

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.10.2016

+ **W.P.(C) 1501/2015 & CM Nos. 2644/2015 and 4395/2015**

MONNET ISPAT AND ENERGY LTD

... Petitioner

versus

UNION OF INDIA & ANR

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr P. Chidambaram, Mr Kapil Sibal and Mr Rajiv Nayar,
Senior Advs. with Mr Rishi Agarwal, Ms Sadapurna Mukherjee
and Ms Aparna Mehta

For the Respondents : Mr Sanjay Jain, ASG with Mr Akshay Makhija and
Mr Shreshth Jain
Mr Gopal Jain, Sr. Adv. with Mr Ashish Rana for applicant in
CM 4295/2015 .

+ **W.P.(C) 1496/2015 & CM 2634/2015, 3069/2015, 3072/2015**

UTKAL COAL LIMITED & ANR

... Petitioners

versus

UNION OF INDIA & ORS

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr P. Chidambaram, Sr. Adv. with Ms Vijay Lakshmi Menon,
Ms Ekta Kapil and Mr Rajat Juneja

For the Respondents : Mr Sanjay Jain, ASG with Mr Amit Mahajan and
Mr Akshay Makhija

+ **W.P.(C) 2381/2015 & CM 4270-4272/2015**

JAYASWAL NECO INDUSTRIES LTD.

... Petitioner

versus

UOI & ANR

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Amit Kumar Sinha, Sr. Adv. with Mr Devashish Bharuka,
Adv. with Mr Jatin Sehgal and Mr Ravi Bharuka, Adv.
For the Respondents : Mr Sanjay Jain, ASG with Mr Amit Mahajan
Mr Gopal Jain, Sr. Adv. with Mr Gaurav Juneja, Mr Aditya
Ganju and Mr Vidur Bhatia

+ **W.P.(C) 6302/2015 & CM 11473/2015**

BHUSHAN POWER & STEEL LTD & ANR

... Petitioners

versus

UOI & ANR

... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Kapil Sibal and Mr Rajiv Nayar, Sr. Advs. with Mr Rishi
Agrawal, Mr Karan Luthra and Mr Anuj Malhotra
For the Respondents : Mr Sanjay Jain, ASG with Mr Amit Mahajan with Mr Shresth
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 some overlapping issues pertaining to coal block auctions and are, therefore, being considered together. First of all, we shall take up the petition – Monnet Ispat and Energy Limited v. Union of India (WP(C) 1501/2015).

Monnet Ispat and Energy Limited

2. In this petition, the following prayers were made:-

- “(a) Pass a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature and set aside Clause 3.3.2 at page 119 of the Standard Tender Document issued by Respondent No. 2 as being violative of Article 14, 19(1)(g), 21 and 39 (b) of the Constitution of India;
- (b) pass a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature and set aside the Order dated 18.12.2014 having No. 13016/9/2014-CA-III as being in violation of Section 3 of the Coal Mines (Special Provision) Second Ordinance 2014 and being in violation of Article 14, 19(1)(g), 21 and 39 (b) of the Constitution of India;
- (c) pass a writ, order or direction declaring that the list of qualified bidders in Clause 3.3.2 of the Tender Document consisting of 50% of the bidders or five in number (whichever is higher) which may result into packing of the list by one company which has bifurcated its end use plants into separate units;
- (d) pass a writ, order declaring that “generation of power for captive use” ought to be categorized as per Section 3(1)(v)(ii) of the Coal Mines (Special Provision) Second Ordinance 2014 alongwith “generation of power” unless such captive power plant is used for production of power for the specified end uses mentioned in Section 3(1)(v)(i), (iii), (iv) or (v).
- (e) pass such other and further order(s) as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

Insofar as prayers (a) and (c) are concerned, they relate to Clause 3.3.2 and the same was given up by the learned counsel for the appellant in the course of arguments before us. Therefore, there are essentially two reliefs which

have been sought. One is for setting aside the order dated 18.12.2014 as being in violation of Section 3 of the Coal Mines (Special Provisions) Second Ordinance, 2014 (hereinafter referred to as 'the said Second Ordinance'). It may be pointed out at this juncture itself that the said Second Ordinance has now been replaced by an Act. However, since at that time of the filing of the petitions, it was the said Second Ordinance which was in place, we shall refer to the same. The second relief that has been sought is essentially tied up with the first one inasmuch as a declaration is sought that the generation of power for captive use ought to be categorized in terms of Section 3(1)(v)(ii) of the said Second Ordinance along with 'generation of power' and not separately.

3. Section 3(1)(v) of the said Second Ordinance is as under:-

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

XXXX XXXX XXXX XXXX

(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;

XXXX XXXX XXXX XXXX”

The said provision defines specified end-use to mean (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. It was submitted by the learned counsel for the petitioner that the said definition of specific end-use is an exhaustive definition. There are four specified end-uses and the fifth category is a residual one but no notification has been made under that category. It is the contention of the petitioner that coal mines may be classified under Section 7(1) of the said Second Ordinance for ‘iron and steel’, ‘generation of power, including the generation of power for captive use’, ‘washing of coal obtained from a mine’ and ‘cement’. It was submitted that the Central Government does not have the power to club the end-uses or to split the end-uses. It was, therefore, submitted that the end-uses of ‘iron and steel’ and ‘cement’ cannot be clubbed together. Similarly, the end-use of ‘generation of power’ and ‘generation of power for captive use’ cannot be split. It was further

submitted that the Central Government could not create a new end-use called 'non-regulated sector'. Monnet Ispat is concerned with the coal mine at Gare Palma IV/5. Earlier, this coal mine had been allocated to the petitioner for the end-use of production of iron and steel. According to the petitioner this end-use should have been maintained but, by the order dated 18.12.2014, it has been classified as for the 'non-regulated sector'. Thus, according to the learned counsel for the petitioner, this is contrary to Section 7(1) read with Section 3(1)(v) of the said Second Ordinance and is, therefore, illegal. It is on this basis that the order dated 18.12.2014 has been sought to be set aside.

4. The order dated 18.12.2014 is as under:-

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

"Most Immediate"

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)
Tel. No. 23384594

Encl: *Annexure-I & II*

Nominated Authority, Ministry of Coal

Copy to:

SID (NIC)- with the request to upload on the website of Ministry of Coal”

Annexure-II to the said order to the extent relevant is set out herein below.

“Coal/Blocks earmarked for Auction

Sl. No.	Schedule	Sl. No. of Schedule	Name of Mine/ Coal Block	Location (State/ Coalfield)	Specified End-use
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
11.	II	6	Gare-Palma-IV/5	Chattisgarh-Mand Raigarh	Non-Regulated Sector
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX

”

5. It was further contended that 'iron and steel', 'cement', 'aluminium' etc. are different sectors and the final products are in different markets. The requirements for coal in these sectors are different. The rates of consumption of coal for these industries are also different. The input to output ratios in these sectors are different and, therefore, they cannot be clubbed together under the classification – 'non-regulated sector' – and bidders cannot be forced to bid against each other for the same coal mine. If this were to be permitted, it would amount to violation of the principle of a level playing field. It is further submitted that aluminium would have an advantage over 'iron and steel' in such an auction. In order to substantiate this plea, results of the auction of the 21 coal blocks were put forth and it was submitted that iron and steel had definitely suffered in the auction. It was contended that as against 72% share of the extractable reserves of coal in the 21 coal mines, the 'iron and steel' sector now would be left with only a 32% share. The captive power plant sector which, according to the petitioner, are really captive power plants for the aluminium industry have allegedly cornered a share of 39% as against 11% compared to the pre-auction period. It was, therefore, submitted that the classification done by the Government by virtue of the order dated 18.12.2014 and, in particular,

in classifying Gare Palma IV/5 under the ‘non-regulated sector’ was illegal. Consequently, it was submitted that the auction held for Gare Palma IV/5 was liable to be set aside. It was also contended that the successful bidder for Gare Palma IV/5 was Hindalco Industries (intervener herein). The said successful bidder had made the bid for the coal mine for its captive power plant which could supply power for production of aluminium. It was contended that this has become possible because captive power plants had been allowed to bid for coal mines which had been classified under the ‘non-regulated sector’. Under the said Second Ordinance, captive power plants would fall under Section 3(1)(v)(ii) along with generation of power. A number of coal mines had been classified under the end-use power by virtue of the order dated 18.12.2014 and according to the petitioner, captive power plants should also have been placed in that category and not clubbed with ‘iron and steel’. It was submitted that a Division Bench of this Court had already held that the end-use under Section 3(1)(v)(ii) was generation of power, including the generation of captive use. It was submitted that once this was held by this Court, the two could not have been split up. A reference was made to the Division Bench decision in **Jindal Steel and**

Power Limited v. Union of India and Others: WP(C) 309/2015 and

particularly to paragraphs 56 and 57, which read as under:-

“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.”

It was submitted that because the captive power plants were allowed to bid for Gare Palma IV/5 which were classified under the ‘non-regulated sector’, the auction held for Gare Palma IV/5, in which Hindalco Industries was successful, is illegal and is liable to be set aside.

6. It was also contended that the Central Government had projected that the country needs to produce 300 million tonnes per annum of ‘iron and steel’ by 2025 as against the production level of 85 million tonnes per annum in the year 2013-14. It was, therefore, contended that more coal mines should be allocated or made available to the ‘iron and steel’ sector which was a priority sector in terms of the preamble to the said Second Ordinance. It was submitted that it is because of this reason that ‘iron and

steel’ has been identified as a separate end-use. Consequently, it was submitted that including ‘iron and steel’ and clubbing it with other sectors under the so-called ‘non-regulated sector’ is opposed to the preamble and the objects of the said Second Ordinance.

Submissions on behalf of the Respondents

7. Mr Sanjay Jain the learned ASG appearing on behalf of the respondents submitted that the petitioner (Monnet Ispat and Energy Limited) cannot challenge the conditions of the tender/auction having participated in the same. He submitted that the Standard Tender Document was published on 27.12.2015. The petitioner was well aware of the tender conditions and the tender process and it had, in fact, participated in the tender process and had even been successful in its bid in respect to Gare Palma V/7. It may be pointed out that Gare Palma V/7 was also classified under the ‘non-regulated sector’. It was further submitted that the petitioner had also submitted its bids for Kathautia, Ardhagram, Gare Palma IV/5 and Bicharpur. The bids were filed by the petitioner on 03.02.2015, which was the last date for submission of technical bids and the initial price offer for the said Schedule II mines. The present writ petition was filed on 12/13.02.2015 after the petitioner had participated in

the tender process. Therefore, according to the learned counsel for the respondents, the petitioner cannot now be allowed to challenge the tender conditions. It was also contended that this Court ought not to interfere at this stage inasmuch as the auctions have taken place under the same set of rules and subsequent thereto vesting orders have also been passed.

8. It was also submitted that the scope of judicial review under Article 226 is limited only to cases where there is clear arbitrariness, discrimination or bias and insofar as the tender conditions are concerned, there is very little scope for interference. A reference was made to the Supreme Court decision in **Tata Cellular v. Union of India: 1994(6) SCC 651** and, in particular, to paragraph 94 thereof which reads as under:-

“94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fairplay in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

9. It will be seen from the above extract that the terms of the invitation to tender are not open to judicial scrutiny because the invitation to tender is in the realm of contract and the Government must have freedom of contract. It was, therefore, submitted that the procedure adopted by the respondents for auction of the coal block was neither discriminatory, arbitrary or biased and the same has been devised in order to prevent cartelization and to achieve the best utilization of natural resources of this

country by technically qualified private companies at the most attractive prices.

10. With regard to the plea that there could not be any clubbing of 'iron and steel' with 'cement' and 'captive power plant' under the 'non-regulated sector', it was submitted that the same was done because the auction process, that is, of forward bidding to discover the highest price, is the same for 'iron and steel', 'cement' and 'captive power plant' (CPP). It was also submitted that the expression 'non-regulated sector' is not a new end-use and that, in fact, a corrigendum dated 24.12.2014 had been issued clearly indicating that the expression 'non-regulated sector' as mentioned in Annexure-II to the order dated 18.12.2014 refers to 'iron and steel, cement, and captive power plants.' The said corrigendum is reproduced herein below:-

"Most Immediate"

No. 13016/9/2014-CA-111
Government of India
Ministry of Coal

Shastri Bhawan, New Delhi
Dated the 24th December, 2014

CORRIGENDUM

Subject: Earmarking of coal mines/blocks for auction and

**allotment under the Coal Mines (Special Provisions)
Ordinance, 2014 — reg.**

Attention is invited to this Ministry's Order of even No. dated 18-12-2014 on the subject cited above and to inform that Gare Palma IV/2 & Gare Palma IV/3 Coal Mines from Schedule II (Sl. No. 3 & 4) as well as Gotitoria East & Gotitoria West Coal Mines from Schedule II (Sl. No. 16 & 17) and mentioned at Sl. No. 1 & 2 and 21 & 22 respectively of Annexure-II 'of the Order ibid dated 18-12-2014, shall be considered for allocation as one mine, as per earlier approved Mining Plans.

2. Further, it may also be noted that 'Non Regulated Sector' as mentioned in Annexure-II of the aforesaid Order refers to meant for Iron & Steel, cement and Captive Power Plants.

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

To:
The Nominated Authority, Ministry of Coal

Copy to:

TD(MC)– with the request to upload on the website of Ministry of Coal”

11. It was submitted that even the Standard Tender Document clearly indicates that the non-regulated sector pertains to auction of mines for ‘iron and steel’, ‘cement’ and ‘captive power plants’.

12. It was further submitted that a Division Bench of this court in ***Jindal Steel and Power Limited (supra)*** had clearly held that Section 7(1) of the said Second Ordinance empowered the Central Government to classify

mines and that the Central Government had the right to classify Schedule I mines for specific end-uses which may be different from the end-uses prescribed prior to the cancellation of the earlier allocations. It was, however, stated that though it was held in the said decision that the Government could not be oblivious to the earlier end-use, it was also pointed out that the words 'classify mines' had a reference to specification of end-use, whereas the word 'earmarked' had a reference to earmarking mines for auction/allocation or allotment. It was, therefore, submitted that the Government's power to classify would also include the power to club different specified end-uses for the purpose of auction. It was also submitted that there was no requirement in the said Second Ordinance requiring the Government to hold an auction for each end-use separately. They could be clubbed and the common thread which ran through 'iron and steel', 'cement' and 'CPP' was that they were in the 'non-regulated sector' which was different and distinct from generation of power which was a regulated industry.

13. It was, therefore, contended by the learned counsel for the respondents that no interference with the auction process or the auction already conducted is necessary.

The Intervener's submissions

14. The learned counsel for the intervener Hindalco Industries Limited submitted that the Gare Palma IV/5 coal block, which was a Schedule-II coal mine, was advertized and offered for auction by the nominated authority, Ministry of Coal through the tender document dated 27.12.2014. Thereafter, Hindalco submitted its bid. The initial price offers (IPO) of various bidders were opened on 16.02.2015. The petitioner (Monnet Ispat and Energy Limited) had also participated. The IPO of Hindalco was the highest and that of the petitioner which was a prior allottee was the lowest in the top 5 which qualified for the second stage, that is, the auction. The said IPO set the floor price of the auction as per the highest IPO of Hindalco. The petitioner also participated in the auction. The auction was conducted from 14.02.2015 to 19.02.2015. Hindalco required Gare Palma IV/5 for its end-use plant 'CPP' which would generate captive power for production of aluminium. On 19.02.2015, the auction process was concluded and Hindalco was declared as the successful bidder and thereafter the vesting order came to be passed in favour of Hindalco insofar as Gare Palma IV/5 was concerned.

15. It was submitted by the learned counsel for the Hindalco that the present petition was filed by deliberately not impleading Hindalco or the other participants in the auction as respondents despite knowing that there were four other participants in the auction round. The present petition was filed on 12.02.2015. On 18.02.2015, the petitioner prayed for an interim order which was to the following effect:-

“In the meanwhile, any further steps taken in the subject tender-cum-auction shall be subject to further orders of this Court.”

It is submitted by the learned counsel for Hindalco that the petitioner did not inform this court nor did it amend the memo of parties to implead Hindalco, which was declared as the successful bidder on 19.02.2015 to the knowledge of the petitioner. It is submitted that as the petitioner had deliberately not impleaded Hindalco as a respondent despite knowing that Hindalco was a proper and necessary party, the interim order ought not to operate to the prejudice of Hindalco.

16. It was also submitted that the auction process cannot be challenged by the petitioner once the petitioner had participated in the same. It was submitted that the petitioner was a successful bidder for Gare Palma IV/7 on 22.02.2015 under the same auction process and, therefore, just because

it had lost out in the auction for Gare Palma IV/5, it cannot challenge the very same process in which it was successful for Gare Palma IV/7. It was, therefore, submitted that the writ petition ought to be dismissed.

Rejoinder arguments

17. In rejoinder, the learned counsel for the petitioner submitted that the auction for Gare Palma IV/5 was to commence on 18.02.2015 and the present writ petition was filed on 13.02.2015 seeking a declaration from this Court that Gare Palma IV/5 should be reserved for the end-use of 'iron and steel'. It was further submitted that on 18.02.2015, this Court had passed the interim order, which we have already extracted above, and, therefore, it cannot be said that the petitioner filed the present petition after having participated in the tender. It was submitted that the petitioner's challenge is to the order dated 18.12.2014 as being violative of Sections 3 and 7 of the said Second Ordinance inasmuch as the order has led to a wrong categorization of Gare Palma IV/5 for the 'non-regulated sector' which arbitrarily clubbed 'captive power plants', 'iron and steel' and 'cement' into one category. According to the petitioner, this led to an arbitrary tender process inasmuch as the concept of 'non-regulated sector' is not in conformity with the said Second Ordinance which conceptualizes

“Iron and steel”, “cement” and “power” as distinct core sectors. The preamble emphasizes that the auction process and allocation/allotment must be done in such a manner which minimizes the impact on each of these core sectors. But, because of the clubbing of ‘captive power plants’, ‘iron and steel’ and ‘cement’, this has had an adverse impact on the core sector of ‘iron and steel’ as is clear from the fact that the subject coal mine has been won by Hindalco for its captive power plant, which, in turn, would be used for production of aluminium which is not a core sector. It was, therefore, submitted that the writ petition should be allowed and the order dated 18.12.2014 should be set aside particularly in respect of Gare Palma IV/5 being categorized under the ‘non-regulated sector’ and not for the specified end-use of ‘iron and steel’.

DISCUSSION:

18. Having considered the arguments of the parties, it becomes clear that this petition has two facets to it. The first facet is whether the petitioner has come to this Court after delay and after participating in the tender/auction process and because of this had disentitled itself for any relief in the present writ petition. The second facet is whether the categorization done by the Government by virtue of the order dated 18.12.2014 was valid in law or

not. It is clear that there is no specified end-use by the name – ‘non-regulated sector’. But this expression has been explained by the order dated 24.12.2012 to mean ‘iron and steel’, ‘cement’ and ‘captive power plants’. All these end-uses are specified end-uses as set out in Section 3(1)(v) of the said Second Ordinance. The idea behind classifying mines is to deal with them separately. This object is discernible from a reading of Section 7(1) of the said Second Ordinance along with Section 3 thereof. In our view, clubbing of specific end-uses would run counter to the principle of classification. Coal mines would have to be specified for an end-use and, therefore, it cannot be said that a particular coal mine would have a specified end-use of ‘iron and steel’ as well as ‘cement’ or ‘iron and steel’ and ‘captive power plants’. The requirements are different. The objective behind the said Ordinance is for best utilizing the reserves of coal and for allocating the same in such a manner that there is no adverse impact on the core sectors of ‘iron and steel’, ‘cement’ and ‘power’. Therefore, in our view, the clubbing of different specified end-uses together runs counter to the logic of classification itself. This is apart from the other difficulties of treating unequals equally which in itself would amount to arbitrariness.

Therefore, in our view, the specified end-uses could not be clubbed together. Each coal mine had to be classified for a specific end-use.

19. This takes us to the consideration of the first aspect as to what order does the petitioner deserve. Although the learned counsel for the petitioner contended that the present writ petition was filed prior to the auction inasmuch as the petition was filed on 12.02.2015, whereas the auction was conducted from 14.02.2015 to 19.02.2015, even the interim order which was passed on 18.02.2015 was when the auction process was underway. We must point out that the Standard Tender Document was available much earlier and at least from 27.12.2014 onwards. The petitioner did not make any complaint with regard to the order dated 18.12.2014 and participated in the tender process by submitting its bids, the last date of which was 03.02.2015. Therefore, it cannot be said that the petitioner had not participated in the tender. It is clear that once the petitioner has participated in the tender process and has even succeeded in respect of Gare Palma IV/7, it cannot be permitted to challenge the same as it has lost out in the auction. Therefore, insofar as WP(C) 1501/2015 is concerned, the petitioner would not be entitled to any order in its favour and the auction of

Gare Palma IV/5 coal mine, in which Hindalco was the successful bidder, cannot be interfered with.

Utkal Coal Limited & Another: WP(C) 1496/2015

20. This petition pertains to the Utkal 'C' Coal Blocks which is a Schedule III mine. The prayers in the writ petition are as under:-

- (a) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus declaring that the impugned orders dated 18 December 2014 and dated 06 January 2015 issued by the Respondents, which specifies the end use of Utkal 'C' coal block as power to include generation of power for captive use;
- (b) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus to the Respondents to take Utkal 'C' Coal Block out of the purview of the Schedules annexed to the impugned Orders dated 18 December 2014 and 6 January 2015 and exclude the Utkal 'C' Coal Block from the bid process contemplated in the aforesaid orders; and/or
- (c) Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing the Clause 4.1.2(f) of the Standard Tender Document (for Power Sector) dated 7 February 2015 insofar as it excludes the eligibility of person engaged in generation of power for captive use from the bid process; and/or
- (d) Issue an appropriate writ, order or direction to the Respondents to allow the Petitioner No.1 to participate in the bid process for allocation of the Utkal 'C' Coal Block

for the specific end use of generation of power including generation of power for captive use;

- (e) pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- (f) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus declaring that the impugned orders dated 18 December 2014 and dated 06 January 2015 issued by the Respondents, which specifies the end use of Utkal 'C' coal block as power to include generation of power for captive use;
- (g) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus to the Respondents to take Utkal 'C' Coal Block out of the purview of the Schedules annexed to the impugned Orders dated 18 December 2014 and 6 January 2015 and exclude the Utkal 'C' Coal Block from the bid process contemplated in the aforesaid orders; and/or
- (h) Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing the Clause 4.1.2(f) of the Standard Tender Document (for Power Sector) dated 7 February 2015 insofar as it excludes the eligibility of person engaged in generation of power for captive use from the bid process; and/or
- (i) Issue an appropriate writ, order or direction to the Respondents to allow the Petitioner No.1 to participate in the bid process for allocation of the Utkal 'C' Coal Block for the specific end use of generation of power including generation of power for captive use;
- (j) pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

21. From the above prayers, it is evident that by virtue of the orders dated 18.12.2014, the specified end use for Utkal 'C' is 'Power' and the petitioners' grievance is that this should have also included generation of power for captive use. It is in this context that quashing of clause 4.1.2(f) of the Standard Tender Document for the power sector, insofar as it includes the eligibility of a person engaged in generation of power for captive use, has been sought. Clause 4.1.2(f) of the Standard Tender Document for the power sector is 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.”

22. It is evident from the said clause that a person engaged in captive generation of power, as defined in the Electricity Act, 2003 and the Rules thereunder shall not be eligible to participate in the tender process. The learned counsel for the petitioner drew the attention of this court to

paragraphs 56 and 57 of the decision in *Jindal Steel (supra)*, where we have taken the view that 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. It was held that the classification done/to be done under Section 7(1) of the Ordinance clearly required the mines to be classified as per the specified end uses. Consequently, it was held that once a mine is classified for the specified end use – power, the same would include generation of power for captive use. This court held that this is the legislative intent and the same cannot be altered by executive action. In fact, clause 4.2.1(f) was clearly referred to in the said decision and this court observed that this aspect that power included power for captive use needed consideration inasmuch as the earlier end-use of the petitioner in that case included power for captive consumption and they also had a power plant for captive consumption. In that case, a review of the classification was directed in the light of the discussion in the said decision before the power plants Utkal B1 and Utkal B2 and Gare Palma IV/6 were put up for auction again. A similar direction is sought in the present writ petition. Insofar as the issue on merits is concerned, in our view, it stands

concluded by our decision in *Jindal Steel (supra)*. But, the petitioners may not be in a position to get any relief in the present matter. This is so because shortly after the writ petition was filed on 13.02.2015, this court, while issuing notice on the petition, passed an interim order to the following effect:-

“In the meanwhile, the petitioner shall be permitted to bid, but this is subject to any order that may be passed.”

23. Thereafter, on 05.03.2015, another interim order was passed to the following effect:-

“Any steps taken in WP(C) 1496/2015 shall be subject to final orders that may be passed in the writ petition.”

24. It may be pointed out that after the order dated 13.02.2015 was passed by this court permitting the petitioner to bid, the petitioner did not do so. On the other hand, a bid was sought to be placed at the instance of the Indian Metals and Ferro Alloys Limited which is the alleged parent company of the petitioner in respect of the subject mine – Utkal ‘C’. Since only the petitioner No.1, i.e., Utkal Coal Limited was permitted to place a bid by virtue of the interim order dated 13.02.2015, Indian Metals and Ferro Alloys Limited was not allowed to submit its bid as it was otherwise also not eligible. The fact of the matter is that, although the petitioner No.1

Utkal Coal Limited was granted permission to submit its bid by virtue of the order dated 13.02.2015, it did not do so. According to the respondents, the petitioner No.1 did not submit its bid even in the extended period upto 5.00 p.m. on 18.02.2015 and, therefore, the petitioner No.1 failed to avail the opportunity given by this court by virtue of its order dated 13.02.2015. It was submitted by the learned counsel for the respondents that having failed to place a bid, the present writ petition had been rendered infructuous and was liable to be dismissed on this short ground alone. Of course, the learned counsel for the petitioner submitted that it did not participate in the tender process because the petitioner being a captive power plant could not participate in a reverse bidding process which was tailor-made for independent power plants under the regulated sector and it was further submitted that even if the petitioner had participated, it would have been an empty formality as a captive power plant cannot participate in a reverse bidding process. But, considering the arguments of the counsel for the petitioner, we are of the view that the petitioner cannot get any beneficial order in the present writ petition for the simple reason that they did not participate despite seeking permission and being granted permission by this court. The argument that they did not participate because it would be an

empty formality would not hold good because this was not what was put to the court on 13.02.2015 when they sought permission to participate in the bid. The entire tender process was known to the petitioners and they requested for permission to participate and when that permission was given, they chose not to participate. Consequently, the petitioners are not entitled to any relief.

Jaiswal Neco: WP(C) 2381/2015

25. In this writ petition the following prayers have been made:-

“A. ISSUE a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature quashing the order no. 13016/9/2014-CA-III dated 18.12.2014 as being violative of sec. 3 of the Coal Mines (Special Provision) Second Ordinance 2014 as also being violative of Articles 14, 19(1)(g) and 39(b) of the Constitution of India and a consequent direction to the Respondents to clearly earmark the Schedule I coal mines for each/single specified end-use as defined under sec. 3(1)(v) of the aforesaid Ordinance for the purposes of auction;

B. ISSUE a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature quashing the auction of Gare Palma IV/8 coal mines held on 08.03.2015 and to pass a consequential order directing 'the Respondents to re-conduct the auction of Gare Palma IV/8 coal mines after taking only the Qualified Bidders of one end-use plant, that is, 'production of iron and steel' into account;

C. ISSUE a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature quashing Clause 2.3.1 of the Tender Document dated 7.1.2015 for Gare

Palma IV/8 to the extent it permits addition/clubbing of captive power and cement with iron and steel end use plant being in contravention of sec. 3(1)(v) of the Coal Mines (Special Provisions) Second Ordinance, 2014 read with the statutory order passed by Respondent no. 1 under Rule 8(2) of the Coal Mines (Special Provisions) Rules, 2014 read with the judgment dated 11.02.2015 passed by this Hon'ble Court in Jindal Steel & Power Ltd..v Union of India, Writ Petition (Civil) no. 310 of 2015 and Articles 14 and 19(1)(g) of the Constitution of India;

D. ISSUE a writ, order or direction declaring that "generation of power for captive use" ought to be categorized as per Section 3(1)(v)(ii) of the Coal Mines (Special Provision) Second Ordinance 2014 alongwith "generation of power" unless such captive power plant is used for production of power for the specified end uses mentioned in Section 3(1)(v)(i), (iii), (iv) or (v);

E. ISSUE a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature quashing Clause 3.3.2(b) of the Tender Document dated 7.1.2015 for Gare Palma IV/8 issued by the Respondents No.2 as being violative of Article 14, 19(1)(g) and 39(b) of the Constitution of India and issue a further direction to the Respondents to permit all the Technically Qualified Bidders to participate in the Financial Bid;

F. ISSUE a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature quashing Clause 4.1.2(d) of the Tender Document dated 7.1.2015 for Gare Palma IV/8 issued by the Respondents No.2 as being violative of Article 14, 19(1)(g) and 39(b) of the Constitution of India and issue a further direction to Respondents to permit only one bid company/bidder; and,

G. PASS any such other and suitable order or orders in the nature of writ, order or direction, which this Hon'ble Court

deems fit in the peculiar facts and circumstances of the present case and in the interest of justice.”

26. It will be seen that prayers (a) and (c) are directed against the clubbing of specified end-uses. Prayer (d) is directed against the splitting of generation of power for captive use from generation of power. Prayers (e) and (f) pertain to the inter-play between Clause 3.3.2 and Clause 4.1.2 (d) of the Standard Tender Document. We have already pointed out above while considering Monnet Ispat Engineering Limited [WP(C) 1501/2015] that this prayer was given up by the petitioners. In any event, the issue stands decided in favour of the respondents by virtue of our judgment in **Sharda Energy Limited v. Union of India and Others: WP(C) 1384/2015** decided on 18.02.2015. Therefore, these prayers do not arise for consideration. Prayer (b) is the consequential prayer seeking quashing of the auction of the Gare Palma IV/8 coal block which was held on 08.03.2015 and the respondent No. 3 (Ambuja Cement Limited) was declared as the successful bidder. A further relief has been claimed as a consequence to the relief of quashing of the auction and that is for re-conduct of the auction for Gare Palma IV/8 after taking the qualified bidders whose end-use plants were ‘iron and steel’. In other words, the

bidders whose end-use was ‘captive power plants’ or ‘cement’ are sought to be ignored.

27. The petitioner was allotted Gare Palma IV/9 coal block on 13.01.2006. But this was cancelled by virtue of the Supreme Court judgment dated 25.08.2014 [reported in 2014 (9) SCC 516] and the follow up order dated 24.09.2014. The earlier allocation which had been cancelled was for the end-use of ‘iron and steel’. By virtue of the order dated 18.12.2014 (to which we have already referred in our discussion in Monnet Ispat Engineering Limited [WP(C) 1501/2015]), Gare Palma IV/8 was shown at serial No. 38 of Annexure-II to the said order dated 18.12.2014 in the following manner:-

“Coal/Blocks earmarked for Auction

Sl. No.	Schedule	Sl. No. of Schedule	Name of Mine/ Coal Block	Location (State/ Coalfield)	Specified End-use
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX
38.	III	4	Gare-Palma Sector –IV/8	Chattisgarh-Mand Raigarh	Non-Regulated Sector
XXXX	XXXX	XXXX	XXXX	XXXX	XXXX

28. From the above, it is evident that the specified end-use as per the order dated 18.12.2014 in respect of Gare Palama IV/8 was indicated to be

‘non-regulated sector’. We have also pointed out in our discussion in respect of Monnet Ispat Engineering Limited [WP(C) 1501/2015] that the expression ‘non-regulated sector’ was explained by a corrigendum dated 24.12.2014 to mean ‘iron and steel’, ‘cement’ and ‘captive power plants’.

29. The grievance of the petitioner is that these were separate and distinct specified end-uses and cannot be clubbed together. We have already indicated that in our view, clubbing of specified end-uses is not permissible. Each mine has to be allocated for an individual specified end-use because if that does not happen, then unequals would be treated equally and that in itself would lead to arbitrariness. Prospective bidders who want to utilize coal for ‘iron and steel’ are different from prospective bidders who want to utilize coal for ‘cement’ or for ‘captive power plants’. Their requirements are different, their mechanics are different and their economics are different. Therefore, putting them all together in one auction would amount to treating unequals equally. It is also to be noted that while ‘iron and steel’, ‘cement’ and ‘captive power plants’ are all specified end-uses under Section 3(1)(v) of the said Second Ordinance, the captive power plants can be utilized to generate power in the manufacturing process of those end-uses which are neither ‘cement’ nor ‘iron and steel’, which have

been regarded as the core sectors in the recitals contained in the said Second Ordinance. To be clear, captive power plants may be linked with the production of aluminium, which is not an identified core sector under the said Second Ordinance. The objective of the said Second Ordinance was to allocate the coal resources in such a manner that there would be a minimal adverse impact on the core sectors of steel, power and cement. Obviously, when all these end-uses are clubbed together and the successful bidder could be a captive power plant which is linked with the production of aluminium or some other material, then clearly the coal resources would have been allocated in a manner which would impact the iron and steel sector and the cement sector which are clearly identified as core sectors. In this manner also, we feel that the clubbing of the three end-uses together would have an adverse impact on the core sectors.

30. Insofar as the issue of splitting generation of power for captive use from generation of power is concerned, we are of the view that perhaps there is a logic behind this. The auction process for independent power plants is reverse bidding whereas the auction process for captive power plants is forward bidding. Therefore, the two cannot be, according to the respondents, placed in the very same auction. This is perhaps reasonable

but at the same time captive power plants ought to have been dealt with independently and separately and not clubbed together with ‘cement’ and ‘iron and steel’.

31. The question that now arises is whether the petitioner is entitled to any relief in the present petition. The respondents and in particular respondent No. 3 pointed out that as per the schedule of the tender process, the last date for sale of tender documents at the website of MSTC Limited was 12.02.2015; the bid due date was 14.02.2015; the opening of the technical bids was to be done on 15.02.2015, the announcement of qualified bidders was to be done on 23.02.2015 and the conduct of the electronic auction for the qualified bidders was to be done between 25.02.2015 and 05.03.2015. It was pointed out by the respondents that on 14.02.2015, the petitioner submitted its bid without any demur, protest or reservation in the said Gare Palama IV/8 coal block. While considering the technical bid of the petitioner, the same was rejected by the Technical Evaluation Committee for the reason that the capacity of rolling mill, sinter plant and producer gas plant was not to be considered for assessment of coal requirement as these were not specified end-uses. It was also communicated in the rejection that since consumption norms for coal

requirement for blast furnace were not provided for Gare Palama IV/8, coal requirement for blast furnace shall not be considered. It was also communicated that the washery and transit losses are not to be considered for assessment of coal requirement. It was the view taken by the Technical Evaluation Committee that the petitioner's coal entitlement as computed after considering permitted end uses and excluding washery and transit losses was less than the extractable reserves of the coal mine and, therefore, the bid is rejected.

32. Being aggrieved by this rejection, the petitioner filed a writ petition being WP(C) 1672/2015 in which the plea taken on behalf of the petitioner was that even if the above mentioned elements were ignored for the sake of argument, without admitting that they could be ignored for an integrated steel plant, the petitioner would still be entitled inasmuch as the total coal requirement of the sponge iron plant and the captive power plants and the pellet plant taken together on the basis of the formula given in the tender documents would be in excess of the extractable reserves of 45.85 million tonnes. It was further pointed out that the respondents had not included the computation of the requirement for the pellet plant while stating that the coal requirement of the petitioner was only 45.76 million tonnes. After

considering the arguments, this Court held that there was no reason to permit the respondents to exclude the pellet plant and that once the pellet plant requirement is included even as per the calculation of the respondents, the petitioner's coal requirement would cross the threshold of 45.85 million tonnes. The Court, therefore, took the view that the petitioner's technical bid could not have been rejected on the basis of the reasons on record. As a result, the petitioner was entitled to participate as a technically qualified bidder in the auction to be held on 08.03.2015 (which was the extended date). The writ petition was allowed to that extent.

33. The point that the respondents made was that when the petitioner filed the earlier writ petition, being WP(C) 1672/2015, it had not raised any grievance with regard to the categories of the specified end-uses either with regard to the clubbing of end-uses or the splitting of end-uses. There was no prayer seeking the quashing of the order dated 18.12.2014 or any of the clauses in the tender document dated 07.01.2015. This was so, even though there were writ petitions pending before this Court such as Utkal Coal Limited [WP(C) 1496/2015] and Monnet Ispat and Energy Limited [WP(C) 1501/2015] in which the order dated 18.12.2014 had been challenged. After the order dated 05.03.2015 in WP(C) 1672/2015, the petitioner sent

an e-mail to the respondent No.2 for the first time that it would participate in the auction process under protest due to pendency of writ petitions including, WP(C) 1496/2015 and WP(C) 1501/2015. Immediately thereafter, on 07.03.2015, the present writ petition was filed in which the order dated 18.12.2015 was challenged. The petitioner also challenged the conditions of the tender document. On 08.03.2015 the auction of the said coal block was held and the respondent No. 3 was the highest bidder.

34. It was, therefore, contended on the part of the respondents in the backdrop of the facts narrated above that the present writ petition was hit by delay and laches. It was also contended that the sanctity of the auction process cannot be challenged after participation in the same. It was also contended that the petition was barred by doctrine of estoppel, res judicata, approbation and reprobation, waiver and acquiescence.

35. The learned counsel for the petitioner, however, submitted that on 12.03.2015, when the present writ petition came up for hearing before this Court, the Court was pleased to issue notice and further direct that the 'the auction already conducted shall be without prejudice to the contentions of the petitioner'. It was, therefore, contended that the rights of the petitioner

were reserved and the petitioner cannot be non-suited on the grounds alleged by the respondents.

36. After having heard the learned counsel for the parties and examining the rival contentions on this issue, we are of the view that once a prospective bidder participates in the tender process without any demur, protest or reservation, he cannot be allowed to challenge the very same tender process, at a later stage in which he has lost out. This is a well settled principle. When the petitioner filed the earlier writ petition [WP(C) 1672/2015], it did not raise any ground whatsoever with regard to the order dated 18.12.2014 or the tender documents. All the points sought to be raised in the present petition appeared to be afterthoughts and cannot be entertained by this Court. Consequently, the petitioner is not entitled to any relief in the present petition.

Bhushan Power and Steel Limited [WP(C) 6302/2015]

37. In this matter, the following reliefs have been claimed:-

- “(a) pass a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature and set aside Clause 3.3.2 of the Standard Tender Document issued by Respondent No.2 as being violative of Article 14, 19(1)(g), 21 and 39(b) of the Constitution of India;

- (b) pass a writ, order or direction in the nature of certiorari or any other writ, order or direction of like nature and set aside the Order dated 4.6.2015 as being in violation of Section 3 and 7 of the Coal Mines (Special Provisions) Act, 2015 and being in violation of Article 14, 19(1)(g), 21 and 39(b) of the Constitution of India;
- (c) pass a writ, order or direction directing the Respondents to categorise the Jamkhani Coal Block only for iron and steel under the Coal Mines (Special Provisions) Act, 2015 before putting the same for auction;
- (d) pass a writ, order or direction declaring that “generation of power for captive use” ought to be categorized as per Section 3(1)(v)(ii) of the Coal Mines (Special Provisions) Act, 2015 alongwith “generation of power” unless such captive power plant is used for production of power for the specified end uses mentioned in Section 3(1)(v)(i), (iii), (iv) or (v) of the Coal Mines (Special Provisions) Act, 2015;
- (e) pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

38. This writ petition was filed after the other three petitions which we have already discussed above. The counsel for the parties also submitted that the issues which arise in the present petition are the same as those in Monnet Ispat and Energy Limited [WPC) 1501/2015]. The only difference being that the order that is challenged here is not the order dated 18.12.2014 but a subsequent order dated 04.06.2015. The said order reads as under:-

“No. 13016/9/2014-CA-III

Government of India

Ministry of Coal

Shastri Bhawan, New Delhi,

Dated the 4th June, 2015

ORDER

Subject: Earmarking of coal mines/ blocks for auction and allotment under the Coal Mines (Special Provisions) Act, 2015 — reg

The undersigned is directed to inform the 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 mines 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, in continuation of order of even no. dated 06.01.2015, a list of 10 Schedule-II and Schedule-III Coal Mines is forwarded herewith for conducting e-auction by the Nominated Authority.

Sd/-

(S. K. SHANI)

Director (CA-III & NA)

Nominated Authority,
Ministry of Coal

Copy to:

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

39. The present petition pertains to Jamkhani coal block which is a Schedule-III coal mine. Earlier, prior to cancellation, the Jamkhani coal

block was allocated for 'iron and steel'. By virtue of the order dated 04.06.2015, its specified end-use has now been indicated as "iron and steel, cement and captive power plants". Therefore, the arguments raised are with regard to clubbing and splitting of specified end-uses which we have already discussed in detail above in respect of the other coal blocks. The same principles would apply in the present case also. An additional point was, however, taken by Mr Kapil Sibal, the learned senior advocate who appeared on behalf of the petitioner that in the judgment in the case of *Jindal Steel (supra)*, while discussing the third meeting of the Technical Evaluation Committee held on 12.11.2014, it was noted that the Technical Committee's recommendation for Jamkhani was DRI+CPP. This was discussed in paragraph 35 of the said decision in *Jindal Steel (supra)* in the following manner:-

"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.”

40. It was further pointed out by Mr Sibal that in the Special Leave Petition being SLP(C) 8612-13/2015 preferred by the Union of India against the said decision in *Jindal Steel (supra)*, it has been stated on behalf of the Union of India that in the case of Jamkhani coal block 40% of the geological reserves were in the underground category and the quality of coal was of a better grade and, therefore, as per the approved criteria, the block was classified for DRI+CPP. Thus, according to Mr Sibal the specified end-use recommended by the Technical Committee was DRI+CPP and not DRI, CPP. This implied that the captive power plant was for the steel sector and was not open ended. It was further pointed out by Mr Sibal that in the Special Leave Petition itself in ground ‘P’ it was admitted by the respondent that the Technical Expert Committee retained the Jamkhani coal block for the steel sector. It was, therefore, submitted that having specifically indicated that Jamkhani coal block would be for the

steel sector, the order dated 04.06.2015 is illegal to the extent the specified end-use for Jamkhani coal block has been altered to 'iron and steel', 'cement' and 'captive power plants' whereas it should only have been 'iron and steel' or 'iron and steel' plus 'captive power plants'. We note that this is the very same argument of clubbing which has been raised in the other petitions also. That aspect has already been dealt with by us.

41. The plea taken by the respondents in this particular case is that the Standard Tender Document was published on 08.06.2015 and as such the petitioner was aware of the tender conditions and tender process. The petitioner has, in fact, participated in the tender process and was even declared technically qualified in respect of its bid in the Jamkhani coal block. The present writ petition was filed on 02.07.2015 and the bid in the Jamkhani coal block was submitted by the petitioner on 18.07.2015. As such, it is contended, the petitioner having participated in the tender process cannot be allowed to challenge the tender conditions. In the light of the discussion in respect of the other petitions, this plea of the respondents would also merit acceptance. The result is that the petitioner, here, too, would not be entitled to any relief.

42. In conclusion, for the reasons aforestated, the petitions are dismissed.

There shall be no order as to costs.

BADAR DURREZ AHMED, J

October 05, 2016
SR/dutt

SANJEEV SACHDEVA, J

