

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 309/2015**

% **Judgment delivered on: 11.02.2015**

JINDAL STEEL & POWER LIMITED & ANOTHER ... Petitioners

versus

UNION OF INDIA & OTHERS ... Respondents

Advocates who appeared in this case:-

For the Petitioners : Mr Kapil Sibal, Mr Rajiv Nayar, Sr Advocates with
Mr Sanjeev Kapoor, Mr Rajat Jariwal and Mr Aakash Bajaj
For the Respondents : Mr Mukul Rohatgi, AG and Mr Sanjay Jain, ASG with
Mr Akshay Makhija, Mr Shresth Jain and Ms Devanshi Singh.

WITH

WP (C) 310/2015

JINDAL STEEL & POWER LIMITED & OTHERS ... Petitioners

versus

UNION OF INDIA & ANOTHER ... Respondents

Advocates who appeared in this case:-

For the Petitioners : Dr A.M. Singhvi with Mr Jayant Bhushan, Sr Advocates,
Mr Sanjeev Kapoor, Mr Prateek Kumar, Ms Diya Chaturvedi
and Mr L. Zafeer Ahmed
For the Respondents : Mr Mukul Rohatgi, AG and Mr Sanjay Jain, ASG with
Mr Akshay Makhija, Mr Shresth Jain and Ms Astha Jain.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J.

1. These writ petitions raise common issues and therefore they are being dealt with together. WPC 309/2015 pertains to the Utkal B1 and B2 coal blocks in Odisha. WPC 310/2015 pertains to the Gare Palma IV/6 coal block in Chhattisgarh.

2. In WPC 309/2015, inter alia, the following prayers have been made:-

“(a) Issue an appropriate writ, order or direction to set aside the order dated 18.12.2014 and order dated 06.01.2015 issued by the Respondents to the extent that it changes the end use of coal block Utkal B-1 from sponge iron/steel to power as per e-auction/tendering process for the said coal block and;

(b) Issue an appropriate writ, order or direction thereby directing the Respondents to earmark the end use of coal block Utkal B-1 to Sponge Iron/ Steel sector in the present case, which was the original classification as per e-auction/tendering process for the said coal block;

(c) Issue an appropriate writ, order or direction thereby setting aside the order dated 18.12.2014 and 06.01.2015 issued by the Respondents to the extent that it consolidates Utkal B-1 and Utkal B-2 into one coal block as per e-auction/tendering process for the said coal block and/or;

(d) Alternatively in case in the context of Grounds , it is held that Section 7 of the Ordinance read with Rule 8 (2) of the Rules allows the Respondents to change the end use of coal block Utkal B1 which was earlier earmarked for Sponge Iron/ Steel to Power then issue an appropriate writ/ order/ direction and hold that Section 7 (1) of the Ordinance and/ or Rule 8 (2) of the Rules is unconstitutional to the extent that it allows the

Respondents to change the end use of the Coal Block and set it aside to that extent;”

3. In WPC 310/2015, inter alia, the following prayers have been made:

“(a) Issue an appropriate writ, order or direction to set aside the order dated 18.12.2014 issued by the Respondents to the extent that it changes the end use of coal block Gare Palma IV/6 from sponge iron / steel to power;

(b) Issue an appropriate writ, order or direction thereby directing the Respondents to earmark the end use of coal block Gare Palma IV/6 to "non-regulated sector" i.e. the Sponge Iron/ Steel sector in the present case, which was the original classification;

(c) Alternatively in case in the context of Grounds T,U, V and W, it is held that Section 7 read with Rule 8(2) allows the Central Government to change the end use of coal block Gare Palma IV/6 which was earlier earmarked for Sponge Iron/ Steel to Power than issue an appropriate writ/ order/ direction and hold that Section 7 of the Ordinance and Rule 8(2) of the Rules are unconstitutional to the extent that they allow the Respondents to change the end use of the Coal Block and set it aside to that extent;”

4. In the course of the arguments the learned counsel for the petitioners did not, however, press the alternative prayers challenging the constitutional validity of certain provisions of the THE COAL MINES (SPECIAL PROVISIONS) SECOND ORDINANCE, 2014 (hereinafter referred to as "the said ordinance") and THE COAL MINES (SPECIAL PROVISIONS) RULES, 2014 (hereinafter referred to as "the said rules").

5. The order dated 18/12/2014, which is the subject matter of challenge in both the petitions is as under: –

“No. 13016/9/2014-CA-III
Government of India
Ministry of Coal
Shastri Bhawan, New Delhi,
Dated the 18th December, 2014

ORDER

Subject:- Earmarking of coal mines/blocks for auction and allotment under the Coal Mines (Special Provisions) Ordinance, 2014- reg.

The undersigned is directed to inform that the provisions of Rule 8 (2) (a) & Rule 8 (2) (b) of the Coal Mines (Special Provisions) Rules, 2014 provides that the Central Government shall issue an order to the nominated authority regarding the manner of allocation of the Schedule I coal mine through public auction under Section 4 or Allotment under Section 5 and the Specified end use of any Schedule-II coal mine or Schedule III coal mine.

2. Accordingly, with the approval of the competent authority a list of Coal Mines/Blocks earmarked for Allotment with their specified end-use (*Annexure-I*) and another list of Coal Mines/Blocks earmarked for Auction with their specified end-use (*Annexure-II*) are forwarded herewith for the said purposes.

Sd/-
(Anurag Kapil)
Director (CA-I&II)
Ph. No. 23384594

Encl: *Annexure-I & II*
Nominated Authority,
Ministry of Coal”

Coal Mines / Blocks earmarked for Allotment					
Sl. No.	Schedule	Sl. No. of Schedule	Name of Mine/Coal Block	Location (State / Coalfield)	Specified End-Use
1	II	9	Parsa East, Kanta Basan	Chattisgarh-Hasdo Arand	Power
2	II	10			
3	II	13		Jharkhand-Rajmahal	Power
4	II	15	Pachwara North	Jharkhand-Rajmahal	Power
5	II	23	Baranj-I, Baranj-II, Baranj-III, Baranj-IV, Kiloni, Manoradeep	Maharashtra-Wardha Valley	Power
6	II	24			
7	II	25			
8	II	26			
9	II	27			
10	II	28			
11	II	33	Barjora (North)	West Bengal-Barjora	Power
12	II	34	Khagra Joydev	West Bengal-Raniganj	Power
13	II	37	Tara (West), Tara (East)	West Bengal-Raniganj	Power
14	II	41			
15	II	38	Gangaramchak, Gangaramchak-Bhadulla	West Bengal-Kasta	Power
16	II	40			Power
17	II	39	Barjora	West Bengal-Kasta	Power
18	III	3	Gare-Pelma Sector-III	Chattisgarh – Mand Rajgarh	Power
19	III	5	Talajpali	Chattisgarh –Mand Rajgarh	Power
20	III	6	Chatti Bariatu, Chhati-bariatu (South)	Jharkhand-North Karanpura	Power
21	I to III	36			
22	III	25	Kerandari	Jharkhand-North Karanpura	Power
23	III	28	Badam	Jharkhand-North Karanpura	Power
24	III	31	Dulanga	Orissa-Ib Valley	Power
25	III	32	Manoharpur, Dipside Manoharpur	IB Valley	Power
26	I to III	175			
27	III	26	Sitanala	Jharkhand-Jharia	Steel (Coking Coal)
28	I to III	14	Parsa	Hasdoe-Arand, Chhatisgarh	Power
29	I to III	36	Gare Palma Sector II	Mand Rajgarh, Chhatisgarh	Power
30-31	I to III	160, 161	Mahanadi, Machhakata	Talcher, Orissa	Power
32-33	I to III	170, 172	Utkal-E, Utkal-D	Talcher, Orissa	Power
34-35	I to III	181, 182	Chendipada, Chendipada-II	Talcher, Orissa	Power

36	I to III	1	Tadicherla-I	Godavary Valley, Telangana	Power
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Annexure-II

Coal / Blocks earmarked for Auction					
Sl. No.	Schedule	Sl. No. of Schedule	Name of Mine/Coal Block	Location (State/Coalfield)	Specified End-Use
1	II	3	Gare-Palma-IV/2	Chattishgarh-Mand Raigarh	Power
2	II	4	Gare-Palma-IV/3	Chattishgarh-Mand Raigarh	Power
3	II	12	Tokisud North	Jharkhand-South Kranpura	Power
4	II	19	Amelia (North)	Madhya Pradesh – Singrauli	Power
5	II	32	Talabira-I	Odisha-Ib Valley	Power
6	II	35	Sarisatolli	West Bengal-Raniganj	Power
7	II	42	Trans Damodar	West Bengal-Barjora	Power
8	II	11	Parbatpur-Central	Jharkhand- Jharia	Steel (Coking Coal)
9	II	2	Gare-Palma-IV/4	Chattishgarh-Mand Raigarh	Non Regulated Sector
10	II	5	Gare-Palma-IV/1	Chattishgarh-Mand Raigarh	Non Regulated Sector
11	II	6	Gare-Palma-IV/5	Chattishgarh-Mand Raigarh	Non Regulated Sector
12	II	7	Chotia	Chattishgarh-Hasdo Arand	Non Regulated Sector
13	II	8	Gare-Palma-IV/7	Chattishgarh-Mand Raigarh	Non Regulated Sector
14	II	14	Kauthia	Jharkhand-Daltonganj	Non Regulated Sector
15	II	22	Marki Mangli-I	Maharashtra-Wardha Valley	Non Regulated Sector
16	II	29	Marki Mangli-II	Maharashtra-Wardha Valley	Non Regulated Sector
17	II	30	Marki Mangli-III	Maharashtra-	Non

				Wardha Valley	Regulated Sector
18	II	31	Belgaon	Maharashtra-Wardha Valley	Non Regulated Sector
19	II	35	Andhagram	West Bengal-Raniganj	Non Regulated Sector
20	II	1	Namchik Manpuk	Arunachal Pradesh – Upper Assam	Non Regulated Sector
21	II	16	Gotitoria (East)	Madhya Pradesh - Mohpani	Non Regulated Sector
22	II	17	Gotitoria (West)	Madhya Pradesh - Mohpani	Non Regulated Sector
23	II	18	Mandla North	Madhya Pradesh-Pench-Kanhan	Non Regulated Sector
24	II	20	Bicharpur	Madhya Pradesh - Sohagpur	Non Regulated Sector
25	II	21	Sial Ghoghri	Madhya Pradesh-Pench-Kanhan	Non Regulated Sector
26	III	1	Durgapur II / Taraimar	Chattishgarh-Mand Raigarh	Power
27	III	2	Durgapur II / Sariya	Chattishgarh-Mand Raigarh	Power
28	III	7	Mahan	Madhya Pradesh - Singrauli	Power
29-30	III	14, 15	Utkal-B-1 & Utkal B-2	Orissaa-Ib Valley	Power
31	III	16	Mandakini	Orissa-Talcher	Power
32	III	17	Utkal-C	Orissa-Talcher	Power
33	III	22	Jitpur	Jharkhand-Rajmahal	Power
34	III	27	Ganeshpur	Jharkhand-North Karanpura	Power
35	III	29	Tara	Chattishgarh-Hasdo Arand	Power
36	III	21	Moitra	Jharkhand-North Karanpura	Steel (Coking Coal)
37	III	23	Rohne	Jharkhand-North Karanpura	Steel (Coking Coal)
38	III	4	Gare-Pelma Sector-IV/8	Chattishgarh-Mand Raigarh	Non Regulated Sector
39	III	8	Mandla-South	Madhya Pradesh-Pench-Kanhan	Non Regulated

					Sector
40	III	9	Dongri Tal-II	Madhya Pradesh - Singrauli	Non Regulated Sector
41	III	10	Kosar Dongergaon	Maharastra-Wardha Valley	Non Regulated Sector
42	III	11	Nerad Malegaon	Maharastra-Wardha Valley	Non Regulated Sector
43	III	12	Marki Mangli-IV	Maharastra-Wardha Valley	Non Regulated Sector
44	III	13	Jamkhani	Orissa-Ib Valley	Non Regulated Sector
45	III	18	Brinda, Sasai	Jharkhand-North Karanpura	Non Regulated Sector
46	III	19		Jharkhand-North Karanpura	Non Regulated Sector
47	III	20	Meral	Jharkhand-North Karanpura	Non Regulated Sector
48	III	24	Dumri	Jharkhand-North Karanpura	Non Regulated Sector
49	III	30	Lohari	Jharkhand-Daltonganj	Non Regulated Sector
50	I to III	31	Gare Palma IV/6	Mand Raigarh, Chhatisgarh	Power
51	I to III	32	Fatehpur East	Mand Raigarh, Chhatisgarh	Power
52	I to III	65	Tubed	Auranga, Jharkhand	Power
53	I to III	67	North Dhadu	North Karanpura, Jharkhand	Power
54	I to III	157	Bijahan	IB Valley, Orissa	Power
55	I to III	176	Radhikapur (West)	Talcher, Orissa	Power
56	I to III	180	Radhikapur (East)	Talcher, Orissa	Power
57	I to III	201	Ichhapur	Ranigunj, West Bengal	Power
58	I to III	61	Chakla	Jharkhand	Power
59	I to III	105	Suliyari	Madhya Pradesh	Power
60	I to III	51	Seregarha	Jharkhand	Power
61	I to III	57	Chitarpur	Jharkhand	Non Regulated Sector
62	I to III	19	Bhaskarpara	Chhatisgarh	Non Regulated Sector

63	I to III	140	Majra	Wardha, Maharashtra	Non Regulated Sector
64	I to III	13	Sondiha	Ramkoia Tatapani, Chhatisgarh	Non Regulated Sector
65	I to III	190	Moirra-Madhujoire	West Bengal, Raniganj CF	Non Regulated Sector

6. The impugned order dated 06/01/2015 reads as under:-

“No. 13016/9/2014-CA-III
Government of India
Ministry of Coal

Shastri Bhawan, New Delhi

Dated the 06th January, 2015

Subject: Earmarking of coal mines/blocks for auction and allotment under the Coal Mines (Special Provisions) Second Ordinance, 2014-reg.

The undersigned is directed to inform that Rule 8(2) (a) & Rule 8 (2) (b) of the Coal Mines (Special Provisions) Rules, 2014 provide that the Central Government shall issue an order to the Nominated Authority regarding the manner of allocation of the Schedule I coal mine through public auction under Section 4 or Allotment under Section 5 and the Specified use of any Schedule II coal mine or Schedule III coal mine.

2. Accordingly, in continuation of order of even no. dated 24.12.2014, a list of 23 Schedule- III Coal Mines/Blocks is forwarded herewith for conducting e-auction by the Nominated Authority.

(S.K. SHAHI)
Director (CA-III & NA)

To,
Nominated Authority
Ministry of Coal

Copy to :
TD (NIC), MoC. – with the request to upload on the website of the
Ministry.”

Annexure				
Coal Mines / Blocks earmarked for Auction (Schedule –III)				
Sl.No.	Sl. No. in Schedule III	Name of Mine/Coal Block	Location (State/Coalfield)	Specified End- Use
1	4	Gare Pelma Sector- IV/8	Chhattisgarh- Mand Raigarh	Iron & Steel, Cement and Captive Power plants
2	8	Mandla-South	Madhya Pradesh Pench Kanhana	Iron & Steel, Cement and Captive Power plants
3	9	Dongri Tal-II	Madhya Pradesh Singrauli	Iron & Steel, Cement and Captive Power Plants
4	10	Kosar Dongergaon	Maharashtra-Wardha Valley	Iron & Steel, Cement and Captive Power plants
5	11	Nerad Malegaon	Maharashtra-Wardha Valley	Iron & Steel, Cement and Captive Power plants
6	12	Marki Mangli-IV	Maharashtra-Wardha Valley	Iron & Steel, Cement and Captive Power plants
7	13	Jamkhani	Orissa-Ib Valley	Iron & Steel, Cement and Captive Power plants
8	20	Meral	Jharkhand-North Karanpura	Iron & Steel, Cement and Captive Power plants
9	24	Dumri	Jharkhand-North Karanpura	Iron & Steel, Cement and Captive Power plants
10	30	Lohari	Jharkhand-Daltonganj	Iron & Steel, Cement and Captive Power plants

11-12	18-19	Brinda, Sasai	Jharkhand-North Karanpura	Iron & Steel, Cement and Captive Power plants
13	16	Mandakini	Orissa-Talcher	Power
14	17	Utkal-C	Orissa-Talcher	Power
15	22	Jitpur	Jharkhand-Rajmahal	Power
16	27	Ganeshpur	Jharkhand-North Karanpura	Power
17	29	Tara	Chhattisgarh-Hasdo Arand	Power
18-19	1&2	DurgapurII/Taraimar DurgapurII/Sariya	Chhattisgarh-Mand Raigarh	Power
20-21	14&15	Utkal-B-1, Utkal B2	Orissa-lb valley	Power
22	21	Moitra	Jharkhand-North Karanpura	Iron & Steel, Cement and Captive Power Plants
23	23	Rohne	Jharkhand-North Karanpura	Iron & Steel, Cement and Captive Power Plants

7. The Schedule of the tender process for Utkal B-1 and B-2, as prescribed in clause 3.8 of the Standard Tender Document (for power sector), stipulates that the last date for sale of tender documents at the website of MSTC Limited would be 12.02.2015 and the bid due date has been specified as 14.02.2015. The opening of Technical bids is scheduled for 15.02.2015 and the announcement of qualified bidders is scheduled to be made on 23.02.2015. The conduct of electronic auction (financial bid) for the qualified bidders is scheduled for 25.02.2015 to 05.03.2015. Insofar as Gare Palma IV/6 is concerned, no schedule has as yet been notified.

8. Two things have been done by the impugned orders dated 18/12/2015 and 06/01/2015. First of all, the end-use of the coal block Utkal B1, which had earlier been allotted to Petitioner No.1, has been changed from “sponge iron/steel” to “power”. Secondly, two blocks – Utkal B1 and Utkal B2 - have been consolidated for auction as a single mine. The Petitioners are

aggrieved by both. According to them, the end-use could not have been changed and the two coal blocks could not have been consolidated and was certainly not warranted by the said ordinance.

9. Insofar as WPC 310/2015 is concerned, the only issue pertains to the change of end-use of the Gare Palma IV/6 coal mine from “sponge iron/steel” to “power”. While the Utkal B1 and Utkal B2 mines have been put up for auction, Gare Palma IV/6 has not yet been put up for auction but, that eventuality is imminent.

10. Essentially, the change of end-use is being objected to because the petitioners were prior allottees of these mines with specific end-use of “sponge iron/steel” and have set up end-use steel plants. Both the mines were nearly operational when the allotments were, amongst others, cancelled by the Supreme Court in **Manohar Lal Sharma v. The Principal Secretary & Ors [WP(Crl) No.120/2012]** and other connected petitions by virtue of its judgment and order dated 25/08/2014 and follow up order dated 24/09/2014.

The Petitioner’s pre-cancellation status in WPC 309/2015

11. In WP(C) 309/2015, the petitioner No.1 had earlier been allocated the Utkal B-1 Coal Block in Odisha by an Allocation Letter dated 29.09.2013 for use in a Sponge Iron / Steel Plant and a Captive Power Plant. Based on such allocations and two Memoranda of Understanding dated 18.11.2004 and 03.11.2005 with the Government of Odisha, the said petitioner set up its 1.8 million tonnes per annum (MTPA) capacity Sponge Iron Plant, 2 MTPA

Capacity Steel Plant and 810 MW Captive Power Plant at Angul at a distance of about 5 kms from the Utkal B-1 Coal Block. It is stated by the petitioners that an investment of Rs 19,016.14 crores as on 30.09.2014 was made on the end use plant and Rs 138.11 crores was spent on the development of the Utkal B-1 Coal Block. It was stated on behalf of the petitioners that the allocation letter dated 29.09.2003 was end-use specific for the setting up of a Sponge Iron Plant / Steel Plant and for a Captive Power Plant. The MOUs with the State Government also stipulated that the said Coal Block was allocated to the petitioner for the Sponge Iron/ Steel Plant as well as for the Captive Power Plant. The Ministry of Coal had conveyed its approval to the Mining Plan submitted by the said petitioner on 18.11.2005. Approval was also granted under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Mines Act') in respect of Utkal B-1, subject to the condition that the coal produced from the mine would be used for the 1.8 MTPA Sponge Iron Plant, 2 MTPA Steel Plant and Captive Power Plant proposed to be set up by the said petitioner. A draft Mining Lease was also forwarded by the Ministry of Coal to the said petitioner for execution which had been accepted by the latter through its letter dated 12.12.2007. Environmental clearance as well as Stage-1 and Stage-2 Forest clearances in respect of Utkal B-1 Coal Block had also been obtained by the said petitioner. The environmental clearance dated 04.04.2007 for the Steel Plant clearly mentioned that the coal was to be sourced from the captive coal block and the said clearance also mentions that transportation of coal from the block to the plant would be by a 7.5 km long conveyer belt system. The State

Government, passed an order under the Mines Act, granting the Mining Lease in favour of the said petitioner for the end use – Sponge Iron / Steel Plant and Captive Power Plant – in the light of the clearances and approvals having been obtained by the said petitioner. The Collector, Angul had communicated compliance by the petitioner of all the terms and conditions and recommended the grant of an execution order to the State Government on 08.07.2011. It is stated that the petitioner No.1's Sponge Iron Plant of 1.8 MTPA, Steel Plant of 2 MTPA and Captive Power Plant of 810 MW capacity are complete and are in operation.

The case of the petitioners – in brief

12. Briefly put, the case of the petitioners is that the Supreme Court cancelled the earlier allotments but said nothing about the future manner of allocation of the cancelled coal block allotments. According to the petitioners, even the said ordinance does not contemplate a change of end-use in respect of operational mines (Schedule II mines) and nearly operational mines (Schedule III mines). Hence, executive orders/actions in the shape of the impugned orders dated 18/12/2014 and 06/01/2015 which changed the end-use of the subject mines are liable to be quashed as they are contrary to the said ordinance in letter and spirit. The manner of change in end-use has also been challenged as being arbitrary and not backed by any reason or logic and without proper application of mind.

The case of the Union of India – in brief

13. On the other hand, the contention of the Union of India is that upon the cancellation of the earlier allotments by the Supreme Court all

connections with the past were severed and the central government was presented with a clean slate. It was contended that the end-use specified in earlier allotments became irrelevant for the purpose of future allocations. It did not matter whether the mines were operational or nearly operational, the allottees of the cancelled allotments would have to bear the consequences and no equity could be claimed by them on the ground that they had set up end-use plants at a heavy cost etc. It was also contended that the central government adopted a policy of priority to the power sector as that was the crying need of the hour and that mines having larger reserves and lower quality coal were earmarked for power and those having lower reserves and higher grades of coal were set apart for, inter alia, steel. It was contended that the Technical Committee which was constituted for this purpose conducted the exercise of classification and earmarking based on the above parameters and it is only thereafter that the order dated 18/12/2014 was issued whereby end-uses have been specified for, inter alia, the schedule III mines and conduct of e-auction of 23 such mines has been set up by the order dated 06/01/2014. Therefore, according to the Union of India, there is no cause to interfere with the impending auction of the coal blocks involved in these petitions.

The Supreme Court judgment dated 25/08/2014

14. The following extracts from the said judgment dated 25/08/2014 would clearly indicate as to what were the issues before the Supreme Court and what were its findings on those issues:

“2. Being such a significant, valuable and important natural resource, the allocation of coal blocks for the period 1993

to 2010 is the subject matter of this group of writ petitions filed in the nature of Public Interest Litigation, principally one by Manohar Lal Sharma and the other by the Common Cause. The allocation of coal blocks made during the above period by the Central Government, according to petitioners, is illegal and unconstitutional inter alia on the following grounds: ...”

“5. Principally, two prayers have been made in these matters, first, for quashing the entire allocation of coal blocks made to private companies by the Central Government between 1993 and 2012 and second, a court monitored investigation by the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) or by a Special Investigation Team (SIT) into the entire allocation of coal blocks by the Central Government made between the above period covering all aspects.

6. The present consideration of the matter is confined to the first prayer, i.e., for quashing the allocation of coal blocks to private companies made by the Central Government between the above period. At the outset, therefore, it is clarified that consideration of the present matter shall not be construed, in any manner, as touching directly or indirectly upon the investigation being conducted by CBI and ED into the allocation of coal blocks.”

“82. From the above submissions, the following questions fall for determination:

- (i) Whether the allocation of coal blocks ought to have been done only by public auction?
- (ii) Whether the allocation of coal blocks made on the basis of recommendations of the Screening Committee suffer from any constitutional vice and legal infirmity?
- (iii) Whether the allocation of coal blocks made by way of Government dispensation route (Ministry of Coal) is consistent with the constitutional

principles and the fundamentals of the equality clause enshrined in the Constitution?”

“151. The entire exercise of allocation through Screening Committee route thus appears to suffer from the vice of arbitrariness and not following any objective criteria in determining as to who is to be selected or who is not to be selected. There is no evaluation of merit and no inter se comparison of the applicants. No chart of evaluation was prepared. The determination of the Screening Committee is apparently subjective as the minutes of the Screening Committee meetings do not show that selection was made after proper assessment.....”

“153. The challenge has also been laid to the legality of the allocations made to the State/State PSUs through the Screening Committee route as well as Government dispensation route.....”

“154. To sum up, the entire allocation of coal block as per recommendations made by the Screening Committee from 14.07.1993 in 36 meetings and the allocation through the Government dispensation route suffers from the vice of arbitrariness and legal flaws. The Screening Committee has never been consistent, it has not been transparent, there is no proper application of mind, it has acted on no material in many cases, relevant factors have seldom been its guiding factors, there was no transparency and guidelines have seldom guided it. On many occasions, guidelines have been honoured more in their breach. There was no objective criteria, nay, no criteria for evaluation of comparative merits. The approach had been ad-hoc and casual. There was no fair and transparent procedure, all resulting in unfair distribution of the national wealth. Common good and public interest have, thus, suffered heavily. Hence, the allocation of coal blocks based on the recommendations made in all the 36 meetings of the Screening Committee is illegal.

155. The allocation of coal blocks through Government dispensation route, however laudable the object may be, also is

illegal since it is impermissible as per the scheme of the CMN Act. No State Government or public sector undertakings of the State Governments are eligible for mining coal for commercial use.....”

“157. As we have already found that the allocations made, both under the Screening Committee route and the Government dispensation route, are arbitrary and illegal, what should be the consequences, is the issue which remains to be tackled. We are of the view that, to this limited extent, the matter requires further hearing.”

(emphasis supplied)

The follow up order dated 24/09/2014 of the Supreme Court

14. The consequences of cancellation of the coal blocks were spelt out in the order dated 24/09/2014. Some of the relevant extracts from the said order are as under:-

“4. For the purposes of these “consequence proceedings”, the Union of India filed an affidavit dated 8th September, 2014. It is stated in the affidavit that coal is actually being mined from 40 coal blocks listed in Annexure I to the affidavit. This list includes two coal blocks allotted to an Ultra Mega Power Projects (Sasan Power Ltd. [UMPP] allotted the coal blocks Moher and Moher Amroli Extension). Coal blocks allotted to UMPPs have not been disturbed in the judgment. The list of the 40 coal blocks is attached to this order as Annexure 1.

5. In addition to the above 40 coal blocks, it is stated in the affidavit that 6 more coal blocks are ready for extraction of coal in 2014-15 and this list is Annexure II to the affidavit. These 6 coal blocks have obtained the Mine Opening Permission from the Coal Controller’s Organization under Rule 9 of the Colliery Control Rules 2004[1] (framed under the Mines and Minerals (Development and Regulation) Act, 1957). This

permission is granted subsequent to the execution of a mining lease. The list of these 6 coal blocks is attached to this order as Annexure 2.

6. Therefore, the affidavit is quite clear that 40 coal blocks are already producing coal and 6 coal blocks are in a position to produce coal virtually with immediate effect. The question is whether the allotment of these coal blocks should be cancelled or not.”

“26. Learned counsels for the allottees have essentially raised two contentions. Firstly, the principles of natural justice require that they must be heard before their coal block allotments are cancelled. Secondly, we should appoint a committee to consider each individual case to determine whether the coal block allotments should be cancelled or not.

27. As far as the second contention is concerned, this is strongly opposed by the learned Attorney General and we think he is right in doing so. **The judgment did not deal with any individual case. It dealt only with the process of allotment of coal blocks and found it to be illegal and arbitrary.** The process of allotment cannot be reopened collaterally through the appointment of a committee. This would virtually amount to nullifying the judgment. **The process is a continuous thread that runs through all the allotments. Since it was fatally flawed, the beneficiaries of the flawed process must suffer the consequences thereof** and the appointment of a committee would really amount to permitting a body to examine the correctness of the judgment. This is clearly impermissible.”

“34. There are two categories of coal block allotments: the first category being allotments other than those mentioned in Annexure 1 and Annexure 2; the second category being the 46 coal blocks mentioned in Annexure 1 and Annexure 2 that could possibly be “saved” from cancellation on certain terms and conditions, as submitted by the learned Attorney General.

35. As far as the first category of coal block allotments is concerned, they must be cancelled (except those mentioned in the

judgment). There is no reason to “save” them from cancellation. **The allocations are illegal and arbitrary; the allottees have not yet entered into any mining lease and they have not yet commenced production. Whether they are 95% ready or 92% ready or 90% ready for production (as argued by some learned counsel) is wholly irrelevant. Their allocation was illegal and arbitrary, as already held, and therefore we quash all these allotments.**

36. Learned Attorney General identified 46 coal blocks that could be “saved” from the guillotine, since all of them have commenced production or are on the verge of commencing production. As these allocations are also illegal and arbitrary they are also liable to be cancelled. However, the allotment of three coal blocks in Annexure 1 is not disturbed and they are Moher and Moher Amroli Extension allocated to Sasan Power Ltd. (UMPP) and Tasra (allotted to Steel Authority of India Ltd. (SAIL), a Central Government public sector undertaking not having any joint venture). As far the 6 coal blocks mentioned in Annexure 2 are concerned, the allocatees have not yet commenced production. They do not stand on a different or better footing as far the consequences are concerned. These allotments are also liable to be cancelled. The allocation of the Pakri Barwadih coal block (allotted to National Thermal Power Corporation (NTPC), being a Central Government public sector undertaking not having any joint venture) is not liable to be cancelled.

37. Except the above two allocations made to the UMPP and the two allocations made to the Central Government public sector undertaking not having any joint venture mentioned above, all other allocations mentioned in Annexure 1 and Annexure 2 are cancelled.

38. It was submitted by the learned Attorney General that on the cancellation of the coal block allotments, CIL would require some breathing time to manage its affairs. The Central Government is keen to move ahead but some time would be required to manage the emerging situation. Similarly,

breathing time is also required to be given to the allottees to manage their affairs on the cancellation of the coal blocks.

39. In view of the submissions made, although we have quashed the allotment of 42 out of these 46 coal blocks, we make it clear that the cancellation will take effect only after six months from today, which is with effect from 31st March, 2015. This period of six months is being given since the learned Attorney General submitted that the Central Government and CIL would need some time to adjust to the changed situation and move forward. This period will also give adequate time to the coal block allottees to adjust and manage their affairs. That the CIL is inefficient and incapable of accepting the challenge, as submitted by learned counsel, is not an issue at all. The Central Government is confident, as submitted by the learned Attorney General, that the CIL can fill the void and take things forward.

40. In addition to the request for deferment of cancellation, we also accept the submission of the learned Attorney General that the allottees of the coal blocks other than those covered by the judgment and the four coal blocks covered by this order must pay an amount of Rs. 295/- per metric ton of coal extracted as an additional levy. This compensatory amount is based on the assessment made by the CAG. It may well be that the cost of extraction of coal from an underground mine has not been taken into consideration by the CAG, but in matters of this nature it is difficult to arrive at any mathematically acceptable figure quantifying the loss sustained. The estimated loss of Rs. 295/- per metric ton of coal is, therefore, accepted for the purposes of these cases. The compensatory payment on this basis should be made within a period of three months and in any case on or before 31st December, 2014. The coal extracted hereafter till 31st March, 2015 will also attract the additional levy of Rs. 295/- per metric ton.”

Effect of the Supreme Court judgment and order

15. Mr Kapil Sibal, Senior advocate, appearing on behalf of the petitioner No.1 in WP(C) 309/2015, submitted that the cancellation of the coal block allocations by the Supreme Court by virtue of its judgment dated 25.08.2014 and the follow up order dated 24.09.2014 does not, in any way, foreclose the challenge in the present petitions. He submitted that the Supreme Court cancelled the coal block allocations on the ground that the process of allocations suffered from irregularities and illegalities. He submitted that the investments which had by then been made by the allottees were considered to be irrelevant by the Supreme Court for the purposes of examining the legality of the allotments. He submitted that the Supreme Court did not hold that the investments and the end-uses of the earlier allotments would not been relevant at the stage of re-auctioning / re-allotment of the blocks. It was submitted that the Supreme Court was only concerned with the legality of the earlier allocations / allotments and was not at all concerned with the issue of subsequent auctioning of coal blocks. It was also submitted by Mr Sibal that the impression given to the Supreme Court by the Union of India was that after cancellation, the mines would be taken over by Coal India Limited (CIL). As such, the issue of re-auctioning was not considered by the Supreme Court. It was also submitted that the question of auctioning as a method of disposal of the natural resources was only generally considered by the Supreme Court and it was observed that auctioning is not necessarily the best way of disposal of all natural resources. Consequently, it was contended that the assertions on the part of the Union of India that the current auctioning is being carried out under the

aegis of the orders of the Supreme Court is misplaced. It was also submitted by Mr Sibal that while the Supreme Court held the earlier allocations / allotments to be illegal, it did not hold that the specification of a particular end use was illegal, nor did the Supreme Court consider the aspect of re-allocation of mines.

16. Dr Abhishek Manu Singhvi, the learned Senior counsel, appearing for one of the petitioners in WP(C) 310/2015 submitted that the Supreme Court's judgment dated 25.08.2014 and the subsequent order dated 24.09.2014, were prior to the Ordinance and prior to the notification for auction. Both the orders of the Supreme Court related to one issue only and, that is, whether the allotment of coal blocks to several entities by way of the Screening Committee process from 1993 onwards was valid and legal? The Supreme Court held the allotments to be arbitrary and illegal, being violative of Article 14 of the Constitution of India as also contrary to Section 3(1)(a) of the Coal Mines (Nationalisation) Act, 1973. Dr Singhvi further submitted that the Supreme Court was not concerned with how and in what manner the coal resources would be disposed of after the cancellation order. According to Dr Singhvi, there were several eventualities. The coal blocks could have been taken over by Coal India Limited (CIL), which was the suggestion before the Supreme Court; the coal blocks could be set up for auction or for allotment through the Government route. There were other proposals also. But, the Supreme Court was not concerned with that. The only question before the Supreme Court was the legality of the earlier coal block allocations / allotments, which, ultimately, the Supreme Court cancelled.

17. On the other hand, Mr Mukul Rohatgi, the Attorney General of India, submitted that the Supreme Court judgment dated 25.08.2014 and the consequent order dated 24.09.2014 completely effaced the previous allotments and freed-up all linkages with end-uses. The slate was wiped clean, as it were. It was submitted that the fact that the petitioners were prior allottees of a mine and had set up plants was completely irrelevant. The Supreme Court had cancelled all the allotments in their entirety and the Government had to start afresh. He submitted that footprints of prior allotments stood completely erased. It was contended that there could be no vested right in the prior allotments or arising out of prior allotments and that arguments similar to those raised in these petitions had been unequivocally rejected by the Supreme Court. A reference was made to para 15 of the order dated 24.09.2014, where the Supreme Court, as pointed out above, observed that the allocations were illegal and arbitrary and whether the allottees were 95% ready, or 92% ready or 90% ready for production was wholly irrelevant. The allocation was held to be illegal and arbitrary and, therefore, the Supreme Court quashed all these allotments. It was submitted that the argument of the petitioners that the Supreme Court was dealing only with cancellation of the allotments and that the Supreme Court orders could not be construed to mean that no equities arose out of the existing investments, was without merit. It was submitted that the Supreme Court left it to the Central Government to deal with the emergent situation in the best manner possible by giving the Central Government time upto 31.03.2015. According to the Attorney General, all equities even if they had

existed at the time of the Supreme Court decision, stood extinguished on the cancellation of the allotments by the Supreme Court. He submitted that the Supreme Court cancelled all the allotments after being aware of the end-use investments of the prior allottees. It took a conscious decision of cancelling the allotments and that such decision also resulted in the severance of the links to the end-use plants. In fact, the Supreme Court went to the extent of not even saving the blocks which were operational. He submitted that the stand of the Central Government before the Supreme Court was not that the mines, after cancellation, would be taken over by CIL on a permanent basis. According to the Attorney General, what was submitted by the Central Government to the Supreme Court was that CIL could take over and continue the extraction of coal from the blocks without adversely affecting the rights of those employed therein. This was in order to ensure that coal production would not stop notwithstanding the cancellation of the coal producing blocks. It is for this reason that breathing time was given upto 31.03.2015 to the prior allottees to continue coal operations and to enable CIL to make appropriate arrangements for taking over after that date.

18. In our view, as would be evident from the extracts from the Supreme Court judgment dated 25.08.2014, the allocations of coal blocks for the period 1993-2010 was the subject matter of the petitions before the Supreme Court. The consideration before the Supreme Court was confined to the quashing of the allocation of coal blocks to, inter alia, private companies made by the government during the period 1993 to 2010, as would be evident from the extract of para 6 set out earlier in this judgment. The

questions which the Supreme Court was examining were set out in paragraph 82 of the said judgment which include the issue of whether the allocation of coal blocks made on the basis of recommendations of the Screening Committee suffered from any legal infirmity. In other words, the Supreme Court was concerned about the legality and validity of the allocation of coal blocks during the period 1993-2010. The Supreme Court came to the conclusion that the entire exercise of allocation through the Screening Committee route appeared to suffer on the vice of arbitrariness and of not following any objective criteria in determining as to who was to be selected and who was not to be selected. There was no evaluation of merit and no *inter se* comparison of the applicants. The Supreme Court was dismayed at the fact that no chart of evaluation had been prepared and that the determination of the Screening Committee was apparently subjective as was disclosed by the minutes of their meetings. In para 154 of the said judgment, the Supreme Court concluded that the entire allocation of coal blocks as per the recommendations made the Screening Committee from 14.07.1997 in 36 meetings and the allocation through the government dispensation route suffered from the vice of arbitrariness and legal flaws. And, from para 157 of the judgment dated 25.08.2014, it is evident that the Supreme Court having once decided that the allocations were illegal, set up the matter for further hearing to consider as to what would be the consequences.

19. This was considered in the follow-up order dated 24.09.2014. In para 27 of the order dated 24.09.2014, the Supreme Court made it clear that the

judgment dated 25.08.2014 did not deal with any individual case and that it had only dealt with the process of allotment of coal blocks and found it to be illegal and arbitrary and repelled the argument that a committee be appointed to consider each individual case as to whether the coal block allotment orders should be cancelled or not. The Supreme Court held that the process of allotment cannot be reopened collaterally through the appointment of the committee as that would virtually amount to nullifying the judgment. The Supreme Court observed that since the process of allotment was fatally flawed, the beneficiary of the flawed process must suffer the consequences thereof.

20. On going through both, the judgment and the follow-up order of the Supreme Court, we are of the view that the Supreme Court was only concerned with the legality of the allocations/ allotments of coal blocks made between 1993 and 2010 through the Screening Committee process. The Supreme Court found that the process was flawed and held the allotments/allocations to be illegal. While doing so, the Supreme Court observed that investments made by the allottees was not a relevant consideration for the purposes of considering the legality of the allocations/allotments. We agree with the learned counsel for the petitioners that the Supreme Court was not concerned with the future manner of allocations/ allotments/ utilisation of the coal blocks. The cancellation of the coal block allocations cannot be regarded as a circumstance which would make the consideration of end-use for the purposes of future allocation irrelevant. In other words, while the investments made by the prior allottees

were construed as irrelevant for the purpose of cancellation, it does not follow that the end-use earlier specified in respect of the previous allocations would be irrelevant for the purposes of future allocations. Therefore, the Supreme Court judgment and the follow-up order do not, in our view, come in the way of the petitioners in challenging the change of end-use based upon the provisions of the said Ordinance.

The Ordinances and the Rules

15. Pursuant to the Supreme Court cancelling the coal block allocations and its directions pertaining to the 42 coal blocks which were permitted to continue till 31/03/2015 under some conditions, The Coal Mines (Special Provisions) Ordinance, 2014 was promulgated by the President of India on 21/10/2014. Thereafter, the Central Government made The Coal Mines (Special Provisions) Rules, 2014 (hereinafter referred to as ‘the said rules’) on 11/12/2014. A second ordinance – The Coal Mines (Special Provisions) Second Ordinance, 2014 (“the said ordinance”) – was promulgated by the President to replace the earlier ordinance with certain modifications so as to provide for dispute settlement, bar of jurisdiction of civil courts and protection of action taken in good faith by the authorities in the performance of their duties under the ordinance.

16. The Preamble of the said ordinance is as follows:-

“An Ordinance to provide for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders and allottees with a view to ensure continuity in coal

mining operations and production of coal, and for promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest and for matters connected therewith or incidental thereto”.

(underlining added)

Two relevant recitals are as under:-

“WHEREAS the Supreme Court of India vide judgment dated 25th August, 2014 read with its order dated 24th September, 2014 has cancelled the allocation of coal blocks and issued directions with regard to such coal blocks and the Central Government in pursuance of the said directions has to take immediate action to implement the said order;

AND WHEREAS it is expedient in public interest for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the energy security of the country and to minimise any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation;”

(underlining added)

17. The other relevant provisions of the said ordinance are:-

“3. (1) In this Ordinance, unless the context otherwise requires,-

XXXX XXXX XXXX XXXX XXXX XXXX

(c) “appointed date” in relation to-

(i) Schedule I coal mines excluding Schedule II coal mines, shall be the 24th day of September, 2014 being the date on which

the allocation of coal blocks to prior allottees stood cancelled;
and

(ii) Schedule II coal mines shall be the 1st day of April, 2015 being the date on which the allocation of coal blocks to prior allottees shall stand cancelled,

In pursuance of the order of the Supreme Court dated the 24th September, 2014 passed in Writ petition (Criminal) No. 120 of 2012

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(n) “prior allottee” means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have been cancelled pursuant to the judgment of the Supreme Court dated 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No. 120 of 2012.

Explanation.— In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Schedule I coal mines, then, the third party shall be deemed to be the prior allottee;

(o) “Schedule” means a Schedule appended to this Ordinance;

(p) “Schedule I coal mines” means, –

(i) all the coal mines and coal blocks the allocation of which was cancelled by the judgment dated 25th August, 2014 and its order dated 24th September, 2014 passed in Writ Petition (Criminal) No. 120 of 2012, including those allotments which may have been de-allocated prior to and during the pendency of the said Writ Petition;

(ii) all the coal bearing land acquired by the prior allottee and lands, in or adjacent to the coal mines used for coal mining operations acquired by the prior allottee;

(iii) any existing mine infrastructure as defined in clause (j);

(q) “Schedule II coal mines” means the forty-two Schedule I coal mines listed in Schedule II which are the coal mines in relation to which the order of the Supreme Court dated 24th day of September, 2014 was made;

(r) “Schedule III coal mines” means the thirty-two Schedule I coal mines listed in Schedule III or any other Schedule I coal mine as may be notified under sub-section (2) of section 7;

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(v) “specified end-use” means any of the following end-uses and the expression “specified end user” shall with its grammatical variations be construed accordingly,—

(i) production of iron and steel;

(ii) generation of power including the generation of power for captive use;

(iii) washing of coal obtained from a mine;

(iv) cement;

(v) such other end-use as the Central Government may, by notification, specify;

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XXXX”

4.(1) Subject to the provisions of section 5. Schedule I coal mines shall be allocated by way of public auction in accordance with such rules, and on the payment of such fees which shall not exceed five crore rupees, as may be prescribed.

(2) Subject to the provisions in sub-section (3) of this section and section 5, the Central Government may, for the

purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal, select any of the following companies through auction by competitive bidding, on such terms and conditions as may be prescribed—

- (a) a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India; or
- (b) a company or a joint venture company formed by two or more companies,

that carry on coal mining operations in India, in any form either for own consumption, sale or for any other purpose in accordance with the permit, prospecting licence or mining lease, as the case may be, and the State Government shall grant such reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal to such company as selected through auction by competitive bidding under this section.

(3) Subject to the provisions of section 5, the following persons who fulfil such norms as may be prescribed, shall be eligible to bid in an auction of Schedule II coal mines and Schedule III coal mines and to engage in coal mining operations in the event they are successful bidders, namely:—

- (a) a company engaged in specified end-use including a company having a coal linkage which has made such investment as may be prescribed;

*Explanation.--*A "company with a coal linkage" includes any such company whose application is pending with the Central Government on the date of commencement of this Ordinance;

(b) a joint venture company formed by two or more companies having a common specified end-use and are independently eligible to bid in accordance with this Ordinance:

(c) a Government company or corporation or a joint venture company formed by such company or corporation or with any other company having common specified end-use:

Provided that nothing contained in sub-section (2) shall apply to this sub-section.

(4) A prior allottee shall be eligible to participate in the auction process subject to payment of the additional levy within such period as may be prescribed and if the prior allottee has not paid such levy, then, the prior allottee, its promoter or any of its company of such prior allottee shall not be eligible to bid either by itself or by way of a joint venture.

(5) Any prior allottee who is convicted for an offence relating to coal block allocation and sentenced with imprisonment for more than three years, shall not be eligible to participate in the auction.

5. (1) Notwithstanding the provisions contained in sub-sections (1) and (3) of section 4, the Central Government may allot a Schedule I coal mine to a Government company or corporation or to a joint venture between two or more Government companies or corporations or to a company which has been awarded a power project on the basis of competitive bids for tariff (including Ultra Mega Power Projects) from specified Schedule I coal mines by making an allotment order in accordance with such rules as may be prescribed and the State Government shall grant a reconnaissance permit, prospecting licence or mining lease

in respect of any area containing coal to such company or corporation:

Provided that the Government company or corporation may carry on Coal Mining in any form either for its own consumption, sale or for any other purpose in accordance with the permit, prospecting licence or mining lease, as the case may be:

Provided further that no company other than a Government company or corporation shall hold more than twenty-six per cent of the paid up share capital in the Government company or corporation or in the joint venture between a Government company or corporation, either directly or through any of its subsidiary company or associate company:

Provided also that a joint venture of any two or more Government companies or corporations shall be prohibited from alienating or transferring any interest, except the taking of loans or advances from a bank or financial institution, in the joint venture of whatsoever nature including ownership in favour of a third party.

(2) No allotment under sub-section (1) shall be made to a prior allottee, if that allottee has not made the payment of the additional levy within the specified period.

7. (1) The Central Government may, before notifying the particulars of auction, classify mines identified from Schedule I coal mines as earmarked for the same class of specified end-uses.

(2) The Central Government may in public interest, by notification, modify Schedule III coal mines by adding any other Schedule I coal mine for the purposes of specified end-use.

8 (1) The nominated authority shall notify the prior allottees of Schedule I coal mines to enable them to furnish information required for notifying the particulars of Schedule I coal mines to be auctioned in accordance with such rules as may be prescribed.

(2) The information required to be furnished under subsection (1) shall be furnished within a period of fifteen days from the date of such notice.

(3) A successful bidder in an auction conducted on a competitive basis in accordance with such rules as may be prescribed, shall be entitled to the vesting of Schedule I coal mine for which it bid, pursuant to a vesting order drawn up in accordance with such rules.

(4) The vesting order shall transfer and vest upon the successful bidder, the following, namely:—,

- (a) all the rights, title and interest of the prior allottee, in Schedule I coal mine concerned with the relevant auction;
- (b) entitlement to a mining lease to be granted by the State Government;
- (c) any statutory licence, permit, permission, approval or consent required to undertake coal mining operations in Schedule I coal mines if already issued to the prior allottee;
- (d) rights appurtenant to the approved mining plan of the prior allottee;
- (e) any right, entitlement or interest not specifically covered under clauses (a) to (d).

(5) The nominated authority shall, in consultation with the Central Government, determine the floor price or reserve price in accordance with such rules as may be prescribed.

(6) The successful bidder shall, prior to the issuance and execution of a vesting order, furnish a performance bank guarantee for an amount as notified in relation to Schedule I coal mine auctioned to such bidder within such time, form and manner as may be prescribed.

(7) After the issuance of a vesting order under this section and its filing with the Central Government and with the appropriate authority designated by the respective State Governments, the successful bidder shall be entitled to take possession of the Schedule I coal mine without let or hindrance.

(8) Upon the execution of the vesting order, the successful bidder of the Schedule I coal mine shall be granted a prospecting licence or a mining lease, as applicable, by the concerned State Government in accordance with the Mines and Minerals (Development and Regulation) Act, 1957.

(9) A Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India, allotted a Schedule I coal mine shall be granted a prospecting licence or a mining lease, as applicable, by the concerned State Government in accordance with the Mines and Minerals (Development and Regulation) Act, 1957.

(10) In relation to Schedule II coal mines, the successful bidder which was a prior allottee, shall continue coal mining operations after the appointed date in terms of the approved mining plan, till the mining lease in terms of sub-section (8) is granted, upon the grant of a vesting order and to that extent, the successful bidder shall be deemed to have been granted a

mining lease till the execution of the mining lease in terms of the said sub-section,

(11) In relation to Schedule II coal mines, the Government company or corporation which was a prior allottee can continue coal mining operations after the appointed date in terms of the approved mining plan, till the mining lease in terms of sub-section (9) is granted, upon execution of the allotment order and to that extent, the allottee shall be deemed to have been granted a mining lease till the execution of the mining lease in terms of the said sub-section.

(12) The provisions of sub-sections (1) and (2) and sub-sections (4) to (7) (both inclusive) of this section as applicable to a vesting order, shall *mutatis mutandis* be also applicable to an allotment order.

SCHEDULE I

Sl. No.	Name of Coal Mine/Block	Name of Prior Allottee	State where Coal Mine/Block Located
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31	Gare Palma IV/6	Jindal Steel & Power Ltd, Nalwa Sponge Iron Ltd.	Chhattisgarh
--	--	--	--
158	Jamkhani	Bhushan Ltd.	Odisha
--	--	--	--
164	Utkal B1	Jindal Steel & Power Ltd.	Odisha
--	--	--	--
168	Utkal-B2	Monet Ispat Ltd	Odisha
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SCHEDULE III

Sl. No.	Name of Coal Mine/Block	Name of Prior Allottee	State where Coal Mine/Block Located
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13	Jamkhani	Bhushan Ltd.	Odisha
14	Utkal B1	Jindal Steel & Power Ltd.	Odisha
15	Utkal-B2	Monet Ispat Ltd	Odisha
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The relevant provisions of the said Rules are as follows:-

“CHAPTER III: AUCTION AND ALLOTMENT PROCESS

8. Allocation process.- (1) In connection with the allocation of Schedule I coal mines-

(a) the nominated authority shall finalise a mine dossier in the manner specified in rule 9;

(b) the Central Government shall issue an order to the nominated authority as provided in sub-rule (2) of rule 8;

(c) pursuant to the order issued by the Central Government under sub-rule (2) of rule 8, the nominated authority shall conduct the auction process in accordance with the provisions of rule 10 or the allotment process in accordance with rule 11 and rule 12, as the case may be.

(2) The Central Government shall issue an order to the nominated authority regarding the following, namely:-

(a) the manner of allocation of the Schedule I coal mine through -

- (i) public auction in accordance with the provisions of section 4 of the Ordinance; or
 - (ii) allotment under section 5 of the Ordinance;
- (b) the specified end use in case of any Schedule II coal mine or Schedule III coal mine;
- (c) broad parameters for conducting auction or allotment; and
- (d) any other matter that the Central Government may deem expedient in accordance with the Ordinance or these rules.
- (3) The Central Government may recommend the methodology for determination of the Floor Price or Reserve Price, as the case may be, to the nominated authority which shall make the determination of the same in accordance with the Ordinance and these rules.
- (4) The sum for auction or allotment shall, inter-alia, include-
- (a) a fixed amount for the value of land and mine infrastructure,
 - (b) the floor price or reserve price, as the case may be,
 - (c) a variable amount of bid, in case of auction,
- to be paid in such manner as may be specified by the Central Government.”

Analysis of the provisions of the Ordinance and Rules

18. The Preamble of the said Ordinance makes it clear that it has been promulgated to provide for the allocation of coal mines to successful bidders and allottees with a view to ensure continuity in coal mining operations and

production of coal and for promoting the optimum utilisation of the coal resources consistent with the requirement of the country in the national interest. The avowed object of the Ordinance, therefore, is to provide for allocation of coal mines. The allocation is to be done to successful bidders in auctions or to allottees. Auction and allotment have been specifically dealt with under Chapter II of the said Ordinance. The auction procedure and eligibility conditions have been set out in Section 4, whereas the allotment of mines to Government companies or corporations would be in terms of Section 5. We may point out that the said Ordinance is comprised of three Schedules – Schedule I, Schedule II and Schedule III. Schedule I can be regarded as the set of 204 coal blocks which were cancelled by the Supreme Court. Schedule II comprises of 42 coal blocks which find mention in the Supreme Court order dated 24.09.2014, which were operational and in respect of which the appointed date is 01.04.2015. This is so because the Supreme Court permitted the operation of those mines by the prior allottees upto 31.03.2015 to enable the prior allottees as also Coal India Limited / Government to manage their affairs. Schedule III, at the time the Ordinance was promulgated comprised of 32 coal mines. This Schedule lists those coal mines which are nearly operational as pointed out in the counter-affidavit of the Union of India. Subsequently, 27 other mines have been added to Schedule III from the Schedule I mines. The first set of 32 mines in Schedule III includes the Utkal B-1 and Utkal B-2 coal blocks. The additional set of 27 mines which have been migrated from Schedule I subsequently, includes Gare Palma IV/6.

19. We now need to refer to the second recital of the said Ordinance which provides that it is expedient in public interest for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the “energy security of the country” and to “minimise any impact on the core sectors, such as steel, cement and power utilities” which are vital for the development of the nation. According to Mr Sibal and the other learned counsel appearing for the petitioners, this recital provides the key to the guidelines and / or statutory policy which ought to govern the allocations and allotments. There was a great deal of debate on the meaning, width and amplitude of this recital. It was contended on behalf of the petitioners that the coal block allocations and allotments have to be done in such a manner as to minimise any impact on the core sectors, such as steel, cement and power utilities. A two-fold submission was made. First of all, it was submitted that, while allocating coal mines, the impact of such allocation on any of the core sectors would have to be minimised. In other words, if an allocation to cement or to power utilities was to be made, then the adverse impact on the steel sector has to be examined and minimised and the vice-versa. The second submission was that there is no inter se priority given to any of the core sectors, namely, steel, cement and power utilities. Each one of them has been regarded as vital for the development of the nation. It was, therefore, contended that the Central Government’s stand, as expressed by the learned Attorney General, that the power sector has to be accorded a higher priority, would be contrary to the policy of the said Ordinance which does not accord any such priority.

20. The learned Attorney General had argued that it is for the Government to decide as to which coal block should go where and that the past had no relevance. He submitted that the requirement for power was critical and there was a great dearth and shortage of power. It was submitted that most of the coal in India is of an inferior quality, which is suitable for the power sector and, therefore, it was for the Government to decide to change the end use from steel to power as the Government was duty bound to use the coal resources in the best manner possible in general public interest. The learned Attorney General had also submitted that the whole objective was to keep in view “the energy security of the country” and that this expression meant that the power sector had to be given priority.

21. We do not agree with this interpretation of the said recital. The use of the expression “energy security of the country” refers to the ‘coal reserves’ and not to the ‘power sector’. Coal is a primary source of energy, whereas power is not. Power can be generated through use of coal in thermal power plants, it could be generated using through hydroelectric stations, it can be generated using solar energy, wind energy and atomic energy. These are all energy sources from which power can be generated. Power itself is not an energy source and, therefore, in our view, the expression ‘energy security of the country’ refers to the ‘coal resources’ of this nation and not to ‘power’. On the contrary, power utilities has been regarded as a core sector in much the same way as steel and cement. Both expressions – “energy security of the country” and “power utilities” appear in the same recital and would, therefore, have to be given different meanings. We are in agreement with

the submissions made by the learned counsel for the petitioners that from the second recital of the said Ordinance, it cannot be concluded that power has been given priority over steel and other sectors. On the contrary, all the core sectors have been placed at par.

22. We shall now examine the provisions of Section 7 of the said Ordinance in respect of which a great deal of arguments were addressed on both sides. Section 7(1) empowers the Central Government to classify mines identified from Schedule I coal mines as earmarked for the same class of specified end-users, prior to notifying the particulars of the auction. In our view, this provision is not happily worded and that is what is creating the confusion. According to the petitioners, this provision entails that the prior-cancellation end-uses cannot be altered. On the other hand, the Attorney General was of the view that the Central Government was empowered to classify mines by specifying end-uses without bothering about the pre-cancellation end-uses. 'Specified end-use has been defined in Section 3(1)(v) and refers to 5 categories:-

- 1) Production of iron and steel;
- 2) Generation of power, including the generation of power for captive use;
- 3) Washing of coal obtained from a mine;
- 4) Cement; and
- 5) Such other end-use as the Central Government may, by notification, specify.

23. So, according to the Attorney General, it is open for the Central Government to specify any of the above end-uses in respect of any of the Schedule I coal mines. The fall out of this submission is that the end-uses of Schedule II and Schedule III coal mines can be different from the end-uses of these mines in the pre-cancellation era. In fact, the submission on behalf of the Central Government was that the link between a coal block and an end-use had been severed by the cancellation of the coal blocks by the Supreme Court.

24. Having considered the arguments and counter-arguments on the interpretation of Section 7 of the said Ordinance, we are of the view that, although the Central Government has the right to classify the Schedule I mines for specified end-uses, which may be different from the end-uses prescribed prior to cancellation, the Central Government cannot ignore or be oblivious of the earlier end-use. Before we elaborate on this aspect, we would like to express our view on the expressions “classify mines” and “earmarked” appearing in Section 7(1) of the said Ordinance. In our view, the classification of mines has reference to the specification of end-use, whereas the earmarking has a reference to whether the mine is to be auctioned following the process stipulated in Section 4 or to be allotted under the provisions of Section 5.

25. We have already indicated above that, in our view, the Central Government can specify an end-use for a coal mine, different from its earlier end-use. But, this does not mean that it can completely ignore the earlier end-use and arbitrarily specify a new end-use. The classification of mines on specified end-uses must be based on some objective and palpable criteria which has a clear nexus with the very object of the said Ordinance as indicated in the second recital to which we have already alluded above. In other words, the specification for an end-use for a coal mine has to be guided by the fact that the allocation or allotment has to be made keeping in view the energy security of the country. In other words, for promoting the optimum utilisation of coal resources. Secondly, the allocation has to be such that it minimises any adverse impact on the core sectors, such as steel, cement and power utilities. This means that if an allocation is altered by altering the end-use from, say, steel to power, the adverse impact on steel would have to be considered before the allocation is changed. It is in this sense that the earlier end-use has to be considered and has not become irrelevant.

26. At this point of time, it may also be pointed out that by virtue of Section 8(4) of the said Ordinance, all the rights, etc. of a prior allottee get transferred to a successful bidder. These rights include the mining plan, licences, permits, permissions and approvals, many of which are end-use specific. If the end use is changed, then all these approvals, permissions, permits would be rendered useless and the process of obtaining them would have to be started all over again. This would, in all probability entail a delay

in coal mining operations and would probably run counter to the objective (enshrined in the Preamble) of ensuring continuity in coal mining operations and production of coal. These considerations have to be kept in mind and factored in while classifying mines for specified end-uses in exercise of the power granted by Section 7(1) of the said Ordinance.

27. We shall examine later in this judgment as to whether the Central Government has been able to do so insofar as the petitioners' specific cases in these writ petitions are concerned.

28. At this juncture, it would be appropriate to consider the provisions of Section 7(2) of the said Ordinance. It stipulates that the Central Government, may, in public interest, by notification, notify Schedule III coal mines by adding any other schedule I coal mine for the purposes of a specified end-use. We were intrigued by this provision and had requested the counsel on both sides to explain as to what is the objective of placing a coal mine in Schedule III and what is the common thread that ran through the coal mines, which had been put in Schedule III. The answer given on the side of the respondents was that Schedule III, as it originally stood comprised of 32 coal mines, which were nearly operational. 27 other coal mines, which have met that criteria, have been added subsequently on 19.12.2014 which includes the Gare Palma IV/6 coal block. The definition given to Schedule III coal mines in Section 3(1)(r) simply refers to them as the 32 Schedule I coal mines listed in Schedule III or any other Schedule I

coal mine as may be notified under sub-section (2) of Section 7. Although this explanation is somewhat circular, similar to a snake eating its tail, we think that what is meant by a Schedule III coal mine is a coal mine from the larger set of Schedule I coal mines and which is not a part of Schedule II, for which an end-use has been specified. Initially, this Schedule contained the 32 Schedule I coal mines, which were nearly operational. If this meaning is to be given, then there may be some merit in the argument raised by the learned counsel for the petitioners that end-use of Schedule III coal mines cannot be altered within the meaning of the said Ordinance. But, there is a counter-argument that the Schedule does not specify any end-use. Either way, it is quite baffling as to what is the object and purpose behind Schedule III. But that should not detain us because an end-use can only be specified or changed, for that matter, in the manner indicated by us while discussing the provisions of Section 7(1).

The Technical Committee and its Deliberations

29. The learned counsel for the Union of India had handed over two files— (1) File No.43020/06/2014-CPAM [dealing with constitution of the Technical Committee and record notes of its meetings and related matters] and (2) File No.43020/06/2014-CPAM-Work Sheet [containing data sheets and work sheets for deliberations of the Technical Committee] – for our consideration. We may point out that the first file (as handed over to us) has page numbers 1 to 7A in ink and the rest (8 to 143) in pencil. There are some other pages after page 143 which bear no page number and therefore it is not known as to whether they form part of the contemporaneous record or

not. The file also had 13 pages of notes (green sheets) from 29/10/2014 to 07/01/2015. On going through the said files the facts narrated hereinbelow have been revealed.

30. By an office memorandum dated 29/10/2014 issued by the government of India, Ministry of coal, the technical committee under the chairmanship of Advisor (projects), Ministry of coal with the following members was constituted to formulate criteria and classify coal mines/coal blocks for auction and allotment with the approval of the competent authority: –

- | | | |
|----|--|------------------|
| 1. | Advisor (projects), Ministry of coal | Chairman |
| 2. | Representatives of Ministry of Power | member |
| 3. | Representative of DIPP | member |
| 4. | Representatives of Ministry of steel | member |
| 5. | Director (Tech.), C I L or representative of C I L | member |
| 6. | Director (technical), CMPDIL | member |
| 7. | Director (technical), Ministry of coal | member secretary |

The proposed terms of reference of the technical committee were as under: –

- I. To formulate criteria for classifying coal mines/coal blocks for auction and allotment.
- II. To classify 204 coal mines/coal blocks for the purpose.

- III. The classification regarding schedule II & III of The Coal Mines (Special Provisions) Ordinance, 2014, dated 21/10/2014 be completed within 7 days.
- IV. To prepare pre-determined evaluation criteria for allotment of coal mines/coal blocks as provided in The Coal Mines (Special Provisions) Ordinance, 2014.
- V. Any other issues as may be deemed necessary by the committee.

The First Meeting (31/10/2014)

31. The first meeting of the technical committee was held on 31/10/2014. The committee proposed the following criteria for classifying coalmines/coal blocks for auction and allotment:

- (a) De-allocated coal mines/coal blocks which are contiguous to the mines/blocks of CIL/ its subsidiary companies may be allotted to CIL/ its subsidiary companies keeping in view the conservation of resources and operational convenience to the extent possible.
- (b) De-allocated coal mines/coal blocks which were allotted earlier to government companies/corporations may be considered for allotment to the government companies/corporations for the specified end-use purposes with regard to the blocks in schedule II and III of the ordinance **as a number of blocks are earmarked for power which is a priority sector.**
- (c) **The remaining de-allocated coal blocks/mines may be considered for auction based on the grade of coal and**

quantum of reserves and size of the block. Generally E, F & G grade coal are for power. DRI and cement industries use D grade and superior grade coal. However E & F grade coal with washing are also being used for DRI and cement. This needs to be kept in view while earmarking the blocks.

- (d) De-allocated coal mines/coal blocks having coking coal reserves may be considered for steel sector.**
- (e) The blocks having reserves of more than 100 million tonnes may be considered for power sector (end use). However, if part of the reserves contain better grade of coal say grade-E or superior, it may also be considered for captive power along with DRI plants/cement as end-use for auction. In this regard, the EUP considered earlier will also be kept in view for schedule II mines/blocks.**
- (f) The blocks having reserves of less than 100 million tonnes may be considered for auction for DRI/cement/captive power depending upon the grade of coal.**
- (g) Keeping number of blocks same, the committee has also considered clubbing of some adjoining blocks from conservation and mining feasibility point of view.**

With regard to the predetermined evaluation criteria for allotment of coal mines/coal blocks, the committee proposed the following:

- (a) Location of plant--distance from the proposed coal block; distance from the nearest rail head; distance by road.**

- (b) Status/preparedness of the end-use plant (EUP) -- Project report preparation; land acquisition; water tie up; environmental approvals; financial closure.
- (c) Demand-supply gap of the state during the XII plan and XIII plan as per CEA/MOP.
- (d) Total quantity of coal required -- normative requirement as per CEA for power or as per the normative requirement of the concerned line Ministry; annual requirement for the given size of the unit and for other sectors.
- (e) Financials --space authorised capital; turnover (last 5 years); profit after tax (last 5 years); net worth.
- (f) General particulars-- registered office, legal status of ownership, administrative ministry of the state/Central government, core business of the company, names of the directors.

The proposed criteria were to be discussed further in the second meeting of the technical committee for finalisation.

The Second Meeting (05/11/2014)

32. The second meeting of the technical committee was held on 05/11/2014. In that meeting, the technical committee adopted the criteria which had been proposed in the first meeting for classifying coal mines/coal blocks for auction and allotment. In the said meeting it was also proposed to classify the mines / blocks listed under schedule II and schedule III of the

ordinance initially which would be followed for the rest of the blocks as per the criteria mentioned above. The technical committee requested the representative of CMPDIL to go through the blocks/mines listed in the schedules of the ordinance and to classify the blocks/mines for discussions in the third meeting of the committee as per the criteria adopted. It was also proposed to explore the bringing of blocks from schedule I to schedule III for consideration of the committee in the next meeting.

The Third Meeting (12/11/2014)

33. The third meeting of the technical committee was held on 12/11/2014. The second paragraph of the record note of discussions at this meeting reads as under:—

- "2. Welcoming the participants, advisor (projects), Ministry of coal presented the details worked out by CMPDI to classify coal mines/coal blocks in the schedule II and III of the ordinance based on the criteria finalised in the 2nd meeting for further discussion. After detailed discussions the committee classified the mines/blocks listed in schedule II of the ordinance as enclosed at **Annexure-B** and those listed in schedule III of the ordinance as enclosed at **Annexure-C.**"

In these petitions, we are concerned with schedule III mines. Consequently, Annexure-C, to the extent relevant, is set out herein below: —

Sl. No	Name of coal block	Location (state/coal field)	Name of the previous Allocatee company	Specified end-use of previous Allocatee	Govt.(G)/ Pvt.(P) Earlier Allocation	Recommendation of the Technical Committee		
						Classification (auction/government allotment)		Remarks
						Auction (sector)	Government allotment (sector)	
...								
13	Jamkhani	Orissa-lb Valley	Bhushan Ltd	Sponge Iron	P	DRI + CPP	-----	
14	Utkal-B-1*	Orissa-lb Valley	Jindal Steel & Power Ltd	Sponge Iron	P	Power	-----	*For conservation and mining feasibility Utkal B1, B2 need to be amalgamated.
15	Utkal-B-2*	Orissa-lb Valley	Monet Ispat and Energy Ltd	Sponge Iron	P	Power	-----	
...								

34. In the third meeting, the technical committee also recommended the combining of, inter alia, the Utkal B1 and Utkal B2 blocks of Schedule III “keeping in mind the conservation and mining feasibility”. Finally, the committee also discussed the scope of bringing the blocks from Schedule I to Schedule III and proposed to identify such blocks which had approved mining plans or where geological reports were available and which could go for production in about 2 to 3 year’s time.

35. As per the data sheet for the first meeting, the geological reserves for Utkal-B1 has been shown to be 228.14 million tonnes (within barrier: D – 0.204; E – 2.219; F – 18.166; G – 6.955 & beyond barrier: D – 2.261; E –

15.473; F – 116.653; G – 66.209). For Utkal-B2 the geological reserves have been shown to be 114.34 million tonnes (C: 0.0040; D: 0.3313; E: 7.1513; F: 56.0114; G: 50.8390). For Jamkhani the geological reserves have been shown as 222.12 million tonnes (Proved: B – 0.2002; C – 4.2935; D – 7.6104; E – 7.4339; F – 170.3385; G – 14.4754 & Indicated: C – 1.7864; D – 5.0891; E – 4.4823; F – 5.2344; G – 1.1813). In other words, the range of grades of coal in Utkal B1 is D – G, in Utkal B2 is C – G and in Jamkhani it is B – G. But, in the data sheet for the third meeting, the range of grades of coal for Utkal B1, Utkal B2 and Jamkhani have been shown as E – G, E – G and C – G, respectively. The data sheet for the third meeting suggests that “for conservation and mining feasibility Utkal B1 and B2 blocks need to be amalgamated” and that the end-use classification for auction be stipulated as “Power”. Insofar as Jamkhani is concerned, the end-use suggested was DRI + CPP.

The Fourth Meeting (19/11/2014)

36. In this meeting the technical committee examined the list of 45 coal blocks falling in Schedule I for earmarking and classification so that the same could be brought to Schedule III. The committee classified 44 blocks as mentioned in Annexure-B to the record note. We are only concerned with Gare Palma IV/6 as that was proposed to be migrated from Schedule I to Schedule III and the said annexure is reproduced to that extent:

Sl. No	No. as per schedule	Name of coal block	Location (state/coal field)	Specified end-use of previous Allocattee	Govt.(G)/ Pvt.(P) Earlier Allocation	Recommendation of the Technical Committee		
						Classification (auction/government allotment)		Classification (auction/government allotment)
						Auction (sector)	Government allotment (sector)	
...								
4	31	Gare Palma IV/6	Mand Raigarh, Chhattisgarh	Sponge Iron	P	Power	-----	Mining Plan approved
...								

37. It is evident from the above table that the end-use of Gare Palma IV/6 was changed from “sponge iron” to “power”. In the data sheet for the fourth meeting, the geological reserves of Gare Palma IV/6 has been shown to be 158 million tonnes (OC: 74; UG: 84) and the grade of coal has been indicated as E – F.

38. It is pertinent to note that on 10/11/2014, the Secretary, Ministry of Steel, Government of India wrote to the Secretary, Ministry of Coal. Paragraphs 3, 4 and 5 of the said letter are relevant. They are reproduced below:-

“3. Presently, Ministry of Steel is in the process of targeting to achieve a crude steel capacity level of 300 MT by 2025-26 in pursuance of a decision taken in the High Level Committee on Manufacturing. The requirement of coking and non-coking coal for steel sector for 300 MT capacity is broadly estimated as 170 Million Tonne & 140 Million Tonne respectively.

4. It is relevant to mention that coal of both varieties i.e. coking and non-coking is the most important raw material for steel sector besides iron ore. Whereas coking coal is required in blast furnaces in pig iron production or in integrated steel plants through blast furnace route after conversion to coke, non-coking coal is required for the production of sponge iron through DRI route. Besides, non-coking coal is also required by steel sector for cold dust injection (CDI) or pulverised coal injection (PCI) in blast furnace to substitute coking coal/Coke as well as captive power generation in their plants. Hence, it is vital for the survival of the Indian steel sector that all coal blocks earlier allocated for end-use in iron and steel projects may be earmarked for allocation in end-use projects of iron and steel sector in the future allocation process.

5. You may kindly appreciate that some urgent steps are required to be taken to ensure the domestic availability of coal in the interests of the Indian steel sector. It may be ensured that auction/allocations under fresh process not only meet the linked capacity which de-allocated but also exceeds the same, in view of the target to achieve 300 MT capacity for steel. In this regard, it is proposed that some coal mines/coal blocks may also be earmarked for allocation to PSUs under the administrative control of Ministry of steel like NMDC, SAIL, KIOCL and MOIL or joint ventures under section 5 of "The Coal Mines (Special Provisions) Ordinance, 2014" to carry on coal mining for its own consumption and meeting the requirements of steel sector."

(underlining added)

39. This letter of 10/11/2014 from the Secretary, Ministry of Steel was responded to by the Secretary, Ministry of Coal on 17/11/2014 by stating that *"Ministry of Coal is deliberating on the issue and action as appropriate*

would be taken keeping the interest of different end use sectors while putting the coal blocks on offer.”

40. On 28/11/2014 the Joint Secretary, Ministry of Steel issued a letter, with the approval of the Steel Minister, to his counterpart in the Ministry of Coal. Paragraphs 2, 5 and 6 of the said letter are relevant and they are reproduced hereinbelow: –

“2. I am informed that Technical Committee is earmarking coal blocks to be put for auction as per the provisions of Coal Mines (Special Provisions) Ordinance, 2014. It is requested to have a relook on the criteria Being Considered by the Technical Committee for earmarking as discussed below: –

(i) Ministry of Steel is of the view that some coal mines/coal blocks may be earmarked for PSUs under the administrative control of this Ministry to carry out coal mining for meeting the requirements of steel sector. Such commercial operation would require earmarking of larger coal blocks or iron and steel sector. Present criteria of smaller coal block of less than 100 MT based on grade of coal for end use sector would defeat the above objective. This needs to be considered for amendment so that larger blocks of appropriate grade are earmarked for iron and steel sector under government dispensation route for commercial mining.

(ii) Similarly, there is another criteria adopted by the Technical Committee that the blocks having reserves of more than 100 MT may be considered for power sector (end use). However if part of the reserves contain better grade of coal say E or superior, it may also be considered

inter alia for DRI plants along with CPP. The criteria is based on traditional steel making assumptions, but today there are green coal technologies available for steel making which use inferior grade of coal like of F grade. You may appreciate that policy should be forward-looking providing encouragement to technological advancement rather than prohibitive to innovation. This criteria also may be revisited and large reserves of more than 100 MT having F or better grade may also be considered for iron & steel sector.

XXXX

XXXX

XXXX

XXXX

XXXX

5. The Government has an extremely aggressive goal of producing 300 MT of steel by 2025. The domestic availability of coal for the steel sector would be critical for achieving this goal by ensuring that Indian steel remains cost competitive. Accordingly, it is reiterated that all coal blocks earlier allocated for end-use in iron and steel projects may continue to remain earmarked for iron and steel sector in the forthcoming auction process. In any case, the overall quantity of coal available to the iron and steel sector prior to deallocation of coal blocks should not be reduced.

6. I request you to consider above issues urgently in view of the deadline for auction process in respect of Schedule-II and Schedule-III mines. Matter concerning allocation of coal to steel PSUs under government dispensation route for own use and commercial operations may kindly be considered before the bidding for the Schedule-I block is initiated.”

(underlining added)

41. The said letter dated 28/11/2014 was put up before the Adviser (Projects) [who also happens to be the Chairman of the Technical Committee](pages 7-8/N) on 01/12/2014. His comments are at page 9/N and are, inter alia, as under:-

“...Ministry of Steel’s contention is that with the advanced green technologies for steel making using inferior grade coals (F Grade), blocks with such inferior grade coals should also be considered for steel sector while earmarking such blocks. In fact , the Technical Committee constituted for earmarking/ classification of coal blocks in which the representative of Ministry of steel was also present, has already completed its exercise and circulated its minutes. While carrying out this exercise the committee has earmarked/classified some of the coal blocks earlier earmarked for sponge iron to power sector in view of quality and quantity of the results occurring in these blocks. If this earmarking/classification is to be reviewed by the technical committee, a direction needs to be there from the competent authority to this effect. Accordingly, the file is submitted for consideration.”

(underlining added)

The Secretary, Ministry of Coal by virtue of his noting dated 02/12/2014 was of the view that “*it would be appropriate for the Technical Committee to consider the matter and give its view*”. This was endorsed by the Minister on 04/12/2014.

The Fifth Meeting (12/12/2014)

42. In the fifth meeting of the technical committee held on 12/12/2014 the views of the Ministry of steel were taken up for consideration but, they were rejected in the following manner: –

“4. The Committee also discussed about the representation received from Ministry of Steel in regard to the criteria adopted by the Technical Committee for coal blocks of less than 100 million tonnes based on grade of coal for end-use sector. They mentioned that larger blocks of appropriate grade may be earmarked for iron and steel sector under government dispensation route for commercial mining. The Technical Committee deliberated the subject and observed that this will be kept in mind when the blocks for commercial mining are taken up for classification.

5. Further, in regard to modifying the criteria based on the green coal technologies available for steel making and considering inferior grade of coal like ‘F’ for DRI sector, the Technical Committee was of the opinion that this issue has already been considered while framing criteria, where it was mentioned that DRI and cement industries use ‘E’ and ‘F’ grade of coal with washing. The committee further noted the criteria that if part of the reserve contains better grade of coal say grade E or superior, it may also be considered for captive power along with DRI plants/cement as an end use. As such, the Committee is of the opinion that the request of Ministry of Steel to review the criteria for classification of blocks adopted by the Technical Committee is not warranted.”

(underlining added)

The Sixth Meeting (23/12/2014)

43. The sixth meeting of the Technical Committee, though slated for 23/12/2014, could not be held because of the absence of one of the members.

44. Pursuant to the meetings of the Technical Committee, the impugned order dated 18/12/2014 and order dated 06/01/2015 were issued whereby (a) Utkal B1 and Utkal B2 were merged, to be auctioned as one mine and (b) the end use was changed from “sponge iron” to “Power”. The end use of Gare Palma IV/6 was also changed to “Power” from “Sponge Iron”.

Analysis of Technical Committee deliberations

45. Let us now analyse as to how the Technical Committee has gone about in assigning specified end-uses to the coal blocks. The Technical Committee was constituted to formulate criteria and classify coal mines / coal blocks for auction and allotment. In the first meeting, a criteria for classifying coal mines / coal blocks was proposed for auction and allotment. This proposal was accepted in the second meeting of the Technical Committee. As per the criteria, de-allocated blocks, which could be considered for auction, were sought to be classified on the basis of the grade of coal and quantum of the reserves and the size of the blocks. It was accepted that generally, lower grades of coal – grade ‘E’, ‘F’ and ‘G’ were suitable for power and that DRI and cement industries use grade ‘D’ and superior grades coal. What is important is that it was recognized that ‘E’ and ‘F’ grade coal with washing were also being used by DRI and cement industries and that this needed to be kept in view while earmarking the coal blocks. It was also noted that de-allocated coal mines / coal blocks having coking coal reserves could be considered for steel. Another criteria used was that blocks having ‘reserves’ of more than 100 million tonnes could be considered for the power sector. However, if a part of the reserves

contained better grades of coal, such as grade 'E' or superior, the same could be considered for captive power alongwith DRI plants / cement as an end-use for auction. It was also noted that the earlier end-use would also be kept in view for Schedule II mines / blocks. Furthermore, it was felt that blocks having reserves of less than 100 million tonnes could be considered for auction for DRI / cement/captive power depending upon the grade of coal. Furthermore, the Committee also considered clubbing of some adjoining blocks from the "conservation and mining feasibility" point of view.

46. We have gone through the two files, as mentioned above, which had been handed over to us for our consideration. We were unable to discern from that as to how the figure of 'reserves' of 100 million tonnes which was to be used as a cut-off point, was arrived at. It could very well have been 150 million tonnes or even 200 million tonnes. The reasons for adopting the figure of 100 million tonnes are not discernible from the record notes. Furthermore, the criteria only speaks of 'reserves'. It does not specify as to whether it refers to geological reserves or extractable reserves. According to the petitioners, the reference must always be to extractable reserves and not to geological reserves. On the other hand, the submission on the part of the respondents is that the reference should be to geological reserves and not to extractable reserves because the quantum of extractable reserves changes according to the technology adopted. Be that as it may, the position is that the criteria adopted does not specify the nature of the 'reserves' whether geological or extractable. This issue is further discussed later in this judgment.

47. It is important to note that there are new technologies as a result of which lower grade coal can be used for production of steel as in the case of the petitioners' steel plant which uses the technology of Syn gas (for the first time in India). We also note that when the classification was done in the third meeting of the Technical Committee, Utkal B-1 and Utkal B-2 were merged and combined as a simple block. The avowed reason given for this was conservation and mining feasibility. This is the only expression that has been used in the record note of the third meeting of the Technical Committee. It is not clear as to what was considered with regard to 'conservation and mining feasibility'. The parameters employed for deciding to merge Utkal B-1 and Utkal B-2 are not palpable from the record note of the third meeting of the Technical Committee. This aspect is also dealt with in greater detail later in this judgment.

48. We also note that there is no discussion with regard to the individual coal blocks which, we think, was necessary even in view of the criteria adopted by the Technical Committee. When it was recognized that even 'E' and 'F' grade coal with washing could be used for steel and that this aspect had to be kept in view while earmarking the blocks, the same ought to have been considered while changing the end-use of the Utkal B-1 and Utkal B-2 blocks. It was contended on the part of the petitioners and, not without basis, that while the Jamkhani coal block had reserves in excess of 100 million tonnes, its end-use was retained as steel and captive power plant, whereas the criteria sought to be employed indicated that the coal blocks

having reserves of more than 100 million tonnes would go to power. At the same time, Utkal B-1 and Utkal B-2 blocks have been re-classified for power.

49. We may also note that the Ministry of Steel had also raised concerns about the negative impact the change of the end-use would have on the steel sector. It is pertinent to recollect that the letter dated 10.11.2004 issued by the Secretary, Ministry of Steel as also the letter dated 28.11.2004 issued by the Joint Secretary, Ministry of Steel with the approval of the Steel Minister requested the Coal Ministry not to change the end-use from steel to power or any other end-use. There was also a clear-cut request for revisiting the criteria of 100 million tonnes and that coal blocks having more than 100 million tonnes and having low grade of coal should also be considered for the iron and steel sector. These requests made by the Ministry of Steel were rejected by the Technical Committee on the ground that the Technical Committee had already considered the subject matter of the request while framing the criteria. We are afraid that we do not see as to how the concerns raised by the Ministry of Steel were addressed by the Technical Committee, particularly in the light of the considerations that were required to be given at the time of classification of the end-uses under Section 7(1) read with the Preamble and the second recital of the said Ordinance. There is no discussion in the record notes of the Technical Committee as to what would be the impact on the steel sector on account of the change of end-use of the coal blocks in issue in the present petitions. That was a vital aspect which has been completely ignored.

Whether criteria adopted by Technical Committee was uniformly followed

50. The learned counsel for the petitioners also raised the issue that even the alleged policy / criteria adopted by the Technical Committee was not followed in classifying the specified end-use. As an example, it was submitted that the Jamkhani coal block, which had geological reserves of 178.414 million tonnes (extractable reserves of 114.98 million tonnes), was retained for the end-use of, *inter alia*, Sponge Iron/ Steel and was not earmarked for the power sector, although the criteria was that mines having reserves in excess of 100 million tonnes would be for the power sector. Similarly, the geological reserves of the Mandla (North) coal block was 187 million tonnes (extractable reserves 84 million tonnes), yet, its end-use has been retained as for cement and has not been changed to power, although the geological reserves exceed 100 million tonnes. Similarly, Talabira-I, which has geological reserves of only 37.60 million tonnes (extractable reserves of 27.77 million tonnes), has been specified for power, although its reserves are below 100 million tonnes. The Utkal B-2 coal block had geological reserves of 114.33 million tonnes and extractable reserves of only 58.5 million tonnes and also had grade 'E' coal alongwith grades 'F' and 'G', the same has been earmarked for the end-use – power as against its earlier end-use Sponge Iron / Steel. One criteria said to have been adopted by the Technical Committee was that if part of the reserves of a coal mine contain a better grade of coal, say grade 'E' or superior, it could be considered for captive power alongwith DRI plants/cement as end-use for auction. Utkal B-2 block clearly fits into this criteria and yet its end-use was changed from Sponge Iron / Steel to

power. The Jitpur coal mine has geological reserves of 81.095 million tonnes (extractable reserves of 65.53 million tonnes), yet, it has been earmarked for power. There is no discussion in the record notes of the meetings of the Technical Committee as to why the criteria was not uniformly followed and, particularly as to why the end-use of Utkal B-1 and Utkal B-2 and Gare Palma IV/6 was altered from the earlier end-use of Sponge Iron / Steel to power, although each of these coal mines could fit in the criteria adopted by the Technical Committee for specifying the end-use of Sponge Iron / Steel.

Geological Reserves versus Extractable Reserves

51. It was contended on behalf of the petitioners and, particularly by Dr Singhvi that the consideration of geological reserves as against extractable reserves for classifying mines having reserves of more or less than 100 million tonnes is without any basis. This is so because the standard tender document itself in clause 4.1.2 (b) stipulates that one of the conditions that a bidder would have to satisfy before he is considered eligible for bidding for the coal mine is that the “extractable reserves” of the coal mine should not exceed 150% of the annual coal requirement of the specified end-use plant, taken over a period of 30 years, less the requirement of coal of such specified end-use plant met from any other coal mine allocated to the successful bidder pursuant to any other auction or allotment process conducted by the nominated authority under the said Ordinance and the said rules.

52. In response, the argument presented by the learned Attorney General is that the geological reserves were taken as a criteria for classification and that geological reserves are established by scientific methods of exploration in contradistinction to extractable reserves which is variable, dependent on technology employed for mining. First of all, we do not find any such reasoning in any of the record notes of the meetings of the Technical Committee. In fact, there is no reasoning given as to why geological reserves were considered and not the extractable reserves. Secondly, if geological reserves were the only relevant criteria, then why is there a reference to extractable reserves in an eligibility condition ? From this, it is clear that the relevant consideration ought to be extractable reserves and not geological reserves.

Amalgamation of Utkal B-1 and Utkal B-2

53. It was submitted by Mr Sibal that the said Ordinance did not empower the respondent to consolidate coal mines that had been de-allocated. Furthermore, Schedules I and III of the said Ordinance identify Utkal B-1 and Utkal B-2 as separate coal mines and the Ordinance contemplates the auctioning of the coal mines listed in the said Schedules. He submitted that this meant that the mines had to be auctioned as such, that is, as separate mines. He also submitted that there is no rationale or justification for amalgamation of Utkal B-1 and Utkal B-2 inasmuch as the approval of the mining plans clearly stipulates that the allottee has to work out an understanding with the allottees of the adjoining block to extract coal from a common barrier. Therefore, mining under the common barrier is no justification for amalgamation of the blocks. The counter argument

advanced by the learned Attorney General was that by merging Utkal B-1 and B-2 blocks, an additional 35 million tonnes of coal reserves would be available for mining by eliminating the common barrier. It was also contended that the Technical Committee had taken the decision to merge the two mines based on well considered criteria. Therefore, the petitioners cannot be heard to contend that a decision to the contrary could also be taken. It was contended that the writ court does not sit as an appellate body over the views of a Technical Committee.

54. Having considered the arguments on this aspect of the matter, we find that in the record notes of the Technical Committee, there is no discussion as to why the Utkal B-1 and B-2 coal mines are being amalgamated. It is only in the record note of the third meeting where, in Annexure-C thereto, in the remarks column of the table, it has been mentioned that Utkal B-1 and Utkal B-2 need to be amalgamated for ‘conservation and mining feasibility’. The expression “conservation and mining feasibility” is a very general expression and no specifics have been indicated in the record note of the Technical Committee. One of the factors, which, according to the respondent, justified the amalgamation of the said two coal blocks was that an additional 35 million tonnes of coal reserves would be available for mining by eliminating the common barrier. But, as pointed out by Mr Sibal, the approval to the mining plan of the two coal blocks, specifically stipulates that the allottee of one block shall work out an understanding with the allottee of an adjacent block to extract coal from the common barrier. Therefore, even if the two mines were not amalgamated, the coal reserves in the common barrier, would still be available for extraction. Thus, we agree

with the submissions made by Mr Sibal that use of the common barrier cannot be a ground for amalgamation of the two blocks. We are not sitting in appeal over the decision of the Technical Committee. But, this court, in exercise of its jurisdiction under Article 226 of the Constitution, has to satisfy itself as to whether the Technical Committee had applied its mind to the relevant criteria. We are not questioning the decision as such, but, the decision making process. In this context, we find that there has not been a proper application of mind, while taking the decision to amalgamate Utkal B-1 and Utkal B-2.

Extent of Coal Reserves in India.

55. Mr Kapil Sibal, in the context of the argument raised by the learned Attorney General that power was a critical and priority sector and that, therefore, coal mines need to be reserved for this critical sector, drew our attention to the fact that the coal reserves in India as on 01.04.2014 were 301.564 billion tonnes, the extractable reserves were to the extent of 216.10 billion tonnes. He submitted that the coal reserves with Coal India Limited as on 01.04.2014 were 64.781 billion tonnes (geological reserves) and 46.486 billion tonnes (extractable reserves). It was submitted that taking the current production of 462 million tonnes per annum as on 31.03.2014, the reserves with Coal India Limited would last for more than 100 years. It was further pointed out that the geological reserves in the 204 coal blocks (of Schedule I mines), was to the extent of 40.31 billion tonnes. Thus, the coal reserves, which are free and do not form part of the coal blocks covered by the said Ordinance or the coal reserves with coal India or the coal reserves

with Singareni Collieries Company Limited are to the extent of 162.044 billion tonnes. It was, therefore, submitted that the coal blocks under the said Ordinance constituted a very small sub-set of the total coal reserves, which were available for further auction / allotment. Therefore, if power was a critical sector, those coal blocks would very well be employed for the purpose and there was no need to change the end-use of the coal blocks from Sponge Iron / Steel to power in respect of the coal blocks falling within the purview of the said Ordinance which did not give priority to power over steel. We feel that when the objective of the Ordinance was to ensure continuity in coal mining operations and production of coal and promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest, these aspects ought to have been kept in mind, particularly, when the second recital in the said Ordinance specifically speaks of energy security of the country and allocation of coal mines to successful bidders and allottees while minimising any impact on core sectors, such as steel, cement and power utilities which have been recognised as vital for the development of the nation. It is obvious that when there is a shift from one end-use to another, such as from steel to power, there would be an adverse impact on steel. This impact has to be minimised as per the said Ordinance. This aspect, we find, has not been considered while changing the end-use of the Utkal B-1 and Utkal B-2 and Gare Palma IV/6 mines from Sponge Iron / Steel to power.

Power includes captive power

56. Another point made on behalf of the petitioners was that while Section 3(1)(v)(ii) sets out clearly that the generation of power includes the

generation of power for captive use, the latter has been excluded by executive action in the tender conditions. This, according to the learned counsel for the petitioners is illegal. At this juncture, it would be pertinent to point out that, as per the standard tender document (for power sector, issued by the nominated authority, Ministry of Coal, Government of India, New Delhi), it has been stipulated in clause 4.2.1 as under:-

“(f) Eligibility in case of generation of power being the specified end use:

A person engaged in captive generation of power as defined in the Electricity Act, 2003 and the rules thereunder; or generation of power under Case 2 as specified in the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensees, dated January 19, 2005, as amended, shall not be eligible to participate in the tender process.”

The Attorney General submitted that power generation, transmission and supply are regulated under the Electricity Act, 2003, whereas captive power plants are deemed to be in the non-regulated power sector. Therefore, the mode of auction for the regulated power sector is by way of reverse auction and this mode cannot be applied to the non-regulated captive power plants and that is why captive power plants have been excluded from the standard tender documents.

57. We are of the view that there is merit in the contention raised by the learned counsel for the petitioners. The specified end-use stipulated by the Ordinance by virtue of Section 3(1)(v)(ii) clearly provides the specified end-

use of generation of power to include the generation of power for captive use. This is the legislative mandate. The classification done / to be done under Section 7(1) of the Ordinance clearly requires the mines to be classified as per the specified end-uses. Therefore, once a mine is classified for the specified end-use – power, the same would include generation of power for captive use. This is the legislative intent and the same cannot be altered by executive action. This aspect also needs consideration inasmuch as the petitioners' earlier end-use included power for captive consumption and they do have a power plant for captive consumption. But, because of the exclusion, the petitioners cannot participate in the subject auction in respect of Utkal B-1 and Utkal B-2 and Gare Palma IV/6.

The March 31, 2015 deadline

58. It is also pertinent to note that the deadline of 31.03.2015 applies only to Schedule II coal mines and does not apply to Schedule III coal mines. This is for the reason that Schedule II coal mines are those mines which were operational and the Supreme Court had permitted the continuation of their operations by the prior allottees upto 31.03.2015 and thereafter it was for the Central Government / Coal India Limited to arrange for continuing the coal operations. By virtue of the said Ordinance, the auction / allotment route has been adopted and it is in respect of the Schedule II mines that the date of 31.03.2015 is critical. Insofar as Schedule III mines are concerned, they were nearly operational and the deadline of 31.03.2015 does not apply to them.

Conclusion:

59. For the reasons discussed above, we are of the view that the classification of end-uses for the coal blocks involved in the present petitions as also the merger of the Utkal B-1 and Utkal B-2 needs to be reviewed. The points raised by the petitioners and, more importantly, the Ministry of Steel ought to have been given serious consideration. The guidelines and directions provided by the Preamble and the second recital of the said Ordinance have not been kept in mind by the Technical Committee while merging Utkal B-1 and Utkal B-2 and while specifying the end-use – “Power” for Utkal B-1, B-2 and Gare Palma IV/6. The logical sequitur is that such end-use classifications for the coal mines in question are quashed and the Utkal B-1 and Utkal B-2 are directed to be de-merged.

60. Consequently, we direct that Utkal B-1 and Utkal B-2 be taken off from the subject auction and the specified end-use as also the issue of their merger be reviewed in the light of the discussion above before they are put up for auction again. The same, as regards specification of end-use, would apply to Gare Palma IV/6, which is yet to be put up for auction. The writ petitions are allowed to this extent. The parties are left to bear their own costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

FEBRUARY 11, 2015

HJ/dutt