

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 1506 of 2013

M/s Shri Bajrang Power & Ispat Ltd. Through Its Director Shri S.K. Goyal Plant At Village Borjhara, Urla Industrial Area, Raipur 493221, P.S. Urla, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Union Of India Through Its Secretary (Coal) Ministry of Coal Shastri Bhawan New Delhi
2. Coal India Ltd. Through its Director (S&M) 15, Park Street Kolkata
3. South Eastern Coalfields Ltd. Through its CMD Seepat Road, P.B No. 60 Bilaspur C.G - 495006

---- Respondents

And

Writ Petition (C) No. 1507 of 2013

Godawari Power And Ispat Limited Plot No. 428/2, Phase I, Industrial Area, Siltara 493111, Raipur C.G. P.S. Dharsiwa, Raipur, C.G., Through Its Authorised Representative Lakshman Prasad.

---- Petitioner

Versus

1. Union of India Through Its Secretary (Coal) Ministry Of Coal Shastri Bhawan New Delhi
2. Coal India Ltd. Through Its Director (S&M) 15, Park Street Kolkata
3. South Eastern Coalfields Ltd. Through Its CMD Seepat Road, P.B No. 60 Bilaspur C.G. 495006

---- Respondents

For Petitioners	: Shri Ratan K. Singh, and Shri Sunil Otwani, Advocates.
For Respondent/SECL	: Shri R.K.Gupta, Advocate.
For Respondent/Union of India	: Shri Narendra Kumar Vyas, Assistant Solicitor General.

**Hon'ble Shri Navin Sinha, Chief Justice &
Hon'ble Shri Justice P. Sam Koshy**

Order On Board

Per Navin Sinha, C.J.

22/04/2015

1. The Petitioners are aggrieved by order dated 28.6.2013 of the Secretary (Coal), Government of India, Ministry of Coal, declining to grant them normal coal linkage for their existing plant Kiln-II. Since the issues involved are common, they have been heard together and are being disposed by a common order.
2. The Petitioners had preferred W.P.(C) No. 1745 of 2012 and W.P.(C) No. 1744 of 2012 respectively for the same relief which was disposed on 12.10.2012 to consider their representations for normal coal linkage.
3. The Respondents have held that normal coal linkage was granted to the Petitioners for Kiln-I only. The request with regard to Kiln-II was deferred because of non-availability of coal availability position. By the time linkage for Kiln-II came to be considered, the Petitioners had been allocated coal blocks leading to conscious decision by the State Level Committee (Long Term) (hereinafter called 'the SLC(LT)) to grant tapering linkage for Kiln-II. It was further held that the order allocating the coal blocks did not specifically mention whether they were for the existing projects or the expansion projects. Denial of Tapering linkage for Kiln-II was not

contested for four years till 2010. If normal coal linkage was granted for Kiln-II as part of the existing project, the satisfaction level would go up to 89% which was beyond the general satisfaction level, while otherwise it would remain at 67% which was the general satisfaction level.

4. Learned Counsel for the Petitioners assailing the impugned order contended it to be unsustainable and arbitrary. The Respondents have wrongly linked coal supply for Kiln-II with the allocation of coal blocks which was made with regard to coal supply for expansion projects only. Kiln-II related to an existing project for which normal coal linkage had already been sought earlier. The request for normal linkage for Kiln-II was never declined but deferred for reasons attributable to the Respondents alone. The allocation of coal blocks being limited to expansion projects, there was no justification for the Respondents to apply it to existing projects. Referring to the communication dated 5.8.2010 by Respondent No. 2 to Respondent No. 1, it was submitted that the authorities were very clear on the issue that the normal coal linkage granted for existing units had nothing to do with subsequent allocation of coal blocks which was confined to expansion projects only and not to existing capacities. This was reiterated on 16.9.2010 by the Government of India, Ministry of Coal addressed to Respondent No. 2 referring to the former communication from Respondent No. 2. It was clarified that coal supplies to existing end use plants of all

consortium members of CCCML be resumed at normal basis and coal supplies to EUP / CPPs be regulated as per tapering guidelines dated 26.2.2010. It needs no further clarification that it was a direction from the Ministry itself that normal coal linkage was to be granted to the Petitioners for Kiln-II also.

5. It was lastly submitted that on 5.10.2010, Respondent No. 2 wrote to Respondent No. 1 inter alia with regard to the Petitioners, that presently coal was being supplied as normal linkage for existing units and regulated as per extant tapering linkage policy for existing units with tapering linkages. Only on conversion of these tapering linkages into normal linkage by the Ministry, supplies can be made under normal linkages. The only ground mentioned in the impugned order with regard to non-availability of coal availability position does not survive any more as quite apparently, there is no difficulty in providing coal supplies evident from the aforesaid letter.

6. Learned Counsel for the Union of India in support of the impugned order submitted that originally request was made by the Petitioners for normal coal linkage for their sponge iron plants, Kiln-I and Kiln-II. Normal linkage was granted for Kiln-I on 5.1.2006 and that for Kiln-II was deferred. At this stage, the Petitioners made applications for allocation of coal blocks. The Screening Committee allocated coal blocks in February, 2005. The issue for grant of coal linkage to Kiln-II was considered by the SLC(LT) subsequently on 12.5.2006 and in view of the allocation of the coal block it was

decided to grant tapering linkage for Kiln-II by order dated 20.9.2006. The Petitioners did not raise any objection and continued to draw coal in accordance therewith till 2010 which is the normative date for production of the coal block and from which date tapering coal linkage was to take effect. Representation was filed only on 7.10.2010 for normal supplies with regard to Kiln-II. The conclusions in the impugned order are therefore reasoned and well considered calling for no interference. Without prejudice to the same, in view of the subsequent cancellation of the coal blocks itself, the matter may be remanded to the authorities for fresh consideration in accordance with law.

7. We have considered the submissions on behalf of the parties.

8. It is apparent that the original request by the Petitioners was for normal linkage both for Kiln-I and Kiln-II. While it was granted for the former, with regard to the latter, it was deferred for reasons attributable to the respondents alone who did not bother to collate necessary information with regard to coal availability position and not due to any reason for non-availability of coal supplies or any deficiency on part of the Petitioners. The communications dated 5.8.2010, 15.9.2010 and 5.10.2010 referred to by the Petitioners cumulatively, do not leave any doubt that the coal block allocation to the Petitioners was for their expansion units and not for the existing units. The request for normal linkage for Kiln-II, was with regard to

an existing unit. Linking of the issue for normal coal supplies to Kiln-II, which was a part of the existing unit with allocation of coal blocks which was meant for catering to the expansion units, in our opinion, was wholly improper. We have already noticed that the decision for normal linkage with regard to Kiln-II was not denied on grounds of ineligibility or any other valid ground in law but only because the Respondents had not collected the necessary information with regard to the coal availability position and about which there remains no difficulty today in view of the letter dated 5.10.2010 of Respondent No. 2. The impugned order to the extent that it holds that the order allocating coal blocks did not specifically mention that these were for the existing projects or for the expansion project in the facts of the case and the material discussed hereinabove is a completely wrong conclusion arrived at by Respondent No. 1. In the facts and circumstances of the case, the Respondents seek to take advantage of their own wrong in not deciding the request for normal linkage to Kiln-II in due time and then allow intervening circumstances to hold that the Petitioners are not entitled to normal coal linkage.

9. If that were not enough, the only reason for which normal linkage for Kiln-II was sought to be denied was by reason of allocation of the coal block, no more survives also. Whether it be the former or the subsequent issue, we are satisfied that the impugned order is not sustainable and is therefore set aside.

10. The matter is remanded to Respondent No. 1 for taking a fresh decision with regard to normal coal linkage to Kiln-II, admittedly part of the existing project capacity and not the expansion capacity of the project.

11. The communications dated 5.8.2010, 16.9.2010 and 5.10.2010 by the Respondents also do not find any reference in the impugned order but are considered relevant for an appropriate decision. The impugned order dated 28.6.2013 is set aside.

12. Let such decision be taken afresh in the aforesaid manner and a reasoned and speaking order be passed within a maximum period of three months from the date of receipt and/or production of a copy of the order from Respondent No. 2.

13. The writ petitions are allowed.

(Navin Sinha)
CHIEF JUSTICE

(P.Sam Koshy)
JUDGE