

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

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Date of decision: 24th January, 2017

+ **W.P.(C) No.3398/2015 & CMs No.6071/2015 (for stay), 13006/2015 (of R-3&4 for modification / clarification of order dated 13th April, 2015), 28512/2015 (of R-4 for modification / clarification of order dated 13th April, 2015) & 3044/2016 (for impleadment)**

JINDAL STEEL & POWER LIMITED & ANR..... Petitioners

Through: Mr. Kapil Sibal and Mr. Parag Tripathi, Sr. Advs. with Mr. Sanjeev Kapoor, Mr. Aakash Bajaj, Ms. Anusha Nagrajan and Ms. Shruti Chaudhary, Advs.

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjeev Narula and Mr. Ajay Kalra, Advs. for UOI.
Mr. Sandeep Sethi, Sr. Adv. with GP Capt. Karan Singh Bhati, Mr. Jaideep Singh and Mr. Amit Verma, Advs. for CIL & SECL.

AND

+ **W.P.(C) No.886/2016 & CM No.3888/2016 (for stay)**

JINDAL STEEL & POWER LIMITED & ANR Petitioners

Through: Mr. Kapil Sibal and Mr. Parag Tripathi, Sr. Advs. with Mr. Sanjeev Kapoor, Mr. Aakash Bajaj, Ms. Anusha Nagrajan and Ms. Shruti Chaudhary, Advs.
Mr. Prashanto C. Sen, Mr. Udayan Verma and Mr. Shivanshu Singh, Advs. for BALCO.

Versus

**MINISTRY OF LABOUR AND EMPLOYMENT
& ORS**

..... Respondents

Through: Mr. Sanjeev Narula and Mr. Ajay Kalra, Advs. for UOI.
Mr. Sandeep Sethi, Sr. Adv. with GP Capt. Karan Singh Bhati, Mr. Jaideep Singh and Mr. Amit Verma, Advs. for CIL & SECL.
Mr. Prashanto C. Sen, Mr. Udayan Verma and Mr. Shivanshu Singh, Advs. for BALCO.

**CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. WP(C) No.3398/2015 was filed pleading:
 - (i) That the respondent no.1 Union of India (UOI) vide letter dated 20th June, 1996 allocated coal block Gare Palma-IV/1 to the petitioner no.1 Jindal Steel & Power Ltd. (JSPL) (the petitioner no.2 Mr. Kapil Dhagat is a shareholder of the petitioner no.1 JSPL).
 - (ii) That the end use of the aforesaid coal block was linked to the Sponge Iron / Steel Plant at Raigarh, Chhattisgarh.
 - (iii) Since coal in the said coal block was of inferior grade having high ash content of 53 to 56% which was not suitable for manufacture of sponge iron / steel, coal washeries were therefore set up to wash the coal and the washed coal was used for manufacture of sponge iron / steel.

- (iv) The washery middlings / coal fines / coal rejects were used in a 540 MW Captive Thermal Plant of the petitioner no.1 JSPL at Dongamahua at Raigarh and in a 134 MW capacity Captive Power Plant situated in the Steel Plant at Raigarh; these power plants have special boilers which can utilize washery middlings/ fines/ coal rejects having high ash content.
- (v) The Environment Clearance dated 31st July, 2008 for the Dongamahua Captive Power Plant (DCPP) at Raigarh granted by the Ministry of Environment and Forest (MoEF) also clearly specifies that 100% fly ash shall be utilized in backfilling of the mined out areas, filling of low lying areas etc. and that such backfilling of the captive coal mines shall be done with the permission of the Director General of Mines Safety (DGMS); the said clearance further specifies that there shall be no ash pond.
- (vi) The Environment Clearance dated 21st May, 2012 for the subject coal mine also provides that the fly ash generated from the DCPP at Raigarh shall be dumped in the mine void in alternate layers with the overburden (OB) in ratio of 25:75.
- (vii) DGMS vide its letter dated 31st July, 2014 permitted petitioner no.1 JSPL to use fly ash after mixing with the OB for back filling in the mined out area.

- (viii) The Notification dated 14th September, 1999 issued by the MoEF makes it mandatory for the coal mine lessees located within 50 Kms of a coal based thermal power plant to use fly ash along with OB for backfilling of open cast mines; thus it is imperative and necessary that the OB produced during the mine operations in Gare Palma Coal Mine should be mixed with the fly ash generated from the DCPD at Raigarh and be used for backfilling the mined out area.
- (ix) Vide order dated 24th September, 2014 of the Supreme Court in W.P.(Crl.) No.120/2012 [*Manohar Lal Sharma Vs. Principal Secretary* (2014) 9 SCC 614 and which was preceded by the judgment reported as (2014) 9 SCC 516] , the allocation of coal blocks except one coal block allocated to Steel Authority of India Ltd. (SAIL) and one coal block allocated to National Thermal Power Corporation (NTPC) and two coal blocks allocated to UMPPs, was cancelled.
- (x) In pursuance to the aforesaid judgment of the Supreme Court, on 21st October, 2014, the Coal Mines (Special Provisions) Ordinance, 2014 was promulgated to provide for auction / 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 identified through the process of auction or allocation; the said Ordinance was repealed by the subsequent Coal Mines (Special Provisions) Second

Ordinance, 2014 dated 26th December, 2014 and which has become the Coal Mines (Special Provisions) Act, 2015.

- (xi) Under the aforesaid Ordinances & Act, the respondent no.2 was constituted as the Nominated Authority.
- (xii) In accordance with the aforesaid Ordinance/Act, the respondent no.1 UOI issued letter dated 24th October, 2014 to all the prior allottees including the petitioner no.1 JSPL to provide details of land and mine infrastructure as per proforma.
- (xiii) The petitioner no.1 JSPL on 12th November, 2014 gave details of the land acquired by the petitioner no.1 JSPL and the cost thereof and stated therein that the investment made in relation to 298.913 hectares of land including investment on its DCP at Raigarh, coal washeries, coal handling plant and associated facilities was excluded from the cost of land and mine infrastructure; the petitioner no.1 JSPL in the said letter also gave the particulars of the facilities located in the area of Gare Palma IV/1 which it intended to retain as it had made substantial investments thereon and as the same were required for operation of its captive power plant; the petitioner no.1 JSPL therein included two number of coal washeries including Coal Handling Plant, Stock of Middlings, Rejects and Pond Fines, OB Dump Pit 1 and Void (for fly ash filling inside the Void), OB Dump Pit 2 (to

fulfill the requirement of OB to be mixed with fly ash before backfilling).

- (xiv) The said area of 298.913 hectares is de-coaled as the coal therefrom has already been mined also holds OB dumps, void for backfilling of fly ash and stock of middlings/ pond fines / rejects which are required by the petitioner no.1 JSPL for operation of its Captive Power Plant at Raigarh.
- (xv) The petitioner no.1 JSPL thus did not include any details as regards aforesaid facilities while seeking compensation under the Ordinances / Act aforesaid.
- (xvi) The petitioner no.1 JSPL in its subsequent letter dated 25th November, 2014 in response to another letter dated 11th November, 2014 under the Ordinances / Act aforesaid also reiterated its intention to retain the plant area as the same is integral for the operation of the DCPD at Raigarh including OB dumps, void for backfilling of fly ash and stock of middlings/pond fines/rejects.
- (xvii) That the respondent no.2 Nominated Authority in its Standard Tender Document informed the prospective bidders that the petitioner no.1 JSPL intended to retain the aforesaid area of 298.913 hectares since it was being used as aforesaid, thereby clearly accepting the exclusion of aforesaid area of 298.913 hectares from auction process of Gare Palma IV/1 coal block.

- (xviii) That in the auction held, Bharat Aluminium Company Ltd. was the preferred bidder for the said coal block.
- (xix) The respondent no.4 South Eastern Coalfields Ltd. (SECL) vide its letter dated 31st March, 2015 informed the petitioner no.1 JSPL that the respondent no.4 SECL had been authorized to exercise the power relating to taking over management and operation of the Gare Palma IV/1 coal mine as the designated custodian.
- (xx) That the petitioner no.1 JSPL in its response dated 31st March, 2015 thereto also informed that according to the Environment Clearance to the DCP, the petitioner no.1 JSPL had been required to backfill the mined out areas with fly ash and the DGMS had also permitted the petitioner no.1 JSPL to backfill the fly ash after mixing with OB.
- (xxi) The petitioner also informed that any stoppage of fly ash backfilling inside the mine void will lead to stoppage of power generation at DCP and consequently, the linked integrated steel plant of the petitioner no.1 JSPL at Raigarh.
- (xxii) The respondent no.4 SECL on 2nd April, 2015 informed the petitioner no.1 JSPL that its request for backfilling of fly ash generated at the DCP in the Gare Palma IV/1 mine cannot be permitted.
- (xxiii) The respondent no.2 Nominated Authority vide order dated 26th March, 2015 required the petitioner no.1 JSPL to by 8th April, 2015 remove the coal stock.

(xxiv) The petitioner no.1 JSPL vide letter dated 2nd April, 2015 represented thereagainst and reiterated that the retention of plant area by the petitioner no.1 JSPL is essential for operation of DCPD inasmuch as for dumping of fly ash supply of washery middlings / fines / rejects was essential.

(xxv) The respondent no.4 SECL vide letter dated 2nd April, 2015 to the petitioner no.1 JSPL rejected the request of the petitioner no.1 JSPL to retain 298.913 hectares of area for fly ash filling / dumping as aforesaid.

Accordingly, this petition was filed impugning the order dated 26th March, 2015 of the respondent no.2 Nominated Authority and the letter dated 2nd April, 2015 of the respondent no.4 SECL and seeking a declaration that the said 298.913 hectares of area shall be deemed to be excluded from Gare Palma IV/1 coal mine.

2. The petition came up first before the Division Bench on 7th April, 2015 and finding the same to be falling in the roster of a Single Judge of this Court, came up before this Bench on 13th April, 2015 when while issuing notice thereof, the respondents were directed to permit the petitioners to dump the fly ash generated in the course of operation of DCPD in the same manner as the petitioner no.1 JSPL had been doing till now and it was further directed that the middlings available at site as of then will be allowed to be removed for dumping of fly ash.

3. LPA No.449/2015 was preferred by respondents no.3 (Coal India Ltd.) (CIL) and 4 viz. CIL and SECL against the aforesaid order but which was disposed of vide order dated 17th July, 2015 with liberty to

make an appropriate application before this Bench for variation / modification of the ad-interim order.

4. Such an application was filed and finding that the decision thereof would amount to decision of the writ petition itself, the pleadings in the writ petition were ordered to be completed and the interim order continued.

5. Vide orders dated 9th December, 2015 and 21st December, 2015 a survey / measurement of the middling, rejects and pond fines was permitted to be conducted.

6. On 28th January, 2016, it was informed that the operation of the Gare Palma IV/1 by the respondents no.3 and 4 viz. CIL and SECL who are the custodians of the subject mine was suffering and that the environment clearance permission of the petitioner no.1 JSPL to dump fly ash in the coal mine voids as had been permitted to be done vide interim order had also lapsed but notwithstanding the same, the petitioners taking advantage of the interim order were continuing to dump fly ash. Though it was the contention of the senior counsel for the petitioners on that date that the permission for dumping of fly ash had not been renewed by the DGMS only for the reason of cancellation of the mine and the mining area being under dispute but it was observed in the order dated 28th January, 2016 that without challenging the order of DGMS for non-renewal of such permission, the petitioner no.1 JSPL under the interim orders in this petition could not continue to dump the fly ash.

7. This resulted in filing of W.P.(C) No.886/2016 to impugn the said non-renewal by DGMS of the permission to dump fly ash in the coal mine voids aforesaid.

8. Both the petitions were taken up together and the counsels were heard on 2nd February, 2016, 10th May, 2016, 25th May, 2016, 26th August, 2016 and 2nd September, 2016 when thereof the orders were reserved.

9. Counter affidavits have been filed by the respondents no.3&4 i.e. CIL & SECL pleading:

- (i) That OB has to be mixed with fly ash in accordance with the Environment Clearance granted and fly ash is being obtained by the petitioners from the site of the petitioners which is against the Ordinance, as post giving up the mining area, they cannot be entitled to any right over the aforesaid mines.
- (ii) That depositing of fly ash is not a statutory compulsion but a proposal moved by the petitioners subsequent to which permission was granted; the petitioners should be instructed to follow alternate method of disposal of fly ash like use in building road, concrete material etc.
- (iii) That mixing of fly ash with OB and depositing the same as is being done is not a mandate of the environment authorities but a proposal of the petitioners which was accorded to and that too only till 11th May, 2015.

- (iv) That the interim orders in these petitions are posing great difficulty in operation as it allows the petitioners to interfere with the mining operations of the respondents; the manpower and transport equipment of the petitioners for dumping of fly ash on the sites is against the provisions of the Ordinance which stipulates that there shall not be any right apart from the right of designated custodian to the aforesaid mine.
- (v) That a drain passing through the coal mining area is yet to be mined and it will be mined once the course of the drain is altered and contains approximately 35 lacs tonnes of coal remains in the land under the drain.

10. The respondents no.1&2 i.e. UOI and Nominated Authority, Ministry of Coal, Government of India in their counter affidavit have pleaded:

- (a) that the petitioner no.1 JSPL is prior allottee of Gare Palma-IV/1 coal mine and has filed this petition *inter alia* for exclusion of an area of 298.913 hectares of land from Gare Palma-IV/1 coal mine which is located inside the said coal mine and is being used for 540 MW DCPP at Raigarh, coal washeries, coal handling plant, stock of middlings, rejects and pond fines, road for approach, weigh bridges, OB dump and other related facilities; the petitioner no.1 JSPL has further sought permission for back-filling of fly ash generated from their captive power plant in the mine area.

- (b) That the Supreme Court vide its judgment dated 25th August, 2014 (*Manohar Lal Sharma Vs. Principal Secretary* (2014) 9 SCC 516) held the allocation of coal blocks including the aforesaid to be illegal and arbitrary; thereafter vide order dated 24th September, 2014 [(2014) 9 SCC 614], the Supreme Court cancelled the allocation of 204 coal blocks including the aforesaid and permitted the prior allottees of producing mines to continue mining operations only till 31st March, 2015; Gare Palma-IV/1 is a producing mine.
- (c) That in pursuance to the orders aforesaid of the Supreme Court, Coal Mines (Special Provisions) Ordinance, 2014 was promulgated and in Schedule-II thereof listing the producing coal mines, Gare Palma-IV/1 was included.
- (d) That on 11th December, 2014 Coal Mines (Special Provisions) Rules, 2014 were notified under the Ordinance aforesaid and the Ordinance itself was replaced by a second Ordinance which has since been further replaced by the Coal Mines (Special Provisions) Act, 2015 notified on 30th March, 2015.
- (e) That auction proposed of Gare Palma-IV/1 was challenged in W.P.(C) No.7867/2015 which is pending before the Division Bench of this Court and vide order wherein the auction process was annulled.

- (f) That to ensure continuity in coal mining operations, Section 17 of the Act mandates that from 1st April, 2015, the Central Government shall be deemed to have become the lessee or licensee in relation to Schedule-II mines.
- (g) That as the auction / allotment of Gare Palma-IV/1 was not complete before 31st March, 2015, the Central Government appointed respondent no.3 CIL as designated custodian for managing and operating the said coal mine with effect from 1st April, 2015 in accordance with Section 18 of the Act; the respondent no.3 CIL is managing and operating the said mine through respondent no.4 SECL.
- (h) That a producing coal mine cannot be left without closing it as per Mining Closure Plan; non working of the mine will also be a loss to the public exchequer and production of coal.
- (i) That the contention of the petitioner No.1 JSPL is that 298.913 hectares of land of which exclusion is sought is non coal bearing area which will not be required by the prospective allottee for mining and operations.
- (j) That as per Section 8(4), 3(1)(p) and 3(1)(j) of the Act all coal bearing land acquired by prior allottee and lands in or adjacent to the coal mines used for coal mining operations acquired by the prior allottee as well as existing mine structure vest with the successful bidder.

- (k) That Section 18 casts a duty on the Central Government to appoint a designated custodian to manage and operate the producing coal mines on and from 1st April, 2015.
- (l) That Section 19 of the Act mandates the designated custodian to take control and possession of all lands in or adjacent to coal mines used for coal mining operations on behalf of the Central Government.
- (m) That to determine the validity of the claim of the petitioners for exclusion of 298.913 hectares of land, the Central Government requested the Central Mine Planning and Design Institute Ltd. (CMPDIL), a subsidiary of respondent no.3 CIL to survey the portion of the land inside Gare Palma-IV/1 wherein the captive power plant and other facilities of the petitioners are located, to ascertain whether the said 298.913 hectares of land is non coal bearing or the coal in the said area had already been mined as claimed by the petitioners.
- (n) That as per report dated 16th January, 2016 of CMPDIL, major portion of 298.913 hectares of land is coal bearing having Seams-III & IV.
- (o) That thus the said 298.913 hectares of land would be required by the successful bidder / allottee for coal mining operations and making the said area non-available leads to sterilization of coal available between Pit-1 and Pit-2.

- (p) That it was also reiterated that the area will be required for dumping of OB and would not be available for dumping of fly ash anywhere within the block.
- (q) That as per the Act aforesaid only such infrastructure as will not be required by the successful bidder / allottee for coal mining operation or are not covered under the definition of mining infrastructure can remain with the prior allottee; in case such land or mine infrastructure are required by the successful bidder / allottee for coal mining purpose, then such portion cannot be excluded from auction / allotment process.
- (r) That only DCP, stock of middlings, rejects, pond fines, weight bridges and diesel tanks are not covered under the definition of mine infrastructure and will not be required by the successful bidder / allottee for coal mining operations; similarly washeries are also not covered under the definition of mining infrastructure but since the coal handling plant which is a mine infrastructure is included with the washery, it will be required by the successful bidder and non-transfer of the same to the successful bidder will impede the mining operations.
- (s) Dumping of fly ash is endangering the operational safety of the mine.

11. The petitioner in its rejoinder to the counter affidavit aforesaid of respondents no.1&2 has pleaded:

- (i) That the area of 298.913 hectares was excluded from the auction process and the said exclusion was also mentioned in the impugned Mine Dossier which formed part of the Tender Document.
- (ii) That the aforesaid constitutes a statutory act which cannot be varied.
- (iii) That only a small area of 5.705 hectares within the said 298.913 hectares of land contains coal falls as per the approved Mining Plan of 2008 and the petitioners are ready to relinquish the same.
- (iv) That the transfer and vesting of the said 298.913 hectares of land is contrary to the objectives of the Act which provides for transfer and vesting only of areas required for coal mining operations and production of coal.
- (v) That the Consent to Operate Gare Palma-IV/1 coal mine has been obtained by respondents no.3&4 only on 11th January, 2016.
- (vi) That the report of CMPDIL is *ex facie* erroneous and no reliance can be placed thereon as CMPDIL is an interested party in the dispute.

(vii) That as per geological report of 2006 of Gare Palma-IV/1 coal mine, the portion of the plant area which purportedly has Seam-III and Seam-IV cannot be mined by open cast method due to high stripping ratio of more than 1:26; it was for this reason only that the revised approved Mine Plan of 2008 approved by respondent no.1 UOI did not consider the said seams for open cast; the said seams were not considered for underground mining also because of low seam thickness and the coal if any in the said seams being of inferior grade and being economically unviable for extraction through underground mine method.

(viii) That the respondent no.1 having itself approved the Mine Plan of Gare Palma-VI, cannot rely on geological report of 2006 to contend that the area is coal bearing.

12. It is not deemed necessary to refer to the pleadings of W.P.(C) No.886/2016 inasmuch as if the petitioners were not to succeed in W.P.(C) No.3398/2015, the question of the petitioners being entitled to any relief in W.P.(C) No.886/2016 would not arise. Conversely, if the petitioners were to so succeed, W.P.(C) No.886/2016 would also succeed as no reason other than cancellation of coal mine appears for the denial now of permission granted earlier.

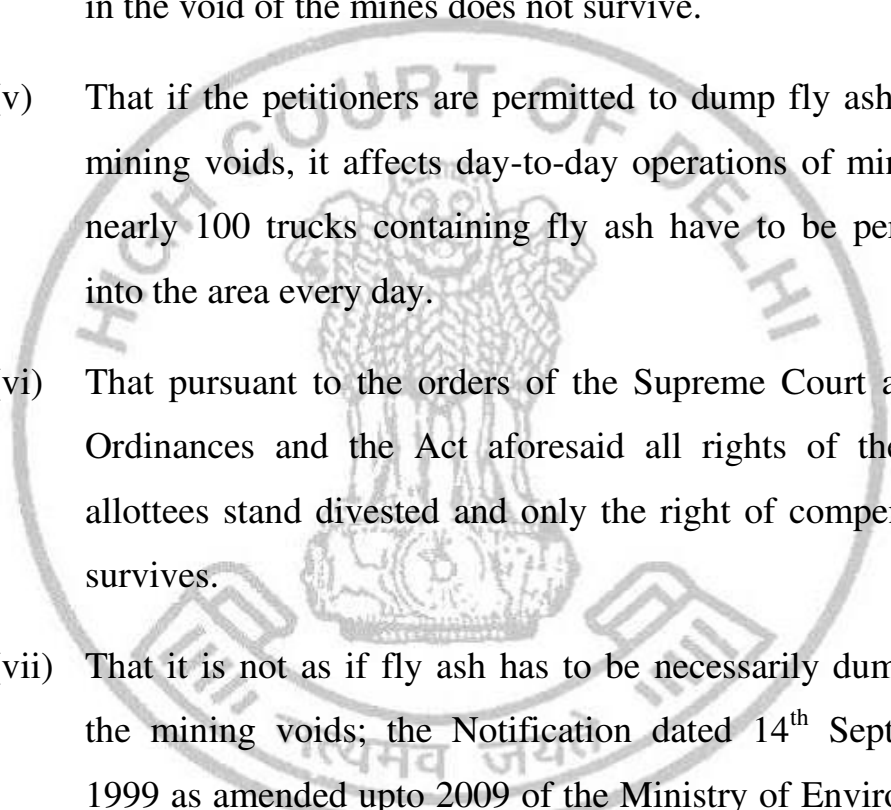
13. The senior counsels for the petitioners during the hearing, on specific enquiry, admitted that 298.913 hectares of land of which exclusion is sought was included in the allocation to the petitioners of mining area and which allocation has been set aside by the Supreme

Court. Similarly, the counsel for respondent no.1 UOI on specific query whether the UOI requires the land under the power plant also stated that the power plant can continue.

14. However, the senior counsels for the petitioners contended i) that notwithstanding the cancellation by the Supreme Court, the rights of the petitioners in the said 298.913 hectares of land remain because the respondent no.1 UOI itself, pursuant to information submitted by the petitioner no.1 JSPL, in the auction excluded this area and cannot now take a stand to the contrary; and, ii) that the petitioner no.1 JSPL is required to dump the fly ash generated by the DCPD and if is not permitted to dump the said fly ash in the mining voids as has been doing till now, the power plant will shut down.

15. Per contra, the senior counsel for the respondents no.3&4 CIL & SECL argued:

- (i) that the rights of the petitioners to the said 298.913 hectares of land were also under the lease deed granted to the petitioners under Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and which lease has now been cancelled by the Supreme Court.
- (ii) That under the orders of the Supreme Court and the Ordinances / Acts supra in pursuance thereto the entire area which was leased to the petitioners vested in the Central Government.

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- (iii) That though under Section 8 of the Act, a right was given to the prior allottee to give information about the non bearing coal lands but the same did not vest any right in the prior allottee.
- (iv) That once the petitioners have no right in the mines, the question of the petitioners having any right to dump fly ash in the void of the mines does not survive.
- (v) That if the petitioners are permitted to dump fly ash in the mining voids, it affects day-to-day operations of mining as nearly 100 trucks containing fly ash have to be permitted into the area every day.
- (vi) That pursuant to the orders of the Supreme Court and the Ordinances and the Act aforesaid all rights of the prior allottees stand divested and only the right of compensation survives.
- (vii) That it is not as if fly ash has to be necessarily dumped in the mining voids; the Notification dated 14th September, 1999 as amended upto 2009 of the Ministry of Environment and Forests prescribes use of fly ash for other purposes as well.
- (viii) The petitioners, instead of using the fly ash otherwise, are wanting to dump the same in the mining area to which they have been left with no right, to save their own costs and expenses.

- (ix) That the permission to the petitioners to dump fly ash was on the terms of the petitioner no.1 JSPL being the lessee of the coal block and once the petitioner no.1 JSPL has ceased to be the lessee, the petitioners have no right to dump fly ash either.
- (x) That the said permission to dump fly ash in the mining voids was given on the representation of the petitioners themselves that they had already mined the said areas and there was no coal left and which representation of the petitioners is found to be wrong.
- (xi) That the permission to the petitioner no.1 JSPL to dump fly ash was along with the OB and now that the petitioner no.1 JSPL is not mining, it has no right to any OB and the petitioner no.1 JSPL cannot dump only fly ash.

16. The senior counsel for the petitioners, in rejoinder i) reiterated that the petitioners having excluded the said 298.913 hectares of land from the auction cannot claim any right thereto; ii) that once the said land was excluded, the respondent no.2 Nominated Authority / custodian have no right and it is irrelevant as to what is the right of the petitioner; iii) that the petitioner no.1 JSPL is willing to settle so that it can continue to dump the fly ash without interfering in the mining activities; iv) that the Central Government is not controverting that the tender document excluded the said 298.931 hectares of land and the counter affidavit of the respondents no.1&2 is contrary thereto; v) that the mining voids / pits cannot possibly be needed for mining operations; vi) that the fly ash

generated by the power plant cannot be used to make bricks as setting up of the plant to make bricks itself will take three years; vii) that the petitioner no.1 JSPL is being targeted though a reasonable solution can be worked out.

17. The senior counsel for the respondents no.3&4 CIL & SECL in sur-rejoinder contended i) that there is no pleading of the said 298.913 hectares of land having been excluded because it was not included in the auction process; ii) in fact there is no power of exclusion; all rights vest in the Central Government; iii) the order excluding the said 298.913 hectares of land from the tender process is not a statutory order.

18. Though the counsel for the petitioners has also filed written submissions but on the same lines as oral arguments and which have already been recorded hereinabove.

19. I have considered the rival contentions.

20. What needs to be adjudicated is:

- (i) Whether the petitioners under the orders of the Supreme Court, provisions of the Ordinances / Act are entitled to exclusion of the said 298.913 hectares of land.
- (ii) Whether any rights can be said to have accrued in favour of the petitioners with respect to the said 298.913 hectares of land by virtue of exclusion thereof from the auction process.

- (iii) Even if the above two questions are answered against the petitioners, whether the petitioners are entitled to permission to continue to dump fly ash in the mining voids.
- (iv) Even if the above question is decided against the petitioners, considering the fact that UOI has no objection to continuance of the power plant and which will necessarily generate fly ash, whether this Court in exercise of its powers under Article 226 of the Constitution of India can direct the respondents to allow the petitioners to continue dumping the fly ash in the mining voids if finds merit in the challenge by the petitioners to the contention of the respondents of the voids where the fly ash is to be dumped are coal bearing.

21. The allocation of Gare Palma-IV/1 coal block to the petitioner no.1 JSPL including the said 298.913 hectares of land has been held by the Supreme Court in ***Manoharlal Sharma Vs. Principal Secretary*** (2014) 9 SCC 516 to be arbitrary and illegal. The consequential order reported as ***Manoharlal Sharma Vs. Principal Secretary*** (2014) 9 SCC 614 records that the final decision with regard to any alleged criminality or otherwise in the allotment of 12 out of the 46 coal producing blocks was then under scrutiny of CBI and directed the said scrutiny to be taken to its logical conclusion. It is a matter of news that with respect to allotment of Gare Palma-IV/1 to the petitioner no.1 JSPL a charge sheet has been filed.

22. Supreme Court, in the consequential order reported as (2014) 9 SCC 614, after considering whether the 46 coal blocks, in which Gare Palma-IV/1 is included, should be saved from cancellation because they

had commenced production or were on the verge of commencing production, cancelled the same though made the said cancellation effective from six months therefrom i.e. with effect from 31st March, 2015.

23. Though in para 13.3 of the judgment, it was noted that the allottees had invested in basic infrastructure like road, rail links etc. and in setting up other infrastructure such as schools, hospitals, facilities for clean and potable water, residential colonies, community centres, playground etc. and that if the coal blocks are cancelled, all the same will also go and also that many of the allottees had problems peculiar to them (as in the case of petitioner no.1 JSPL herein) but did not accept the suggestion on behalf of the said allottees for constitution of a Committee to examine each allotment and consider the facts peculiar to each allottee to report whether the allotment should be cancelled or not and accepted the contention of the UOI that the natural consequence of the finding of allotment of coal blocks being arbitrary and illegal was cancellation thereof and that UOI was fully prepared to face the consequences of cancellation. Similarly, the contention that each of the allottee had not been heard and that the principles of natural justice would be violated if cancellation is effected without hearing the allottees, was not accepted. Resultantly, Supreme Court did not make any provision for saving in favour of erstwhile allottees any part of the coal block allocation whereof was cancelled.

24. It is thus clear that as per the consequential order of the Supreme Court reported as (2014) 9 SCC 614, the allotment in favour of the petitioners including of 298.913 hectares of land was cancelled.

25. Thus, under orders of the Supreme Court, no rights survive to the petitioner no.1 JSPL including with respect to the 298.913 hectares of land.

26. The next question is, whether under the Ordinances/Act aforesaid, the petitioner no.1 JSPL had any right to save any part of the coal block and whether any such right has accrued to petitioner no.1 JSPL. The petitioners claim such right giving two fold reasons. Firstly, that in response to information sought the petitioners sought exemption of 298.913 hectares and in consequence thereof in auction, the said area was exempted. Secondly, that of necessity and the said area being non-coal bearing.

27. I have perused the provisions of the Act aforesaid. The definition Section 3(1) thereof in Clauses (p) and (q) respectively deal with Schedule I and Schedule II Coal Mines. Section 3(1)(p) defines Schedule I Coal Mines as all the coal mines and coal blocks the allocation of which was cancelled by the judgment dated 25th August, 2014 and order dated 24th September, 2014 passed in Writ Petition (Criminal) No.120/2012 and 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 and any existing mine infrastructure. Schedule II Coal Mines are defined in clause 3(1)(q) as the forty-two Schedule I Coal Mines in relation to which the order dated 24th September, 2014 was

made. It is not in dispute that the Gare Palma IV/1 is a Schedule II Coal Mine.

28. Vide Section 17(1) of the Act, the Central Government or a company owned by the Central Government, with effect from the appointed date (which as per Section 3(1)(c)(ii) in relation to Schedule-II Coal Mines was 1st April, 2015) is deemed to have become the lessee or licensee in relation to each of the Schedule-II Coal Mines and thereupon all rights under the mining lease in favour of the prior allottee including surface, underground and other rights are deemed to have stood transferred to and vested in the Central Government or a company owned by the Central Government.

29. It thus follows that not only were the rights of the petitioner no.1 JSPL in Gare Palma IV/1 Coal Block including in the aforesaid 298.913 hectares of land cancelled by the Supreme Court but vide Section 17(1), the said rights stood transferred in favour of the Central Government or a company owned by the Central Government.

30. Section 6 of the Act provides for the Central Government to act through the Nominated Authority and empowers the Nominated Authority to engage any expert to make recommendations for the conduct of auction and in drawing up of the vesting order or allotment order in relation to Schedule I Coal Mines. Section 8 empowers the Nominated Authority to issue vesting orders or allotment orders. Section 8(1) requires the Nominated Authority to notify the prior allottee 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 the Rules. The information sought from the petitioners was in pursuance thereto and while submitting which information the petitioners sought exclusion of the said 298.913 hectares of land. There is however no provision entitling the prior allottee to, while submitting such information, exclude therefrom any part of the coal block allocation made to it and which allocation was held by the Supreme Court to be illegal and was cancelled. Similarly there is no provision therein empowering the Nominated Authority to, notwithstanding the cancellation effected by the Supreme Court, allow the prior allottee to, while submitting such information, exclude certain areas and to accept such exclusion from the deeming provision Section 17(1).

31. The senior counsels for the petitioners laid emphasis, that under Section 8(1), information is sought for “notifying” the particulars of Schedule I Coal Mines to be auctioned and Section 8(3) ‘vests’ in the successful bidder in such auction, Schedule I Coal Mine for which it bid, and contended, that since in pursuance to the information submitted by the petitioner no.1 JSPL excluding 298.913 hectares of land the particulars of Gare Palma IV/1 notified for auction also excluded the said 298.913 hectares, the said 298.913 hectares stand excluded from Gare Palma IV/1 Coal Mine.

32. I am unable to accept. Rights of the petitioner no.1 JSPL in Gare Palma IV/1 Coal Block including the said 298.913 hectares stand cancelled by the judgment/order of the Supreme Court. By statutory fiction under Section 17(1) aforesaid, the said rights stand transferred in the Nominated Authority. The transfer to the Nominated Authority under Section 17(1) is inclusive of the said 298.913 hectares. The same does

not permit of any exclusion. Once that is so, the petitioner no.1 JSPL from the appointed date ceased to have any rights in the said 298.913 hectares of land also and it has no right under the Act to claim any exclusion. Section 8 has to be read harmoniously with Section 17 and the provisions of Section 8 cannot be read as leaving any discretion in the prior allottee and the Nominated Authority to claim and grant exclusion of any part of the allocation which stood cancelled. Section 8(4) vests in the successful bidder all rights, title and interest of the prior allottee in Schedule I Coal Mine concerned with the relevant auction along with the rights appurtenant to the approved mining plan of the prior allottee and any other right, entitlement or interest of the prior allottee not specifically mentioned. Even if it were to be held that since in the tender issued for auction of Gare Palma IV/1 the Nominated Authority did not include the said 298.913 hectares, the effect thereof would only be that the successful bidder would not have any right thereto but the said 298.913 hectares would still continue to vest in the Nominated Authority and not vest in the petitioner No.1 JSPL as a prior allottee.

33. Chapter III of the Act titled “Treatment of Rights and Obligations of Prior Allottees” also does not contain any provision to the aforesaid effect, as would have been if it was open to a prior allottee to retain certain areas out of the land of the coal block.

34. I have also perused the Coal Mines (Special Provisions) Rules, 2014 to which reference was made. Rule 7 thereof, while prescribing the powers and duties of Nominated Authority, though empowers the Nominated Authority to call for all information necessary from any prior allottee including record in relation to coal reserves, production, cost of

production, mine infrastructure and contracts entered into by the prior allottee is not found to empower the Nominated Authority to exclude certain part of the coal block, allocation whereof in favour of the prior allottee was cancelled by the Supreme Court and which by virtue of Section 17 of the Act is deemed to have stood transferred to the Central Government. Rule 9, to which reference was made by the senior counsels for the petitioners is titled “Mine Dossier”. Sub-rule (1) thereof empowers the Nominated Authority to inform any prior allottee, under Section 8(1), to provide such information and documents regarding the coal mine earlier allotted to such allottee, as the Nominated Authority may feel expedient. Sub-rule (6) of Rule 9 requires the Nominated Authority to finalise a written Dossier to be called the ‘Mine Dossier’ for each Schedule-I Coal Mine based on the information received from the prior allottee under sub-rule (1) or information received from persons than the prior allottee. Sub-rule (7) thereof empowers the Nominated Authority to update the Mine Dossier from time to time on its own accord or upon receiving a direction from the Central Government in this regard. Rule 10 titled “Auction”, while empowering the Nominated Authority to conduct the auction of Schedule-I Coal Mines, requires the tender document to include the Mine Dossier containing particulars of Schedule-I Coal Mine. There is thus no provision in the Rules also, as indeed there could not have been, for exclusion of any part of the coal block allotment whereof had been cancelled, from deemed transfer thereof to the Central Government and for retention of the said part by the prior allottee.

35. The contention of the senior counsels for the petitioners that upon the petitioner No.1 JSPL, while submitting the information seeking exclusion of 298.913 hectares area and the Nominated Authority while preparing the Mine Dossier not including the said 298.913 hectares of Gare Palma-IV/1 coal mine, results in the said 298.913 hectares not vesting in the Nominated Authority and/or remaining with the petitioner No.1 JSPL is not within the scheme of the Coal Mines (Special Provisions) Act, 2015 and is contrary to Section 17 thereof. Non-mentioning of 298.913 hectares of land in the Mine Dossier would still not come in the way of the same also having deemed to have stood transferred in the Central Government under Section 17 of the Act.

36. I thus hold that the petitioner No.1 JSPL under the provisions of the Act/Rules is not entitled to exclusion of the said 298.913 hectares of land and no rights have accrued to the petitioner No.1 JSPL in the said land by virtue of exclusion thereof from the Mine Dossier. The Mine Dossier as hereinabove noted can be updated at any time and has no finality. The Mine Dossier is only for the auction process i.e. to inform the prospective bidders of the extent of the coal mine for which bids are invited. Merely because bids are invited for only part of the land and rights which under Section 17(1) are deemed to have stood transferred from the prior allottee to the Central Government does not mean that the remaining land of the coal mine is also not deemed to have stood transferred to the Central Government.

37. The question No.(iii) framed in para 20 hereinabove does not call for much discussion. Once the petitioner No.1 JSPL is not found to be having any right in 298.913 hectares of land, the petitioner No.1 JSPL

cannot exercise any rights whatsoever including of dumping fly ash in the mine voids therein, unless agreed to by the Central Government. The Central Government in whom the rights in the entire cancelled coal blocks are deemed to have stood transferred is entitled to prevent any other person including prior allottee from carrying out any activities therein including of dumping fly ash or any other material thereon / therein.

38. Seen in this context, the reasons given by the respondents for refusing such permission to the petitioner No.1 JSPL pale into insignificance. For this reason only, it is also not necessary to go into the question, whether the voids where the petitioner No.1 JSPL wants to dump fly ash are de-coaled areas i.e. bereft of any coal as contended by the petitioner No.1 JSPL or still have some coal left in them as contended by the respondents. The respondents in this regard rely on the report of an expert and whose opinion is challenged by the petitioner as biased. These in any case are disputed questions of fact which cannot be gone into in writ jurisdiction. I may in this regard also notice that vide Section 27(1) of the Act any dispute arising out of any action of the Central Government, Nominated Authority or Commissioner of Payments or designated custodian or out of any issue connected with the Act is to be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 and the jurisdiction of any Court of other authority except the Supreme Court and the High Court is excluded.

39. That brings me to the question No.(iv) framed in para 20 above i.e. whether this Court in exercise of its power under Article 226 of the

Constitution of India should permit the petitioner No.1 JSPL to continue dumping the fly ash in the mine voids. Though at one time during the hearing, I had observed that considering (a) that the petitioner No.1 JSPL as the prior allottee of Gare Palma-IV/1 had been dumping the fly ash generated from DCPD in the mine voids in the coal block and though the allocation of coal block has been cancelled but DCPD of the petitioners will continue to generate fly ash wherefor the petitioner No.1 JSPL has not made any alternative arrangement; (b) that the petitioner No.1 JSPL will incur hardship, financial and otherwise to now make alternative arrangements for disposal of fly ash and that the respondents or the successful bidder of Gare Palma-IV/1 coal mine may have no other use for the said mining voids; and (c) that the disposal of fly ash is also an environmental issue, an amicable solution should be worked out and suggestion therefor was made and the senior counsels for the petitioners were willing therefor but the counsel for UOI and Nominated Authority and the senior counsel for CIL & SECL stated that it was not possible for the respondents to agree thereto, owing to the report of the expert of the respondents to the effect that the said voids still had some coal left in them and that allowing the petitioner No.1 JSPL to so dump fly ash interfered with the mining operations of Gare Palma-IV/1 Coal Mine.

40. I may record that the senior counsels for the petitioners went to the extent of stating that unless the petitioner No.1 JSPL is permitted to dump fly ash in the mining voids as it has been doing, it will be compelled to shut down DCPD.

41. On consideration, I am for the reasons hereinafter appearing of the opinion that even if this Court were entitled to grant such permission in

exercise of powers under Article 226 of the Constitution of India, no case for grant of such permission is made out.

(A) The allocation of the coal mine in favour of the petitioner No.1 JSPL has been held to be arbitrary and illegal and has been cancelled by the Supreme Court and a charge sheet with respect to the criminality in the said allocation has been filed. The claim of the petitioner No.1 JSPL to dump fly ash in the mining voids in the said coal mine is only on account of the petitioner No.1 JSPL having been permitted to do so pursuant to the allocation of the coal mine to it. Once the said allocation has been held to be illegal and arbitrary and has been cancelled, no benefit/right in equity can flow therefrom.

(B) The refusal of the respondents is not on account of cancellation alone but on account of the mining voids still bearing some coal and the activity of dumping of fly ash interfering with the mining operations. Merely because the petitioner No.1 JSPL as a prior allottee of Gare Palma-IV/1 Coal Mine did not deem it appropriate to mine coal from the said mining voids or found it economically unviable cannot deprive the Nominated Authority or the successful bidder of the coal mine from mining the same if finds it feasible. Merely from the fact that such dumping of fly ash by the petitioner No.1 JSPL did not interfere with its mining operations cannot be a reason to hold that such dumping of fly ash will not interfere when the person mining is different. Though the petitioner no.1 JSPL is disputing the report of the expert appointed by respondents to report whether the voids are coal bearing or not

but under the provisions of the Act and Rules the Nominated Authority is found entitled to engage any expert and the petitioner no.1 JSPL as prior allottee is not found to have any locus to challenge such report.

(C) In the absence of having found any right in favour of the petitioner No.1 JSPL, this Court cannot impose any interference in the rights to be exercised by the Nominated Authority which are vested in it under Section 17(1) of the Act or which may be transferred to a successful bidder.

42. W.P.(C) No.3398/2015 thus fails and as a result thereof there is no need to deal with W.P.(C) No.886/2016. Both the petitions are dismissed. The petitioner No.1 JSPL is also burdened with costs of these petitions of Rs.1 lakh payable to CIL.

43. The fact however remains that under interim orders in these petitions, the petitioner No.1 JSPL has continued to dump fly ash in the mining voids to which it has not been able to establish any right. The said dumping of fly ash by the petitioner No.1 JSPL in the said voids, under interim orders, was thus in violation of the rights of the respondents. The Court, while disposing of matter finally, is required to balance the equities flowing from interim orders. It has been the contention of the senior counsel for CIL and SECL that dumping of fly ash by the petitioner No.1 JSPL under interim orders was interfering with the mining operations and otherwise detrimental to the interest of CIL and SECL. Per contra, the petitioner No.1 JSPL obviously benefited therefrom, having not been required to dispose of fly ash otherwise and which would have been at a cost. The parties have to be restituted. There

is however no material before this Court to assess the advantage/benefit drawn by the petitioner No.1 JSPL from the interim orders and the loss if any caused to CIL and SECL therefrom. Liberty is thus granted to CIL/SECL to, if so desire and have suffered any loss, within three months herefrom, make a claim therefor by way of application in W.P.(C) No.3398/2015 and which application, if filed, shall be considered on its own merits.

RAJIV SAHAI ENDLAW, J.

JANUARY 24, 2017
'gsr/pp/bs'...

