

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 09.03.2017

+ **W.P. (C) No. 3001/2015 & CM Nos.5379/2015,
6595/2015, 10130/2015**

JINDAL POWER LIMITED AND ANOTHER ... Petitioners

versus

UNION OF INDIA & OTHERS ... Respondents

Advocates who appeared in this case:-

For the Petitioners : Mr Kapil Sibal, Sr Advocate and Mr Rajiv Nayar,
Sr Advocate with Mr Sanjeev Kapoor, Mr Aakash
Bajaj and Ms Anusha Nagrajan

For the Respondent/UoI : Mr Sanjay Jain, ASG, Mr. P.S. Narsimha, ASG with
Mr Akshay Makhija, Mr Rohitendra Deb and Mr
Shreshth Jain.

For the Respondents 3 & 4 : Mr Sandeep Sethi, Sr Advocate with GP Capt. K. S.
Bhati and Mr Adarsh K. Tiwari, Ms Monika Sharma
and Mr Amit Verma

AND

+ **W.P.(C) No. 3002/2015 & CM No.5381/2015**

JINDAL POWER LIMITED AND ANOTHER ... Petitioners

versus

UNION OF INDIA & ANOTHER ... Respondents

Advocates who appeared in this case:-

For the Petitioners : Mr Kapil Sibal, Sr Advocate and Mr Rajiv Nayar,
Sr Advocate with Mr Sanjeev Kapoor, Mr Aakash
Bajaj and Ms Anusha Nagrajan

For the Respondent/UoI : Mr Sanjay Jain, ASG, Mr. P.S. Narsimha, ASG with
Mr Akshay Makhija, Mr Rohitendra Deb and Mr
Shreshth Jain.

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J

1. These writ petitions raise common issues and were heard together and are, therefore, being decided together. In both the petitions, there is a challenge to orders dated 20.03.2015 issued by the Nominated Authority (Respondent No.2) pursuant to separate orders also dated 20.03.2015 of the Ministry of Coal, Government of India, whereby the petitioner No.1 [Jindal Power Limited (hereinafter referred to as 'JPL')] was informed that it has not been declared as the Successful Bidder in respect of Gare Palma IV/2 and IV/3 Coal Mine (hereinafter referred to as 'Gare Palma Coal Mine) and the Tara Coal Mine, respectively. The ground for not declaring JPL as the Successful Bidder for the said coal mines was that the highest bidder, which JPL was, did not reflect the fair value.

2. WPC 3001/2015 is in respect of the Gare Palma Coal Mine which is a Schedule II coal mine. WP(C) 3002/2015 is in respect of the Tara Coal Mine which is a Schedule-III coal mine.

3. Writ Petition No.3001/2015 is also directed against the order dated 23.03.2015 of the Union of India, whereby the Gare Palma Coal Mine has been allotted to Coal India Limited. The notification of the Union of India dated 18.03.2015 relaxing the provisions of Rule 11 of the Coal Mines (Special Provisions) Rules 2014 (hereinafter referred to as ‘the said Rules’), which relaxation enabled the allotment of the coal mine to Coal India Limited, is also under challenge. The said notification dated 18.03.2015 reads as under:-

“THE GAZETTE OF INDIA : EXTRAORDINARY [PART II-SEC. 3(ii)]
MINISTRY OF COAL
NOTIFICATION

New Delhi, the 18th March, 2015

S.O. 782(E).—In exercise of the powers conferred by section 31 of the Coal Mines (Special Provisions) Second Ordinance, 2014 (7 of 2014), the Central Government hereby makes the following rules to amend the Coal Mines (Special Provisions) Rules, 2014, namely:—

1. (1) These rules may be called the Coal Mines (Special Provisions) Amendment Rules, 2015.

(2) They shall come into force on the date of their, publication in the Official Gazette.

2. In the Coal Mines (Special Provisions) Rules, 2014, in rule 11, after sub-rule (9), the following sub-rule shall be inserted, namely;—

“(10) The Central Government may in public interest and for the reasons to be recorded in writing, relax any of the provisions of this rule for the allotment of a Schedule I coal mine to a Central Government company or corporation.”

[F.No.54018/2/2015-CA-II]
VIVEK BHARADWAJ, Jt. Secy.

Note : The principal rules were published in the Gazette of India, Extraordinary, Part 11, Section 3, Sub-section (ii) vide number G.S.R. 883(E), dated the 11th December, 2014.”

(underlining added)

The order of the Nominated Authority dated 20.03.2015 in respect of the

Gare Palma Coal Mine is as under:-

“F. No. 104/14/2015/NA
Government of India
Ministry of Coal
O/o the Nominated Authority

World Trade Tower, New Delhi
Dated: 20.03.2015

To,
Kapil Mantri
Authorized Signatory

Jindal Power Limited, Tamnar Chhattisgarh-496107, India	Jindal Center, Tower B, Plot No. 2, Sector 32, Gurgaon -122001, Haryana
--	---

Subject: Declaration of Unsuccessful Bidder of Gare Palma IV/2 & 3 Coal Mine.

Sir,

In pursuance to Order No. 13016/18/2015-CA-III dated 20.03.2015 issued by Government of India under Rule 10(1) of the Coal Mines (Special Provisions) Rules, 2014, I am directed to state that M/s. Jindal Power Limited/64849 has not been declared as Successful Bidder of Gare Palma IV/2 & 3 by Central Government inter alia on the ground that the highest bidder does not reflect fair value.

Nominated Authority”
(Underlining added)

4. The Office Memorandum No.13016/18/2015-CA-III also dated 20.03.2015 issued by the Government of India, Ministry of Coal, which is

referred to in the said Office Order of the Nominated Authority reads as under:-

“F.No.13016/18/2015-CA-III
Government of India
Ministry of Coal

New Delhi dated 20th March, 2015

OFFICE MEMORANDUM

Subject: Direction of the Central Government to Nominated Authority in respect of Gare Palma IV/2 & IV/3 coal mines under Rule 10(10) of the Coal Mines (Special Provisions) Rules, 2014 – reg.

The undersigned is directed to refer to Nominated Authority's communication number 102/4/2015-NA dated 25.02.2013 recommending the name of M/s Jindal Power Ltd. (64849) as Preferred Bidder in respect of Gare Palma IV/2 & IV/3 coal mine and subsequent report vide communication number 104/14/2015-NA dated 05.03.2015.

2. Upon examination of this bid it is found that in Gare Palma IV/2 & IV/3 coal mines there has hardly been any competition. As compared to other contemporaneous bidding of different coal blocks it is obvious that the best bid in the instant case is not satisfactory. The object of the auction is to secure the best value of the natural resource. It is also not understood why the other 3 bidders did not bid. It seems to be a case of irrational conduct by the bidders in which there has not been healthy competition. Be that as it may, the fact is that this coal block did not fetch fair value comparable to other blocks. Examined on this touch stone, it will not be either prudent or in public interest to approve this bid. Accordingly, the same is not approved and Nominated Authority is directed to convey the same to the concerned bidder.

Sd/
(A. Sanjay Sahay)

Under Secretary to the Government of India

To,
The Nominated Authority,
Ministry of Coal”

5. These orders are in respect of the Gare Palma Coal Mine. The Office Order of the Nominated Authority in respect of the Tara Coal Mine is identical to the Office Order in respect of the Gare Palma Coal Mine. However, the Officer Memorandum of the Government of India referred to in the Nominated Authority’s order dated 20.03.2015 in the case of Tara Coal Mine is slightly different. The Office Memorandum in respect of Tara Coal Mine reads as under:-

“F.No.13016/33/2015-NA (Pt.)
Government of India
Ministry of Coal

New Delhi dated 20th March,
2015

OFFICE MEMORANDUM

Subject : Direction of the Central Government to Nominated Authority in respect of Tara coal mine under Rule 10(10) of the Coal Mines (Special Provisions) Rules, 2014-reg.

The undersigned is directed to refer to Nominated Authority's communication number 102/4/2015-NA (Part) dated 10.03.2015 recommending the name of M/s Jindal Power Ltd. (64849) as Preferred Bidder in respect of Tara Coal mine and subsequent report vide communication number 104/26/2015-NA dated 17.03.2015

2 Upon examination of this bid it is found that as compared to other bidding in similar coal blocks, the best bid in the instant case is not satisfactory and is relatively low. Hence, it is evident that this coal block

did not fetch fair value comparable to other blocks. Examined on this touch stone, it will not be either prudent or in public interest to approve this bid. Accordingly, the same is not approved and Nominated Authority is directed to convey the same to the concerned bidder.

Sd/
(A. Sanjay Sahay)
Under Secretary to the Government of India

To,
The Nominated Authority,
Ministry of Coal”

6. The purported reason for the issuance of the impugned orders dated 20.03.2015 by the Nominated Authority is that the highest bid did not reflect the fair value. This was based on the Office Memoranda dated 20.03.2015. The Office Memorandum in respect of Gare Palma Coal Mine contains more purported reasons than in the case of the Tara Coal Mine. This would be evident from a reading of the said Office Memoranda which have been extracted above. Insofar as the Gare Palma Coal Mines are concerned, it has been alleged in the Office Memorandum dated 20.03.2015 that:-

- i) “There has hardly been any competition”;
- ii) “As compared to other contemporaneous bidding of different coal blocks, it is obvious that the best bid in the instant case is not satisfactory”;

- iii) “It is also not understood why the other three bidders did not bid”;
- iv) “It seems to be a case of irrational conduct by the bidders in which there has not been healthy competition”;
- v) “Be that as it may, the fact is that this coal block did not fetch fair value comparable to other blocks”;

7. In the case of Tara Coal Mine, the purported reasons were as under:-

- i) “As compared to other bidding in similar blocks, the best bid in the instant case is not satisfactory and is relatively low”;
- ii) “Hence, it is evident that this coal block did not fetch fair value comparable to other blocks”;

Background

8. By a judgment dated 25.08.2014, the Supreme Court held that the allocation of coal blocks made through the Screening Committee was illegal and arbitrary and by a subsequent order dated 24.09.2014, the Supreme Court cancelled the allocation of 204 coal blocks. However, the Supreme Court allowed the prior allottees of 42 producing mines to continue their mining operations till 31.03.2015. Thereafter, the Coal Mines (Special Provisions) Ordinance 2014 was promulgated and, *inter*

alia, the Gare Palma Coal Mine was introduced in Schedule II of the said Ordinance and the Tara Coal Mine in Schedule-III. On 29.10.2014, the respondent No.2 was notified as the Nominated Authority under Section 6 of the Ordinance dated 21.10.2014. On 11.12.2014, the respondent No.1 notified the said Rules [Coal Mines (Special Provisions) Rules, 2014] under Section 31 of the Ordinance. On 18.12.2014, in exercise of the powers under Rule 8(2) of the said Rules, the Central Government issued an order providing for the list of coal mines earmarked for auction with their specified end-use. The specified end-use in respect of the Gare Palma Coal Mine was – “Power”. On 24.12.2014, a list of 24 coal mines of Schedule II was specified for e-auction which included the Gare Palma Coal Mine. On 26.12.2014, the first Ordinance dated 21.10.2014 was repealed and the Coal Mines (Special Provisions) Second Ordinance 2014 was promulgated. On 27.12.2014, the Standard Tender Document for the power sector was published. An amendment to the Standard Document was issued on 31.01.2015 to deal with the situation in case the bidding reached an offer price of zero. On 03.02.2015, JPL submitted its technical bid alongwith the initial price offer (IPO) in respect of the Gare Palma Coal Mine. On 12.02.2015, JPL was declared as a technically qualified bidder in respect of the Gare Palma Coal Mine. On 17.02.2015,

JPL was included in the list of qualified bidders on opening of the IPO because its bid fell in the top 50% of bids as per clause 3.3.2(b) of the Standard Tender Document.

9. On 19.02.2015, JPL participated in the e-auction for the Gare Palma Coal Mines and thereafter it was declared the preferred bidder as it was the highest bidder with the closing bid of (-) Rs 108 per tonne as additional premium at the reverse / forward auction. On 19.02.2015 itself, the auction process for the 6 Schedule II mines for the power sector was concluded. It is pertinent to note that out of the six bidders, who had qualified under the 50% rule after the IPO, only one, that is, JPL submitted its bid in the auction. The other 5 bidders did not make any bid in the second stage, that is, the e-auction stage.

10. On 25.02.2015, the Nominated Authority (respondent No.2) forwarded its recommendations with respect to the Gare Palma Coal Mine to the Government of India, Ministry of Coal for issuance of further directions in terms of Rule 10(9) of the said Rules. Under Rule 10(10) of the said Rules, the Central Government, on receipt of a recommendation from the Nominated Authority, is to direct the Nominated Authority to

issue a vesting order or such other binding directions as may be deemed appropriate.

11. On 27.02.2015, on receipt of the recommendations of the Nominated Authority, the respondent No.1 issued directions to the said Nominated Authority to re-examine the auction process with respect to the Gare Palma Coal Mines and to give its report to the respondent No.1. On 05.03.2015, inasmuch as the respondents had entered into contracts with other successful bidders of different mines and JPL had not heard from the respondent in respect of Gare Palma Coal Mine, it sent a letter to the respondent No.2 and requested that JPL be declared as the Successful Bidder for the Gare Palma Coal Mine at the earliest. On the same day, that is, on 05.03.2015, the respondent No.2 had submitted its report to the respondent No.1. The respondent No.1, after deliberating upon the report received from the respondent No.2, took a decision on 20.03.2015 not to accept the bid in respect of Gare Palma Coal Mine and, accordingly, the Office Memorandum dated 20.03.2015 was issued and based upon this, the Nominated Authority issued the order dated 20.03.2015 informing JPL that it had not been declared as the Successful Bidder as the highest bid did not reflect the fair value. Insofar as the Tara Coal Mine is

concerned, a similar sequence of events took place and need not be repeated, because that also culminated in the said Office Memorandum dated 20.03.2015 and the subsequent Office Order of the Nominated Authority dated 20.03.2015.

12. The petitioners allege that the auction process of 8 mines was being reconsidered and re-examined by the respondents. Out of them, 5 mines had been cleared. Out of the 3 remaining mines where the auction process had been annulled, 2 were mines in which JPL had been declared as the preferred bidder, namely, in respect of the Gare Palma Coal Mine and the Tara Coal Mine. According to the petitioner, the action of annulment on the part of the respondents is, therefore, actuated with *mala fide* against JPL.

13. On 23.03.2015, the respondent No.1 issued another Office Memorandum directing the Nominated Authority to execute the allotment order in the name of Coal India Limited in respect of the Gare Palma Coal Mine. The said Office Memorandum reads as under:-

“F.No.13016/2/2015-CA-III

Government of India

Ministry of Coal

New Delhi, dated 23rd March, 2015

OFFICE MEMORANDUM

Subject: Direction of the Central Government to Nominated Authority in respect of **Parbatpur Central (Jharkhand), Gare Palma IV/1 (Chattisgarh) and Gare Palma IV/2&3 (Chattisgarh)**-reg.

The undersigned is directed to refer to this Ministry's OM of even no. dated 21.03.2015 and Nominated Authority OM No.103/2/2015-NA dated 23.03.2015.

2. In pursuance of Rule 17 read with Rule 8(2) and 11(10) of Coal Mine (Special, Provisions) Rules, 2014, it has been decided to allot the above mentioned coal mines under Section 5 of Coal Mines (Special Provisions) Ordinance, 2014 to M/s Coal India Ltd, a Central Government Company.

3. Nominated Authority is hereby directed to execute an allotment order in the name of M/s Coal India Limited for utilization of coal for its own purpose, sale or for any other consumption as provided in Section 5 and Section 7 of the Ordinance read with Rule 11(10) of the Rules for Parbatpur Central, Gare Palma IV/1 and Gare Palma IV/2&3 coal blocks.

Sd/-

(A. Sanjay Sahay)

Under Secretary to the Government of India

To,
The Nominated Authority,
Ministry of Coal”

14. WPC 3001/2015 came up for hearing before this court for the first time on 23.03.2015, on which date notice was issued to the respondents and the matter was renotified for hearing on 26.03.2015. The matter was again renotified for further arguments on 27.03.2015 on which date the following order was passed:-

“Arguments are going on in this writ petition and it will not be possible to conclude arguments today which is the last day before the short vacations of this Court. We are therefore renotifying this matter on 13.04.2015.

In the meanwhile, we are making it clear that any and every action taken connected with the present matter will be subject to final orders that may be passed by this Court. Insofar as the course of action to be adopted on 01.04.2015 is concerned, we feel that it would be appropriate if Coal India Limited functions as a custodian akin to the designated custodian contemplated under Section 18 of the Second Ordinance. Coal India Limited, functioning as such custodian, shall utilize the requisite manpower of the petitioner to ensure continuity in coal mining operations and production of coal. All the coal produced on or from 01.04.2015 shall belong to Coal India Limited and they shall be entitled to dispose of the same in any manner they deem fit. This is however, only an interim measure and shall not create any equities in favour of the Coal India Limited or any of the other respondents.

The respondents may file a detailed counter affidavit within ten days and the petitioner may file a rejoinder before the next date of hearing.

Dasti under the signatures of the Court Master.”

15. Thereafter, an amendment application was filed to bring on record and to challenge subsequent actions. The same was allowed on 16.04.2015. Impleadment applications had been filed which had also been allowed. The interim order dated 27.03.2015 has continued till date.

16. Insofar as WP(C) 3002/2015 is concerned, that also came up for hearing on 23.03.2015 whereupon notice was issued and a status quo order with regard to the Tara Coal Mine was issued.

Submissions of the petitioners

17. It was contended on behalf of the petitioners that the decision not to declare JPL as the successful bidder has to be tested solely in the light of the purported reasons specified in the O.M.s dated 20.03.2015 in respect of the Gare Palma Coal Mine as also the Tara Coal Mine. It is submitted that JPL was the highest bidder for the Gare Plama Coal Mine and the Tara Coal Mine with an effective bid price of Rs 808 per tonne [Rs 700 (Ceiling Price) + Rs 108 (Additional Premium Premium)] and Rs 1096 per tonne [Rs 970 (Ceiling Price) + Rs 126 (Additional Premium)]. It was submitted that when the Government of India had fixed a reserved price on the basis of the Coal India notified price of Rs 700, any price quoted below such reserved price insofar as the power sector was concerned, ought to be taken as the fair value. It was further submitted that insofar as the coal mines were reserved for the power sector, any additional premium quoted below zero, meant that there would be no

burden of extraction of coal being passed on to the consumers and this itself would imply that it was a fair value.

18. It was also submitted that comparing the additional premium quoted by the bidders for other coal mines was bad because mere comparison of additional premia without considering the cost of extraction absorbed by the bidders would be a flawed approach. It was also contended that the value depended upon the peculiar characteristics of each mine and that each mine was different. Therefore, comparison of the additional premium offered for mines having dissimilar features would in itself be irrational and arbitrary. It was pointed out that the Gare Palma Coal Mine had certain features which could discourage other bidders from quoting a higher additional premium. The features highlighted were that the distance from the railway siding of the Gare Palma Coal Mine was approximately 55 kms. JPL, however, enjoyed an economic advantage being a prior allottee and it already had in place a 7 km long Cross-Country Pipe Conveyor (CCPC) for transportation of coal from the Gare Palma Coal Mine to its power plant. Therefore, JPL was in a better position to make a quote than other bidders, who were not located in the vicinity and who did not have the requisite infrastructure for

transportation of the coal which was to be extracted. It was also suggested that the high peak rated capacity of 6.25 million tonnes per annum effectively meant that there would be a yearly loss of approximately Rs 640 crores till such time the successful bidder did not have successful power purchase agreements in order to sell 85% of its generated capacity. Furthermore, it was suggested that the Gare Palma Coal Mine had a high mining cost because of the fact that 20% of its reserves were underground.

19. Similar submissions were made in respect of Tara Coal Mine, where also the distance from the Railway Head / Siding from the Tara Coal Mine was 42 kms. The high peak rate capacity of 6 million tonnes per annum leading to a yearly loss of approximately Rs 510 crores till the successful bidder had sufficient PPAs to sell 85% of its generation capacity. It was also suggested that approximately 74% of the total area of Tara Coal Mine fell within the forest area and, therefore, entailed further costs, such as compensatory afforestation charges. It was also submitted that the Tara Coal Mine had one of the highest strip ratios of 6.69:1 which meant that the mining of the coal was extremely expensive and difficult.

20. For all these reasons, it was submitted that the bid price offered by the petitioners in the auction could not be regarded as not reflecting a fair value.

21. It was also submitted that revenue maximisation was not the objective behind the coal block allocations. On the other hand, the emphasis ought to be on optimum utilisation of the coal resources and, ultimately, the coal mining operations with minimum impact on the coal sector.

22. The purported reason of irrational conduct demonstrated by the bidders (which is alleged only in respect of the Gare Palma Coal Mine), is, according to the learned counsel for the petitioners, without any substance. It was further submitted that there was absolutely no basis to justify the decision not to declare JPL as the Successful Bidder in respect of the said coal mine. It was also contended that the decision on the part of the respondents was arbitrary, discriminatory and *mala fide* inasmuch as one of the purported reasons for rejection of the bid was that after the stage of the initial price offer, there was only an increment of Rs 8 and Rs 26 in the bid prices for the Gare Palma Coal Mine and the Tara Coal

Mine, respectively. It was, however, submitted that in five other cases, out of the 8 cases which were subjected to re-evaluation by the respondents, bids were accepted despite the increment being only of Rs 2 after the stage of the initial price offer.

23. It was also submitted that the conduct of the respondents was *mala fide* and pre-meditated because, pending the re-evaluation of the bids, Rule 11 of the said Rules was amended, empowering the Government to relax any rule for allotment of the coal mines to public sector undertakings, thereby enabling the subsequent allotment of the Gare Palma Coal Mine to Coal India Limited within a mere three days of rejection / annulment of the JPL's bid for the said mine.

24. It was also submitted that clause 5.13 of the Standard Tender Document for power sector provided for rejection of bids. Clause 5.13.1 is relevant and the same reads as under:-

“5.13 Rejection of Bids

5.13.1 Notwithstanding anything contained in this Tender Document, the Nominated Authority reserves the right to reject any Bid and / or to annul the tender process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In case such cancellation is pursuant to non-compliance by the relevant Bidders vis-à-vis submissions of Bid then the Nominated

Authority reserves the right to appropriate the relevant Bid Security submitted by such non-compliant Bidders.

XXXXX XXXXX XXXXX XXXXX XXXXX”

25. It was also pointed out that clause 3.3.2 of the said Standard Tender Document described the two stage tender process in detail. Sub-clause (e) thereof indicated what would happen if the preferred bidders was not to become the Successful Bidder. The said clause (e) reads as under:-

“(e) Preferred Bidder not to become Successful Bidder in certain cases:

Notwithstanding the above, in the event that the Nominated Authority or the Central Government determines that a Preferred Bidder should not be declared the Successful Bidder on account of any reason whatsoever, including without limitation the withdrawal of the Preferred Bidder from the auction process for the Coal Mine or the Preferred Bidder ceasing to comply with the Eligibility Conditions, then the Coal Mine may be subjected to re-auction or being granted to the custody of a Designated Custodian, and this tender process may be annulled.”

26. It was submitted in the context of the above provision that in case the preferred bidder does not become the successful bidder, the coal mine in question is either to be subjected to re-auction or has to be granted to the custody of a Designated Custodian and the tender process has to be annulled. But, what has happened in the present case is that Coal India Limited has not been granted the Gare Palma Coal Mine as a Designated

Custodian, but as an allottee by virtue of the O.M. dated 23.03.2015. This, according to the learned counsel for the petitioners, is not permissible.

27. It was submitted by the learned counsel for the petitioners that the bid price for the Gare Palma Coal Mines did reflect a fair value and that this was evidenced by the Statement of the Secretary, Ministry of Coal on 03.03.2015 which was to the following effect:-

“... In one of the blocks, forward auction amount bid was only Rs 108 and suddenly there was this debate that this is very low but let me give you a number here. The value that is coming out of e-auction is Rs 1,679 crores, the value that is coming from royalty is Rs 1,523 crores, but the real value is coming out of the tariff concession that will happen, and that is Rs 11,469 crore. So the overall value that gets determined in that particular block is 14671 crores. It's a huge amount.”

28. It was also submitted that the intrinsic value of Gare Palma Coal Mine is Rs 38 per tonne and the effective bid price quoted by JPL was Rs 808 per tonne which is 21.3 times the intrinsic value. It was also submitted that JPL would bear the entire cost of extraction of the coal and no part of which would be passed through in the power tariff to the ultimate consumer of power and that in addition to this, JPL would be paying Rs 108 per tonne as additional premium to the State Government.

It was further submitted that the successful bidder would also be required to pay royalty, taxes and cess of approximately Rs 400 per tonne to the State Government and that as per the policy of the Government of Chhattisgarh, where the Gare Palma Coal Mine is located, a power plant with captive coal mine is required to supply 7.5% of the net power generated to the Government of Chhattisgarh at energy charges. This translates to a benefit of approximately Rs 425 per tonne to the State Government, which, in turn, implies a total benefit to the consumers of power and the State Government on accepting JPL's bid in respect of Gare Palma Coal Mine, as equivalent to Rs 1633/- per tonne (Rs 808 + Rs 400 + Rs 425 per MT).

29. It was also submitted that the bid price for the Tara Coal Mine also reflected the fair value. The effective bid price for JPL for the Tara Coal Mine was Rs 1096 per metric tonne, whereas the ceiling price for the Tara Coal Mine was only Rs 970 per tonne. The additional premium was Rs 126 per tonne. The total benefit for the Tara Coal Mine, if JPL's bid were to be accepted, would be Rs 1496 per metric tonne. The intrinsic value of Tara Coal Mine is Rs 41.1 per MT and the effective bid price quoted by JPL was Rs 1096 per MT which translated to 26.6 times the

intrinsic value. It was further submitted that the effective bid price of Tara Coal Mine of Rs 1096 per MT was more than the effective bid price of Talabira I and Jitpur at Rs 1088 per MT and Rs 962 per MT, respectively.

30. Therefore, it was submitted that the bid price both for the Gare Palma Coal Mine and the Tara Coal Mine did, in fact, reflect a fair value and any contention to the contrary was untenable.

31. It was also submitted that JPL had emerged as the preferred bidder after due compliance with all the conditions of the tender process and had a legitimate expectation to be declared the Successful Bidder and consequently, to the allocation of the coal mine. The auction process was conducted as per rules. It was submitted that JPL succeeded in the auction for both the mines, fair and square. It was submitted that there was no deviation from the mandated auction process and, therefore, JPL's bid for both the coal mines had to be accepted and JPL was entitled to be declared as the successful bidder.

Respondents' submissions

32. In response, the learned counsel for the respondents submitted that without any vesting order, there was no contractual obligation on the part

of the respondents and that the petitioner did not have any right to a vesting order because the petitioner had only been declared as a Preferred Bidder and had not been declared as a Successful Bidder. It was submitted that it was only the Successful Bidder who had a right for the grant of a Vesting Order.

33. It was also submitted that the question that arose was – whether the relevant procedure had been followed or not in not declaring JPL as the Successful Bidder ? It was submitted that it is the decision making process which is the subject matter of judicial review and not the decision itself. In this context, it was submitted that the analysis of intrinsic value itself and as to whether a fair value had been achieved or not was within the domain of the Government and that the court could not sit in judgment over that decision. Furthermore, it was submitted that under Rule 10(9) of the said Rules, the Nominated Authority, upon completion of the proper auction process, is required to forward its recommendations to the Central Government with regard to the selection of a successful bidder. Referring to clause 3.3.2(c) of the Standard Tender Document, it was contended that the bidder with the best final price offer from amongst the qualified bidders is taken to be the preferred bidder. Thereupon, the

Nominated Authority recommends the name of the preferred bidder to the Central Government. It is only when the Central Government directs that the vesting order should be issued to the preferred bidder, that the preferred bidder becomes a successful bidder. While a successful bidder has a right to be issued a vesting order, a preferred bidder on the other hand has no such right and merely has an expectation. Thus, it was submitted that till the preferred bidder is declared to be a successful bidder, the Government does not owe any obligation to such a bidder with regard to the issuance of a vesting order.

34. Referring to Rule 10(10) of the said Rules, it was submitted on behalf of the respondents that upon receipt of a recommendation by the Nominated Authority, the Central Government has two options before it. It may either direct the Nominated Authority to issue a vesting order in favour of the successful bidder or it may provide such other binding directions to the Nominated Authority as may be deemed appropriate. It was, therefore, contended that the mere forwarding of the recommendations of the preferred bidder does not automatically translate into the grant of a Vesting Order. The Nominated Authority, upon completion of the public auction process, merely forwards its

recommendations. It is for the Central Government to take a decision on the said recommendation as to whether the preferred bidder is to be declared as the successful bidder and thereafter whether a vesting order should be granted to it. The Central Government may also decide not to declare the preferred bidder as a successful bidder and may instead choose to give other directions to the Nominated Authority.

35. In this backdrop, it was submitted that till a bidder was declared as the successful bidder, there was no obligation on the Government to direct the issuance of a vesting order and there is no right in the petitioner to the grant of such a Vesting Order.

36. It was also submitted that the objective of power security and optimal use of coal reserves was not in contradiction to the object of revenue maximisation. The auction process was undertaken in order to achieve the best price for a public resource, such as coal. It was submitted that if the best price is not fetched even through the auction process, it is not incumbent upon the Government to accept the price offered under the auction process. In fact, it was submitted that the Government would fail in its duty if it blindly accepted the price declared

through an auction even though that price, in the view of the Government, did not reflect the fair value of a valuable resource, such as coal.

37. The relevant file of the Gare Palma Coal Mine was shown to us. As pointed out above, the Nominated Authority, after the completion of the auction process, made a recommendation on 25.02.2015. Two days later, on 27.02.2015, the Nominated Authority was asked to re-examine the matter. As pointed out above, on 05.03.2015, the Nominated Authority submitted his report upon re-examination. The report reveals that the Nominated Authority had observed that there was no proof of any collusive bidding and no complaint had been received. Thereafter, the Secretary (Coal) referred the matter to the inter-Ministerial Committee. A meeting was held on 13.03.2015 and it was recorded that since this was a bidding process, the matter be referred back to the Ministry of Coal. Thereafter, there is a note of the Secretary (Coal) to the effect that there was sufficient doubt about the manner in which the bidding was conducted and he recommended not to accept the bid. This was endorsed by the Minister of State (Coal) and thereafter, the Office Memorandum dated 20.03.2015 was issued whereby the Nominated Authority was directed not to declare JPL as the successful bidder.

38. It was contended on behalf of the respondents that after full deliberation and consideration and, in fact, re-examination, the respondent No.1, came to the conclusion as noted in the Office Memorandum dated 20.03.2015, whereupon the Nominated Authority issued the Office Order dated 20.03.2015 informing the petitioner that it could not be declared as the successful bidder. It was submitted by the respondents that the decision making process could not be faulted. Even the decisions could not be construed as arbitrary or having been arrived at upon non-application of mind inasmuch as the said decision was informed by reason. It was also submitted that the decision to allot the Gare Palma Coal Mine to Coal India Limited could not be faulted. This was only a sequel to the fact that JPL's bid for the said mine did not materialise into a successful bid and the auction process was annulled. It was submitted that since the annulment took place on 20.03.2015, a fresh auction process could not be initiated and completed by 31.03.2015 which was the deadline fixed by the Supreme Court and, therefore, as the mine was an operational one, the same was allotted to Coal India Limited by virtue of the Office Memorandum dated 23.03.2015. It was submitted that on 18.03.2015, Rule 11(10) was inserted by way of an amendment to

the said Rules which prescribed that the Central Government could, in public interest and for reasons to be recorded in writing, relax any of the provisions of Rule 11 for the allotment of a Schedule-I Coal Mine to a Central Government Company or Corporation.

39. In response to the contention that the said amendment was brought about overnight in order to defeat the right of the petitioners, the learned counsel for the respondents submitted that the process for amending the rule and insertion of Rule 11(10) commenced about a month prior to the amendment being made and the formal process of finalising the amendment started much before the decision for annulment was taken for the mines in question. It was further submitted that there was nothing in the provisions of the applicable laws that debarred the respondents in allocating a mine to a Government Company after the mine had been put into auction and the auction process had failed and had been annulled for any reason. It was submitted that under Rule 17 of the said Rules, it was specifically provided that if a coal mine was not allotted or auctioned for any reason whatsoever, the Nominated Authority would have the power to re-initiate the process of auction or allotment or take any action as per the direction of the Central Government. It was also submitted that

several coal mines, such as Utkal D, Utkal E and Mandakini B have also been allotted under Rule 11(10) to Government companies apart from the Gare Palma Coal Mine.

40. With regard to the contention of the petitioners that comparison between two mines would not be appropriate as each mine has a different peculiarity, it was submitted on behalf of the respondent that such a contention is not tenable. It was contended that a bid is dependent on various facts, such as peak rate capacity, gross calorific value of coal, extractable reserves, mining cost, number of competing plants in the vicinity, logistics, etc. In the context of the extractable reserves, it was submitted that the Gare Plama Coal Mine had the highest extractable reserve amongst the six Schedule-II mines, which were put to auction for the power sector. Yet, even the smallest mine having an extractable reserve of 10.77 million tonnes as against 155.49 million tonnes in respect of the Gare Palma Coal Mine, received a final bid of Rs 378 additional premium which was much higher than that of Rs 108/- for the Gare Palma Coal Mine. With regard to the grade of coal, it was submitted that Gare Palma Coal Mines and the Sarisatolli Coal Mine had the same grade of coal yet the final bid price for additional premium for

the mines were Rs 108 and Rs 470, respectively. It was submitted that in the totality of circumstances, the Government expected that the Gare Palma Coal Mine as also the Tara Coal Mine should have fetched a higher price and that the bid prices achieved through the auction process in both the cases did not reflect the fair value. Therefore, the decision of the Government to annul the auction process in both the cases and in not declaring JPL as the successful bidder could not be faulted.

41. As regards the scope of judicial review, it was submitted that the same was limited only to cases where there was arbitrariness, discrimination or bias. Reference was made to paragraph 94 of the decision in **Tata Cellular v. Union of India: 1994 (6) SCC 6511** 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 fair play 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 from 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.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

42. In this backdrop, it was submitted that the court does not sit as a court of appeal over administrative actions, particularly with regard to tenders, but, merely reviews the manner in which the decisions were made. The court does not have the expertise or the wherewithal to judge as to whether the decision was right or wrong. Though the court can and must interfere if the decision is arbitrary, biased or actuated by mala fides and does not pass the Wednesbury test of reasonableness. It was

submitted that the decision to annul the auction process in the cases of the Gare Palma Coal Mine and the Tara Coal Mine was not actuated by any mala fides or bias, nor was it an arbitrary decision. On the contrary, it was a decision taken in public interest because in the view of the Government, a fair value had not been realised through the auction process. It was further submitted that the allotment of the Gare Palma Coal Mine in favour of the Coal India Limited was necessary in view of the fact that there was paucity of time for a re-auction as, the mine being an operational one, the terminal date of 31.03.2015, fixed by the Supreme Court, was fast approaching.

Petitioners' Rejoinder

43. In rejoinder, the learned counsel for the petitioners submitted that the procedure for auction prescribed under the Ordinances as also under the Standard Tender Document was fair and transparent. An auction is based on market forces. There is no taint attaching to the auction in respect of the said Coal Mines. Therefore, in these circumstances, when the Nominated Authority recommended that JPL be declared as the successful bidder, the Government did not have an absolute right to say no. This is so particularly when the Nominated Authority stated that

there was no collusion. In this context, it was submitted that the Minister could not take a contrary view on the same material. It was furthermore stressed that it was an auction under a statutory process and not just a private auction. In fact, it was pointed out that there were several instances where there was only one bid in the final auction after the IPO, yet the contracts were awarded to the single bidders at the final auction stage. The learned counsel for the petitioners submitted that JPL needs to be dealt with fairly. It was further contended that a conclusion that there was no healthy competition could only be arrived at if there was a deviation from the norms. But, if the auction was as per norms, then it has to be assumed that there was healthy competition. This is so because the auction process as per the Standard Tender Document itself was fair and reasonable.

44. It was submitted that the timeline suggests that the decision of the respondents was actuated by mala fides. This is so because on 19.02.2015, the auction process was completed and JPL was declared as the preferred bidder in respect of both the Gare Palma Coal Mine and the Tara Coal Mine. On 25.02.2015, the Nominated Authority made a clear recommendation for declaring JPL as the successful bidder in respect of

both the coal mines. On 27.02.2015, the respondent No.1 required the Nominated Authority to re-examine the matter. On 05.03.2015, the Nominated Authority once again submitted its report upon re-examination that there was no collusion. On 18.03.2015, Rule 11 was amended by introduction of sub-Rule (10) therein, whereby power was given to the Government to relax any rule. It is only thereafter that, on 20.03.2015, the impugned Office Memorandum was issued. It was submitted that the notification of 18.03.2015 amending Rule 11 was brought about specifically to ensure that the Gare Palma Coal Mine is not only not awarded to JPL, but is also allotted to a Government Company – Coal India Limited. It was, therefore, submitted that the entire action was arbitrary and *mala fide*. It was also submitted that because JPL was regarded as the preferred bidder in respect of both the Gare Palma Coal Mine and the Tara Coal Mine, it was not considered eligible for Ganeshpur and Utkal-C Coal Mines. This clearly meant that by becoming a preferred bidder, contrary to what the learned counsel submitted, a right was created in JPL. That was the right to be declared as the successful bidder. Thus, it is not as if by becoming a preferred bidder, JPL did not have any standing at all and that it was open to the respondents to annul the auction process without any reason.

Discussion

44. It is well-established that in the course of judicial review of an award of a tender, the court does not sit in appeal over the decision. The scope of review is a very limited one and it is more concerned with the decision making process rather than the decision itself. It is also well-settled that the court, while reviewing an administrative decision, cannot substitute its view for that of the authority taking that decision. The principles with regard to judicial review have been stated as far back as in 1994 in the *Tata Cellular* case (*supra*) which we have already referred to above. The principles were re-stated in *Michigan Rubber (India) Limited v. State of Karnataka and Others*: 2012 (8) SCC 216, wherein, after a review of various decisions, including the case of *Tata Cellular* (*supra*), the Supreme Court has held as under:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.

24. Therefore, a court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”? and

(ii) Whether the public interest is affected?

If the answers to the above questions are in the negative, then there should be no interference under Article 226.”

45. It is evident that the action of the state or its agency would be amenable to judicial review to the extent that the authority concerned is required to act validly for a discernible reason and not whimsically for any ulterior purpose. If that action or decision is taken in a manner within the bounds of reasonableness, interference by courts would not be necessary. The process adopted or decision made must be so arbitrary and irrational that the court could come to the conclusion that no responsible authority acting reasonably and in accordance with the relevant law, could have adopted such a process or arrived at such a decision. Unless this is so, interference in a tender process, in exercise of the power of judicial review, would not be called for.

46. With these principles in mind, let us examine as to whether the decision making process has been arbitrary, discriminatory or actuated with malice and whether the decision itself is so unreasonable and irrational that no responsible authority acting reasonably and in accordance with the relevant law could have arrived at such a decision.

Gare Palma Coal Mine [WP(C) 3001/2015].

47. We shall examine the steps and process adopted in the case of the Gare Palma Coal Mine. We have already noted that pursuant to the auction, in respect of the Gare Palma Coal Mine, the Nominated Authority submitted his recommendations to the Ministry of Coal on 25.02.2015. In the said recommendation, it was provided that the e-auction for the mine commenced on 19.02.2015 at 11.00 a.m. and the closing bid of Rs 108/- per tone (forward) was submitted by JPL on 19.02.2015 at 12:21:43 hrs. A copy of the Bid History as generated from the website of MSTC in respect of the Gare Palma Mine was enclosed alongwith the recommendation. The Bid History was as under:-

“Bid History

Select Auction: MSTC/HO/Nominated Authority/81/Shastri Bhawan/14-15/14856

Auction Type: Reverse Auction

Period : 19/02/2015 11:00:00 To 19/02/2015 13:00:00

Mine Name: Gare Palma IV 2n3

Sl. No. [Type]	Bidder Ref. No.	Bid Amount	Bid Time	IP
1[F]	mstc/Jindal Power Limited/64849	108.0	19/02/2015 12:21:43	10.36.65.167#fe80::b581:87d:c0ef: 1636#fkp>115.113.101.38

F-Forward auction Bid, R- Reverse Auction Bid”

It would be evident from the above that there was only one bid in the reverse auction and that was made by JPL for an amount of Rs 108/- at 12:21:43 hrs.

48. In the said recommendation, the Nominated Authority had also submitted a table showing the IPO (Initial Price Offer) and the highest bid submitted by the qualified bidder alongwith the date and time of submission of the bids. The said table was as under:-

“

Sl. No.	Qualified Bidders [Based on IPO]	Price quoted in IPO (Rs./Tonne)	Higher Bid Price (Quoted Date/ Time)
1	Adani Power Maharashtra Limited	501	Did not Bid
2	GMR Chhattisgarh Energy Limited	0	Did not Bid
3	Jindal India Thermal Power Limited	505	Did not Bid
4	Jindal Power Limited* (64849)	450	108(F) 19.02.2015/12:21:43
5	Jindal Power Limited (65465)	452	Did not Bid
6	Jindal Power Limited (65476)	451	Did not Bid

(F) Indicates Forward Bidding on the basis of Additional Premium (i.e. above Fixed Reserve Price of Rs. 100/- per tonne) in case Reverse Bidding reached to zero.

Only one bid from M/s Jindal Power Limited (64849) was received for this coal mine.”

49. By virtue of the recommendation dated 25.02.2015, the Nominated Authority pointed out that JPL submitted the highest bid and was found to be the Preferred Bidder for Gare Palma Coal Mine (Gare Palma IV/2 and IV/3) for the end-use plant, namely, “1200 MW (2x600 MW) Phase II Power Plant, Tamnar, Chhattisgarh”. JPL was, therefore, recommended for approval of the competent authority in the Ministry of Coal for its declaration as the Successful Bidder and, consequently, for a direction to the Nominated Authority for issuance of a Vesting Order in the name of the Successful Bidder with such additional condition(s), if any, other than that of the Model Vesting Order, as may be prescribed.

50. It was felt by the Central Government that only one bid was made for this mine after the IPO and even the bidder [who quoted the lowest rate of rupees zero in the IPO], that is, GMR, Chhattisgarh Energy Limited, did not bid in the auction. It was also noted that amongst the six power blocks, which had been sanctioned in the first phase, the lowest closing forward bid had been made in the case of Gare Palma Coal Mine. It was noted that the closing bids submitted in respect of the other five coal blocks was as under:-

“

Talabira-I	478(F)
------------	--------

”

Sarisatolli	470(F)
Trans Damodar	940(F)
Amelia North	712(F)
Tokisud North	1110 (F)

”

51. In view of the fact that the bid closed so early, that is, at 12:21:43 when it had opened only at 11.00 hrs, as also the fact that the final bid was far below the final bids in other blocks for the power sector, it was felt that a detailed examination by the Nominated Authority was necessary before a final view could be taken in the matter. Consequently, it was suggested that the Nominated Authority may be asked to re-examine the matter and furnish comments alongwith the details. This was with the approval of the competent authority.

52. As such on 27.02.2015 itself, an Office Memorandum was issued by the Government of India, Ministry of Coal which was to the following effect:-

“13016/18/2015-CA-III
Government of India
Ministry of Coal

New Delhi dated 27th February, 2015

OFFICE MEMORANDUM

Subject: Direction of the Central Government to Nominated Authority in respect of Gare Palma IV/2 & 3 coal mine under

Rule 10(10) of the Coal Mines (Special Provisions) Rules, 2014-reg.

The undersigned is directed to refer to Nominated Authority's communication number 102/4/2015-NA(Pt.) dated 25.02.2015 and 26.02.2015 recommending the name of M/s Jindal Power Limited (64849) as Preferred Bidder in respect of Gare Palma IV/2 & 3 coal mine. The recommendations have been considered by the Competent Authority. It is seen from the bid history that only one bid was made for this mine i.e. by M/s Jindal Power Limited (64849). Even the Bidder who quoted lowest rate (Rs. 0 Zero) in the IPO i.e. M/s GMR Chhattisgarh Energy Limited did not bid. It is further observed that out of the six blocks meant for power sector viz. Talabira-I, Sarisatolli, Trans Damodar, Tokisud North, Amelia North and Gare Palma IV 2 & 3 which have been put on auction in the first phase, the lowest closing forward bid has been made in this case. In accordance with Rule 10(10) of the Coal Mines (Special Provisions) Rule, 2014, the Nominated Authority is hereby directed to re-examine the matter in detail and give its recommendation for consideration of the Competent Authority.

Sd/-

(A. Sanjay Sahay)

Under Secretary to the Government of India

To,
The Nominated Authority,
Ministry of Coal"

53. Thereafter, as pointed out earlier, the Nominated Authority submitted his report dated 05.03.2015. In the said report, it was noted that the Gare Palma Coal Mine was earmarked for specified end-use for the power sector alongwith five other Schedule-II coal mines, namely, Talabira-I, Sarisatolli, Trans-Damodar, Amelia North and Tokisud North. In the said report, a table was provided indicating the date / time of start of e-auction, date / time of closing of bid, ceiling price based on IPO,

closing bid and the name of the closing bidder in respect of the six coal mines where the specified end-use was “Power”. The said table is reproduced hereinbelow:-

Table-I

Name of Coal Mine	Bal. Extractable Res. (MT)	Date/Time of Start of E-Auction	Date/Time of closing bid	No. of Bids	Ceiling Price (Based on IPO) Rs./Tonne	Closing Bid Rs./Tonne	Inc. After IPO	Name of the Closing Bidder
Talabira-I	10.79	14.02.2015 11:00 AM	14.02.2015 20:04:10	138	0+100	0+478 (F)	378	GMR Chhattisgarh Energy Limited
Sarisatolli	51.03	15.02.2015 11:00 AM	15.02.2015 22:32:18	167	0+100	0+470 (F)	370	CESC Limited
Trans Damodar	47.32	16.02.2015 11:00 AM	16.02.2015 21:10:11	264	(-) 500	0+940 (F)	1440	The Durgapur Projects Limited
Amelia North	70.28	17.02.2015 11:00 AM	17.02.2015 16:43:10	115	(-)200	0+712(F)	912	Jaiprakash Power Ventures Limited
Tokishud North	51.97	18.02.2015 11:00 AM	18.02.2015 20:28:15	228	0+100	0+1110(F)	1010	Essar Power Mp Limited
Gare Palma IV/s & 3	155.49	19.02.2015 11:00 AM	19.02.2015 12:21:43	1	0+100	0+108(F)	08	Jindal Power Limited * (64849) * Out of 3 appl. Of JPL

(F) Indicates Forward Bidding on the basis of Additional Premium (i.e. above Fixed Reserve Price of Rs. 100/- per tonne) in case Reverse Bidding reached zero.”

54. It was indicated in the said report dated 05.03.2015 that the closing bid in respect of the Gare Palma Coal Mine was received within the scheduled time (initial time of two hours) and there was no extended time. Only one bid was made for this mine and that was by JPL, though there were other distinct Qualified Bidders. It was also pointed out in the said report that bidding for the other power sector mines was aggressive and the bids continued much beyond the initial scheduled period of two hours. The number of bids made in respect of the other mines earmarked for the Power Sector ranged from 115 to 264 as indicated in the table

above. But, insofar as the Gare Palma Coal Mine was concerned, there was only one bid and that was by JPL. The Nominated Authority observed that it was not understood as to why the other Qualified Bidders did not bid for this mine at all. It was further observed that while smaller mines in terms of extractable reserves had fetched higher prices, Gare Palma IV/2 & IV/3 having the maximum reserves had seen the lowest bid. It was, therefore, opined by the Nominated Authority that it would be reasonable to expect a higher bid price for the Gare Palma Coal Mine.

55. The Nominated Authority also observed that GMR Chhattisgarh Energy Limited having submitted an IPO price of zero and having its requirement unmet despite being the closing bidder for Talabira-I, non-submission of any bid in the e-auction for the Gare Palma Coal Mine was not understood. It was also observed that the tender document provided that in case the H-1 or L-1 bidder (as the case may be), in the initial price offer does not submit any bid in the final price offer stage and consequently the auction process is annulled due to non-submission of a bid in the final price offer stage by any of the qualified bidders, its bid security should be forfeited. In the present case, it would mean that if GMR Chhattisgarh Energy Limited being the L-1 in the IPO stage had

not submitted any bid and no other qualified bidder also submitted any bid, then the auction process would have to be annulled due to non-submission of bids at the final price offer stage and the bid security of the L-1 bidder at the IPO stage would be liable for forfeiture. In this backdrop, the Nominated Authority observed that despite the risk of forfeiture of the bid security amount of Rs 11,82,00,893/-, GMR Chhattisgarh Energy Limited did not submit any bid from 11.00 hrs till 12:21:43 hrs when the lone bid from JPL was received.

56. As a word of caution, of course, the Nominated Authority also observed that there was no conclusive proof available with the Nominated Authority to indicate any collusive bidding nor was there any complaint received about the e-auction platform obstructing bidders from submission of bids and no procedural infirmities had been noticed in the auction process. The Nominated Authority, therefore, left it to the Ministry of Coal to take an appropriate decision in the matter on the basis of the facts submitted in the report dated 05.03.2015.

57. On 09.03.2015, the Secretary (Coal) suggested that the proposal may be referred to the inter-Ministerial Committee for examination and its report so that a final view could be taken by the Government on the

matter. The competent authority agreed with the suggestion and directed that in view of the urgency of the matter, the Committee ought to submit its report within two days.

58. The inter-Ministerial Committee held its meeting on 13.03.2015, but concluded that since the issue pertained to the bidding process, they could not offer any comments on the recommendations of the Nominated Authority and that it was for the competent authority in the Ministry of Coal to take a call in the matter. The Secretary (Coal) thereafter, on 16.03.2015, on examining the Nominated Authority's report dated 05.03.2015, noted the observations of the Nominated Authority that it would be reasonable to expect a higher bid price for the Gare Palma Coal Mine. He also noted that there were other reasons brought out in the note of the Nominated Authority which created sufficient doubt about the manner in which the bidding was done even though there was no conclusive proof of collusive bidding. Consequently, it was suggested that the bid made by JPL in respect of the Gare Palma Coal Mine may not be acceptable and a view be taken separately with regard to what is to be done with the Gare Palma Coal Mine. This was noted by the Secretary

(Coal) on 16.03.2015 and was approved by the competent authority on 20.03.2015.

59. It is on that date that the impugned Office Memorandum dated 20.03.2015 was issued by the Government of India, Ministry of Coal directing the Nominated Authority to convey to JPL that it would not be either prudent or in public interest to approve its bid. Based upon the said Office Memorandum, on 20.03.2015 itself, the Nominated Authority issued the impugned Office Order to the effect that JPL had not been declared as the Successful Bidder of the Gare Palma Coal Mine by the Central Government, *inter alia*, on the ground that the highest bid does not reflect the fair value. This has been questioned by the petitioner.

60. On going through the entire file in respect of the bidding process of Gare Palma Coal Mine and, in particular, the table contained in the Nominated Authority's report dated 05.03.2015 (which has been extracted above), we find that the bidding process insofar as the Gare Palma Coal Mine is concerned, stands out on three aspects when compared to the other five power sector coal mines. The first being the number of bids after the Initial Price Officer. While in the other five cases, the number of bids range from 115 to 264, in the case of Gare

Palma Coal Mine, there was only one bid. It is, therefore, evident that in the case of the five other coal mines, there was aggressive bidding, whereas in the case of Gare Palma Coal Mine, there was one solitary bid. The second aspect which stands out insofar as Gare Palma Coal Mine is concerned is that in all the other cases, the bidding process went on well beyond the initial period of 2 hours. The earliest time of bid closing was in the case of Amelia North, which also took place at 16:43:10 hrs, that is, a clear 5 hours and 43 minutes and 10 seconds after the time of start of the e-auction. The latest closing time was in the case of Sarisatolli, where the bidding went on till 22:32:18 hours (i.e., for 11 hours 32 minutes and 18 seconds), whereas in the case of Gare Palma Coal Mine, the time of start of the e-auction was 11.00 a.m. and there was only one bid and the closing time was 12:21:43 hrs. This clearly indicates, for whatever reason, a complete lack of interest in the bidding for the Gare Palma Coal Mine. The third aspect which stands out in the case of the Gare Palma Coal Mine is with regard to the quantum of the closing bid itself. In the case of the other five power sector mines, which were contemporaneously subjected to the e-auction, the closing bids ranged from Rs 470/- per tonne (F) to Rs 1110/- per tonne (F). In comparison, there was a very low closing bid in the case of Gare Palma Coal Mine of only Rs 108/- per

tonne (F). In these circumstances, the view taken by the Government that the bid of JPL for the Gare Palma Coal Mine did not reflect a fair value cannot be regarded as unreasonable, arbitrary or whimsical. The entire auction process has not been faulted by anyone. It is always open to the Government to either accept or reject the H-1 or L-1 bid, as the case may be. Of course, this has to be for some good reason. In case, the H-1 bid does not reflect a fair value and the conclusion is based on a reasonable appreciation of facts, it would certainly be open to the Government not to accept the bid.

61. For all these reasons, despite all the arguments of the petitioner to the contrary that each coal mine has to be considered in isolation and cannot be compared as there are inherent differences inasmuch as there may be variation in the extractable reserves, the quality of coal, the difficulty of terrain and the difficulty in extracting the coal, etc., the decision of the respondents cannot be faulted. It is apparent that the bidding process for the Gare Palma Coal Mine and, particularly, the stage after the IPO, stands out on at least three aspects, which we have highlighted above. It is, of course, true that there cannot be any identity between the coal mines or even in respect of the closing bids, but, the

number of bids, the time taken in the auction and the closing bid in respect of the Gare Palma Coal Mine, is starkly different from that of the other 5 power sector coal mines, which were, within a day or two, put to auction. In any event, as long as the view taken by the Government is backed by reason, even if we had a different view, we cannot substitute our view for that of the Government. As such, the decision not to declare JPL as the Successful Bidder cannot be interfered with.

62. Insofar as the challenge to the notification dated 18.03.2015 relaxing the provisions of Rule 11 of the said Rules is concerned, we are of the view that the notification dated 18.03.2015 was not brought in to defeat the petitioners' bid. However, with regard to the issue of allotment of the coal mine to Coal India Limited, we have something to say. But, before that, we may point out that the process for amending the rule and inserting Rule 11(10) of the said Rules had commenced much earlier, a month or so prior to the amendment being made. We note that the first recommendation was submitted by the Nominated Authority on 27.02.2015 and the report was also submitted subsequently on 05.03.2015 and the decision not to declare JPL as the Successful Bidder was ultimately taken on 20.03.2015. The process of the amendment had been

initiated prior to 27.02.2015 and, therefore, the contention of the petitioners that it was brought about overnight in order to defeat the right of the petitioners cannot be accepted.

63. From the notings in the file, it is evident that six Schedule-II Coal Mines, namely, Parbatpur Central, Namchik-Namphuk, Gotitoria (East), Gotitoria (West), Marki-Mangli-I and Mraki-II were withdrawn from the e-auction. It was suggested by the Secretary (Coal) on 20.03.2015 that these six mines may be allotted to Coal India Limited in view of the introduction of Rule 11(10) of the said Rules by virtue of the said notification dated 18.03.2015. At that point of time, Gare Palma Coal Mine was not in contemplation for allotment. However, since the decision was taken for not declaring JPL as the Successful Bidder for the Gare Palma Coal Mine on 20.03.2015 itself, the file was recalled by the Secretary (Coal) on 21.03.2015, whereupon it was observed that as the mining activity by the previous allottee would cease on 31.03.2015 in the Gare Palma Coal Mine in view of the Supreme Court order and this would impact coal production and as there was inadequate time to explore the other options to continue the mining after 31.03.2015, the Gare Palma Coal Mine was also suggested to be allotted to Coal India Limited

alongwith the other six mines in public interest. This proposal was accepted by the competent authority on 21.03.2015 itself and it is thereafter that the O.M. dated 23.03.2015 was issued directing the Nominated Authority to execute an allotment order in the name of Coal India Limited in respect of, *inter alia*, the Gare Palma Coal Mine.

64. From the above, it is clear that the notification dated 18.03.2015 was not designed to defeat the interests of the petitioner. However, we must note that the decision to allot the Gare Palma Coal Mine to Coal India Limited was apparently as a stop gap measure inasmuch as there was hardly any time left between 20.03.2015 and 31.03.2015 (when the prior allottee was to end the coal mining operations). In order to maintain coal production and, left with no other viable options at that point of time, the decision was taken to allot the coal mine to Coal India Limited. In our view, this decision of allotment was occasioned by an emergent need of overcoming a temporary situation and it is for this reason that we passed the interim order on 27.03.2015 to the effect that Coal India Limited would function as a Custodian akin to the Designated Custodian contemplated under Section 18 of the Second Ordinance. We, however, permitted Coal India Limited functioning as such Custodian, to utilise the

manpower of the petitioner to ensure continuity of the coal mining operations and production of coal. The coal produced on and from 01.04.2015 was directed to belong to Coal India Limited and that they were entitled to dispose of the same in any manner they deemed fit. We had also made it clear that this was only an interim measure and would not create any equities in favour of Coal India Limited or any of the other respondents.

65. In our view, since the allotment of the coal mine was made to Coal India Limited in order to override an emergency situation, it cannot be regarded as a long term allotment. Therefore, we confirm our interim order and record that Coal India Limited would function as a Designated Custodian. We, therefore, do not uphold the allotment of the coal mine made on 23.03.2015 in favour of Coal India Limited, but leave it open to the Government to take a decision within six weeks as to whether the Gare Palma Coal Mine should be put to re-auction or be allotted to Coal India Limited or any other public sector corporation.

Tara Coal Mine [WP(C) 3002/2015]

66. The Notice Inviting Tenders for e-auction of Schedule-III coal mines, including the Tara Coal Mine was issued on 07.01.2105 by the

Nominated Authority. The initial price offer (IPO) of the Technically Qualified Bidders of the Tara Coal Mine was opened on 05.03.2015. The applicable ceiling rate of Rupee 01 per tonne was discovered on the basis of the rates quoted by the 5 Technically Qualified Bidders in the IPO. The price quoted by the petitioner in the IPO was Rupee 01 per tonne. The e-auction of the said mine commenced on 07.03.2015 at 11.00 a.m. and the closing bid of Rs 126 (per tonne) (Forward) was submitted by the petitioner on 07.03.2015 at 13:21:38 hours. The Bid History as contained in the Nominated Authority's recommendation was as under:-

“Bid History

Select Auction: Tara – MSTC/HO/Nominated Authority/123/Shastri Bhawan/14-15/15684

Auction Type: Reverse Auction

Period: 07/03/2015 11:00:00 to 07/03/2015 13:29:38

Mine Name: Tara

Sl. No. [Type]	Bidder Ref. No.	Bid Amount	Bid Time	IP
1[F]	mstc/JSW/Jindal Power Limited/64849	126.0	07/03/2015 13:21:38	10.36.65.29#fe80:4933: :e59e:98b:f24e#fkip->115.113.101.38
2[F]	mstc/JSW ENERGY LTD/64731	116.0	07/03/2015 13:18:35	192.168.0.103#fe80::4974:d7ac:b1f6:bf8d#->1.22.39.116
3[F]	mstc/Jindal Power Limited/64849	114.0	07/03/2015 13:17:25	10.36.65.29#fe80:4933: :e59e:98b:f24e#fkip->115.113.101.38
4[F]	mstc/JSW ENERGY LTD/64731	110.0	07/03/2015 13:12:27	192.168.0.103#fe80::4974:d7ac:b1f6:bf8d#->1.22.39.116
5[F]	mstc/Jindal Power Limited/64849	108.0	07/03/2015 13:10:06	10.36.65.29#fe80:4933: :e59e:98b:f24e#fkip->115.113.101.38
6[F]	mstc/JSW ENERGY LTD/64731	106.0	07/03/2015 13:05:08	192.168.0.103#fe80::4974:d7ac:b1f6:bf8d#->1.22.39.116
7[F]	mstc/Jindal Power Limited/64849	104.0	07/03/2015 13:00:49	10.36.65.29#fe80:4933: :e59e:98b:f24e#fkip->115.113.101.38
8[F]	mstc/JSW ENERGY LTD/64731	102.0	07/03/2015 12:57:50	192.168.0.103#fe80::4974:d7ac:b1f6:bf8d#->1.22.39.116
9[F]	mstc/Jindal Power Limited/64849	0.0	07/03/2015 11:40:28	115.113.101.38”

67. Consequently, JPL, having submitted the highest bid was found to be the Preferred Bidder for the Tara Coal Mine in respect of its end-use plant, namely, the 1000 MW (4x250) Power Plant, Tamnar, Chhattisgarh. The Nominated Authority, therefore, recommended JPL for approval of the competent authority in the Ministry of Coal for its declaration as the Successful Bidder and, consequently, for a direction to the Nominated Authority for issuance of a Vesting Order in the name of the Successful Bidder with such additional condition(s), if any, other than that of the Model Vesting Order. The said recommendation was forwarded by the Nominated Authority on 10.03.2015. On a consideration of the recommendation, the Secretary (Coal) was of the view that as only a few bids had taken place and the bids appear to be *prima facie* lower as compared to other power blocks, the matter could be referred to the Nominated Authority for re-examination. This view was taken by the Secretary (Coal) on 12.03.2015 and was approved by the competent authority on 13.03.2015. Accordingly, an Office Memorandum dated 13.03.2015 was issued by the Government of India, Ministry of Coal directing the Nominated Authority to re-examine the matter in detail and give its recommendations for consideration of the competent authority.

68. The Nominated Authority, accordingly, re-examined the matter and submitted his report on 17.03.2015. It was stated in the report that the Tara Coal Mine was earmarked for the specified end-use – “Power” – alongwith four other Schedule-III coal mines, namely, Jitpur, Mandakini, Ganeshpur and Utkal ‘C’. The said report of the Nominated Authority providing the relevant details of the e-auction is reproduced hereinbelow:

**“F.No. 104/26/2015-NA
Ministry of Coal
O/o Nominated Authority
World Trade Tower, Barakhamba Lane,**

New Delhi dated 17th March, 2015

Subject: E-auction of Tara Schedule-III coal Mine by the Nominated Authority (NA) – Report of the Nominated Authority (NA) after re-examination in respect of Tara Coal Mine.

A recommendation of the Nominated Authority in respect of Preferred Bidder of Tara coal mine (Jindal Power Limited/ 64849) was submitted to Ministry of Coal on 10.03.2015. In response Ministry of Coal vide O.M. No. 13016/33/2015-CA-III dated 13.03.2015 has directed the Nominated Authority to re-examine the matter in detail and give its recommendation for consideration of the Competent Authority.

2. The matter has been re-examined at our end. Tara coal mine was earmarked for specified end-use “Power” along with 4 other Schedule-III coal mines viz. Jitpur, Mandakini, Ganeshpur and Utkal-C. The date/time of commencement of e-auction, date/time of submission of closing bid, ceiling price based on IPO and closing bid in respect of these 5 coal mines are as under:-

Name of Coal Mine	Bal. Extractable Res. (MT)	Date/Time of start of E-Auction	Date/Time of closing bid	No. Of Bids made	Ceiling Price (based on IPO) Rs./ Tonne	Closing Bid Rs./ Tonne	Inc. After IPO	Name of the Preferred Bidder
Jitpur	65.54	4 Mar-15 11:00 AM	4-Mar-15 17:41:48	70	120 (R)	302(F)	422	Adani Power Limited
Mandakini	287.89	5-Mar-15 11:00 AM	5-Mar-15 19:27:35	160	1 (R)	650(F)	651	Mandakini Exploration and Mining Limited (JV of Jindal India Thermal Power Limited and Monnet Power Company Limited)
Tara	166.92	7-Mar-15 11:00 AM	7-Mar-15 13:21:38	9	1(R)	126(F)	127	Jindal Power Limited
Ganeshpur	91.80	8-Mar-15 11:00 AM	8-Mar-15 22:54:36	265	0	704(F)	704	GMR Chhattisgarh Energy Limited
Utkal – C	123.86	9-Mar-15 11:00 AM	9-Mar-15 17:25:42	115	0	770 (F)	770	Monnet Power Company Limited

3. As may be seen from the above table that the closing bid in respect of Tara coal mine was received in extended time of 24 minutes after the initial scheduled time of 2 hours. The bid history of this mine indicates that only **9 (nine)** bids were submitted for this mine by **two Qualified Bidders**, though there were **5 distinct Qualified Bidders**. The Ceiling Price for this coal mine as mentioned in the tender document was Rs. 970/- per tonne. The list of Qualified Bidders for this mine along with the IPO and highest bid quoted in e-auction (FPO) is given in the table below:

SL. No.	Qualified Bidders [Based on IPO]	Price quoted in IPO (Rs. / Tonne)	Highest Bid Price Quoted (Date/Time)
1	Jindal Power Limited/64849	1	126(F) 07.03.2015/13:21:38
2	JSW Energy Limited/64731	212	116(F)

			07.03.2015/13:18:35
3	KSK Mahanadi Power Company Limited / 64759	750	Did not Bid
4	LANCO Amarkantak Power Limited / 64817	490	Did not Bid
5	Rattan India Nasik Power Limited / 65284	630	Did not Bid

(F) Indicates Forward Bidding on the basis of Additional Premium (i.e. above Fixed Reserve Price of Rs.100/- per tonne) in case Reverse Bidding reached zero.

4. If one were to take the parameter of total number of bids received it would be seen that the bidding for this mine is different compared to the other 4 Schedule-III mines earmarked for “Power” sector where aggressive bidding has taken place and where the bidding continued much beyond the initial scheduled period of 2 hours. The bids made in respect of these 4 mines (Jitpur, Mandakini, Ganeshpur and Utkal –C) earmarked for “Power” sector ranged from **70 to 265** as mentioned in the Table-I in para 2 above. Tara coal mine would meet 95.48% of the coal entitlement of Preferred Bidder i.e. **Jindal Power Limited / 64849**. M/s Jindal Power Ltd./64849 is a preferred bidder for Gare Palma IV/2 and IV/3 coal mines also; however end use plant is different vis-à-vis end-use plant in case of Tara coal mine.

5. Tara coal mine would have met 81.36% of the coal entitlement of **M/s JSW Energy Limited/64731** which is a qualified bidder and quoted Rs.212/- in IPO. M/s JSW Energy Limited / 64731 is not a preferred bidder in any of the mines auctioned so far. JSW Energy Limited did not bid in the e-auction (FPO) but quit after submitting 4 bids only.

6. Similarly, this mine would have met 53.61% of the coal entitlement of **M/s KSK Mahanadi Power Company Limited / 64759** which quoted Rs. 750/- in IPO, however it did not submit any bid. It is not a preferred bidder in any of the mines auctioned so far.

7. Further, **M/s LANCO Amarkantak Power Limited / 64817** which quoted Rs. 490/- in IPO did not submit bid. This mine would have met 62.23% of their coal entitlement. M/s LANCO Amarkantak Power Limited / 64817 is not a preferred bidder in any of the mines auctioned so far.

8. **M/s Rattan India Nasik Power Limited / 65284** which quoted Rs 630/- in IPO also did not submit any bid. This coal mine would have met 71.84% of their coal entitlement. IT is also not a preferred bidder for any other mine auctioned so far.

9. Thus, as seen from Table-I, the bidding for this mine was limited. The final price bid received was also relatively low as compared to other mines earmarked for power sector namely Jitpur, Mandakini, Ganeshpur and Utal - C. The difference between applicable ceiling price cost IPO and the closing bid in this case is Rs. 127/- (including fixed reserve price of Rs.100/-) compared to other cases of Schedule-III mines for power sector, where it ranged from Rs.422/- to Rs.770/-.

10. There is no conclusive proof available with NA indicating any collusive bidding nor is there any complaint received about the e-auction platform obstructing bidders from submission of bid. Further, no procedural infirmities have been noticed in the auction process.

11. The Ministry of Coal may take an appropriate decision in the matter on the basis of facts submitted above.

Sd/-
(Vivek Bhardwaj)
Nominated Authority

To,
Shri S.K. Singh, Joint Secretary,
Ministry of Coal,
Shastri Bhawan, New Delhi.”

69. It is evident from the report that the Nominated Authority observed that the closing bid in respect of the Tara Coal Mine was received in the extended time of 24 minutes as against the initial scheduled time of two hours. He also observed that the Bid History of the mine indicated that only 9 bids were submitted for this mine and by only two of the Qualified Bidders, although, there were 5 distinct Qualified Bidders. It was also noted in the Nominated Authority's report that the total number of bids in respect of the four other Schedule-III mines, which had also been earmarked for the power sector, indicated far more aggressive bidding and where the bidding continued much beyond the initial scheduled period of 2 hours. While the total number of bids in respect of the Tara Coal block was 9 in number, in respect of the other coal mines, the number of the bids ranged from 70 (for Jitpur) and 265 (for Ganeshpur). It was also observed that from the data provided in the above report, the bidding in respect of Tara Coal Mine was limited. The final price bid received was also relatively low as compared to the four other Schedule-III mines earmarked for the power sector. It was also observed that the difference between the applicable ceiling price after the initial price offer and the closing bid in the case of the Tara Coal Mine was Rs 127, whereas in other cases of Schedule-III mines for the power sector, the

difference ranged from Rs 422/- to Rs 770/-. However, as in the case of the Gare Palma Coal Mine, the Nominated Authority observed that there was no conclusive proof indicating any collusive bidding, nor had any complaint been received about the e-auction platform, in anyway, obstructing the bidders from submitting bids. No procedural infirmities had also been noticed in the auction process. In these circumstances, the Nominated Authority, while submitting his report dated 17.03.2015, observed that the Ministry of Coal may take an appropriate decision in the matter on the basis of the facts submitted by him.

70. Thereafter, the matter was once again considered by the Central Government. The Secretary (Coal) noted that the final bid price received for the Tara Coal mine was relatively low as compared to the other mines and in view of this, he recommended that the bid may not be accepted. This recommendation was made on 18.03.2015 which was accepted by the competent authority on 20.03.2015 and as a result thereof, the impugned Office Memorandum dated 20.03.2015 was issued directing the Nominated Authority to convey to JPL that its bid was not approved. The said O.M. dated 20.03.2015, which has already been set out in paragraph 5 of this judgment, indicated that the bid of JPL, as compared

to other bids in respect of similar coal blocks, was relatively low. Based upon this, it was felt that the coal block did not fetch a fair value as compared to other blocks. It was, therefore, noted in the Office Memorandum that it would not be either prudent or in public interest to approve the bid of JPL in these circumstances. Based upon the Office Memorandum, the Nominated Authority issued the Office Order dated 20.03.2015, whereby he informed JPL that it had not been declared as the Successful Bidder for the Tara Coal Mine by the Central Government, inter alia, on the ground that the highest bidder did not reflect the fair value.

71. Thus, it will be seen that, as in the case of the Gare Palma Coal Mine, the highest bid of JPL, as compared to the bids in other Schedule-III Coal Mines, which were earmarked for the power sector, was found to be relatively low. If one were to examine the number of bids made in respect of the Tara Coal Mine and the other four schedule-III coal mines, namely, Jitpur, Mandakini, Ganeshpur and Utkal 'C', it would be immediately evident that the case of the Tara Coal Mine stands out because of the relatively low number of bids. In the case of Tara Coal Mine, only 9 bids and, that too, by only two out of the five distinct

Qualified Bidders were received. The range of the number of bids in respect of the other 4 coal mines was from 70 bids in the case of Jitpur to 265 bids in the case of Ganeshpur. This, within the duration of the bidding, which was only about 2 hours and 21 minutes in the case of Tara Coal Mine, as compared with about 6 hours and 41 minutes in the case of Jitpur and as much as 11 hours 54 minutes in the case of Ganeshpur, clearly indicates that the bidding in the case of the Tara Coal Mine was not at all aggressive as compared to the other coal mines. Furthermore, the closing bids of Tara Coal Mine was also far less than the closing bids of the other coal mines. From all this, it is clear that the conclusion arrived at by the competent authority that the bid of JPL, which was the highest bid for the Tara Coal Mine, did not reflect the fair value, cannot be regarded as an unreasonable one. One may or may not have a different perspective in the matter, but it cannot certainly be said that the conclusion arrived at was not a reasonable one which a reasonable person under the existing circumstances could have arrived at. The decision cannot be termed as arbitrary or whimsical. Therefore, the further decision of not declaring the petitioner as the Successful Bidder for the Tara Coal Mine cannot be faulted. We do not find any error in the

decision making process and that is all that we have to see. There is also no evidence of any mala fides.

Conclusions:

Gare Palma Coal Mine [WP(C) 3001/2015]

72. With regard to the Gare Palma Coal Mine, the decision not to declare JPL as the Successful Bidder cannot be interfered with and as such, the challenge of JPL to the Office Memorandum dated 20.03.2015 issued by the Ministry of Coal, Government of India as also the Office Order dated 20.03.2015 issued by the Nominated Authority cannot be upheld. However, we do not uphold the allotment of the coal mine made on 23.03.2015 in favour of Coal India Limited. We leave it open to the Government to take a decision within six weeks as to whether the Gare Palma Coal Mine should be put to re-auction or be allotted to Coal India Limited or to any other public sector corporation. Till either of the eventualities happen, Coal India Limited shall continue to function as a Custodian akin to the Designated Custodian contemplated under Section 18 of the Second Ordinance (now the Act). The other directions with regard to the manner of functioning of Coal India Limited as given in our interim order dated 27.03.2015 shall also continue till such eventuality.

73. Thus, WP(C) 3001/2015 is partly allowed.

Tara Coal Mine [WP(C) 3002/2015]

74. Since we have not found any fault with the decision of the Government in not declaring JPL as the Successful Bidder for the Tara Coal Mine, this writ petition is liable to be dismissed. It is ordered accordingly. The parties shall bear their own costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

March 09, 2017

dutt

