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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2136 of 2012

- M/s Ultratech Cement Limited (Formerly Grasim Industries Limited) A Company Incorporated Under The Indian Companies Act, 1956, Having Its Registered Office At B Wing, Ahura Centre, 2nd Floor, Mahakali Caves Road, Andheri (East), Mumbai-400093, Through Mr. Rahul Tiwari, S/o Shri Prakash Chandra Tiwari, Aged About 34 Years, Working For Gain At M/s Ultratech Cement Limited. P. S. - Marol, Mumbai

---- Petitioner

Versus

1. Union Of India Through The Secretary, Ministry Of Coal, Shastri Bhavan, New Delhi- 110001
2. H D F C Bank Limited Through Its Branch Manager, Trade Finance Department, 402, 4th Floor Broadway Business Centre, Opp. Samatheshwar Mahadev, Law Garden, Ellisbridge, Ahmedabad, Gujrat-380006 P. S.- Civil Lines, Ahmedabad, Gujrat

----Respondents

For Petitioner	:	Shri Prashant Jayaswal, Senior Advocate with Shri Ashutosh Shukla, Advocate
For Respondent/Union of India	:	Shri B Gopa Kumar, Assistant Solicitor General

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Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

15.11.2017

1. We have heard learned Senior counsel for the petitioner and the learned Assistant Solicitor General.

2. This Writ Petition is instituted seeking to quash letter dated 15.11.2012 cancelling the allocation of Bhaskarpara Coal block, that was jointly allocated to the petitioner along with M/s Electrotherm (India) Limited. The said decision is evidenced by Ex.P/1 document. That letter

is one whereby the competent authority ordered de-allocation of the Bhaskarpara coal block, allotted on 21.11.2008. That decision was taken after a pre-decision notice.

3. To our query, the learned counsel appearing on both sides submitted on facts, that the said allocation is one which would fall within those allocations of coal blocks covered by the contents of paragraph No.163 of the decision of the Hon'ble Supreme Court of India in **Manoharlal Sharma Vs Principal Secretary {**2014 (9) SCC 516}. The said paragraph of that judgment, as reported in SCC, reads as follows:

> "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."

4. Obviously, therefore, the allocation of coal block on the basis of which the petitioner claimed relief in the Writ Petition against its cancellation loses its substratum by reason of the verdict handed down by the Apex Court in **Manoharlal Sharma** (*supra*) . So much so, the coal allocation in favour of the petitioner does not survive to be further considered in this Writ Petition. As a necessary consequence, the question of sustainability and correctness or otherwise of the impugned order/ letter would remain merely academic and the Writ Petition has become infructuous to that extent. We accordingly hold that the allocation of coal block to the petitioner which is the foundation of the cause of action of this Writ Petition having been lost, the challenge against the impugned order/ letter dated 15.11.2012 does not survive.

5. This takes us to an issue relating to the invocation/encashment of bank guarantee which could be effected by or on behalf of the Union of India. The bank guarantee is stated to be due for renewal. It carried a cover of Rs.8.45 crores. However, the liability of the petitioner is calculated by the Coal Controller's Office to be to the extent of 1.6513 crores (Rs.1,65,13,000/- only) and it is to that extent that the bank guarantee is ordered to be invoked as per the decision dated 15.11.2012. Therefore, the eligibility of the Union of India and on its behalf is to invoke the bank guarantee provided by the petitioner to the extent of the aforesaid amount of Rs.1,65,13,000/- as on 15.11.2012, with accruals thereon, in accordance with law, as on the date of invocation/encashment. The invocation/encashment of the bank guarantee will therefore, stand confined to such extent.

6. In the result, this Writ Petition is ordered as one which does not require a decision on merits, it having become infructuous and by further directing that the Union of India will be entitled to invoke the bank guarantee provided by the petitioner only to the extent of the amount of Rs.1,65,13,000/- as on 15.11.2012 with accruals as may be due thereon, in accordance with law, as on the date of invocation/encashment of the said bank guarantee. If the bank guarantee, which now current and live, is not invoked and encashed by the Union of India or on its behalf, the writ petitioner shall renew the bank guarantee for the amount that may accrue, in terms of this order, as on the date on which the current bank guarantee would expire. It is clarified that the order of stay granted in this Writ Petition against the invocation/encashment of the bank guarantee is vacated as a consequence of this final order.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge

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