Respondent No. 4 to be a reference of the difference of opinion between the two members, where one of them had held that the lease deed should be re-entered by incorporating the very conditions, the other had found nothing wrong in the lease deed 17th February 2000, then clearly the limited scope of the Revisional proceedings was whether the said lease is required to be re-entered by incorporating the conditions. There was no question of declaring the lease deed itself to be null and void. The impugned order goes far beyond its scope of difference of opinion between the two members who constituted the Revisional Authority in the first instance. Therefore, even if one considers the exercise of jurisdiction by Revisional Authority as that of a third member to deal with the difference of opinion between the two members who earlier constituted the revisional authority, as referred, the impugned order cannot be sustained in law.

59. This court finds that the decisions cited by the learned ASG have no relevance on the matter on hand. The first decision in *Satna Power Co. P. Ltd. v. Union of India* about captive use of coal does not really help the Union of India. In any event, CCCL has been stating that it is willing to have the conditions incorporated in the lease deed pursuant to the circular dated 29th November 2002. The State Government has also written to the

WP(C) No.8944/2005

same effect to the Central Government. Therefore, there should be no difficulty in the lease now being re-drawn by incorporating such conditions. The decision in *Mannalal Khetan v. Kedar Nath Khetan* has no application to the facts of the present case.

60. In view of the above, it is held that CCCL did not act in breach of any of the conditions of the lease deed. The lease deed itself when it was issued therein was not in violation of any provision of law. There was no occasion to declare the lease deed to be null and void as has been done by the impugned order.

61. Consequent upon the above determination, this Court comes to the conclusion that the show cause notice dated 20th April 2005 issued to CCCL also deserves to be quashed. Once the impugned order is held to be unsustainable in law, the show cause notice has no legal basis.

Conclusion

62. For all of the above reasons, the writ petition is allowed. The impugned order dated 3rd November 2004 of the Revisional Authority is hereby set aside. The order dated 30th October 2002 of the Coal Controller, restraining CCCL from disposing of the coal prior to the lease deed also does not survive and is hereby set aside. The impugned show cause notice dated 20th April 2005 issued by the Central Government subsequent to the impugned order dated 3rd November 2004 is also hereby quashed.

63. It is hereby directed that within a period of four weeks from today, the lease deed will be executed afresh by the State Government in terms of this judgment in favour of CCCL incorporating the conditions set out by the Central Government in its letter dated 28th December 1999. CCCL will be permitted to submit a revised mining plan to the Central Government which will consider the said mining plan in accordance with law and grant CCCL permission subject to any condition as it may deem fit to impose within a period of four weeks thereafter. CCCL will adhere to the conditions imposed by the Central Government in granting such approval. The consequential orders will be passed by the State Government within a period of four weeks thereafter.

64. With the above directions, the writ petition is allowed with costs of Rs. 20,000/- of which Rs. 10,000/- will be paid by the Central Government and Rs. 10,000/- by the State Government to CCCL within a period of four weeks from today.

65. A certified copy of this judgment will be sent to the Secretary, Ministry of Coal, Govt. of India as well as Secretary, Trade, Commerce & Mining Department, Govt. of Maharashtra, Mumbai within a period of five days from today for compliance.

S. MURALIDHAR, J.

APRIL 16, 2010

ak