

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 132 of 2013**

Chhattisgarh Mineral Development Corporation Limited (Government of Chhattisgarh Undertaking)

---- Petitioner

Versus

1. Government of India Ministry of Coal through Secretary Shastri Bhawan, New Delhi
2. Ministry of Environment and Forest through Secretary, Paryavaran Bhawan, CGO Complex, New Delhi 110510

---- Respondents

For Petitioner	: Shri Abhishek Sinha, Advocate.
For Respondents/UOI	: Shri B. Gopa Kumar, Assistant Solicitor General.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**29/08/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard Counsel for the parties.
2. Petitioner is a Government of Chhattisgarh Undertaking. They decided to file the writ application when the Respondent-Ministry of Coal, Government of India decided to issue an order dated 30.11.2012 by virtue of which the coal blocks which were allotted to the Petitioner-Corporation, was withdrawn and consequential action was ordered to be taken which was forfeiture of 50% of the deposit made as a Performance Guarantee.
3. The decision, Annexure P/1 which is the subject matter of challenge came to be stayed by the High Court on 31.01.2013 as an interim measure with a direction upon the Respondents to complete the pleadings. The writ petition remained

pending for final disposal and it is only now that it has been finally heard and is being disposed off by us on the merits.

4. Vide Ministry of Coal's allocation letter dated 25.07.2007, the Petitioner Corporation was allotted a coal block known as Shankarpur (Bhatgaon-II) and extension coal block located in the State of Chhattisgarh. The letter of allocation laid down certain terms and conditions including the time frame of the 'dos and don'ts' to avail the benefit of such allocation. This decision taken by the Ministry of Coal was said to be a part of the various decisions taken by the Screening Committee to allocate coal blocks across the country.

5. From the order under challenge dated 30.11.2012, it emerges that the Petitioner-Corporation, despite repeated reminders and indulgences given to them, failed to make significant progress and development in relation to the working of the coal block and milestones which were required to be achieved, but not achieved. The order impugned gives the details as to the schedule dates of completion of various works and the slippages which are evident from reading of the chart which is part of the order. On the recommendation of the IMG, the following decision was taken and communicated to the Petitioner:-

“After detailed deliberations, the IMG made its recommendation to the de-allocate Shankarpur (Bhatgaon-II) & Extn. Coal block which was allocated to M/s Chhattisgarh Mineral Development Corporation Ltd. In its 15th meeting held on 5th November, 2012. The recommendations made by the IMG are as follows:-

M/s Chhattisgarh Mineral Development Corpn. Ltd. (Shankarpur Bhatgaon II & Extn.)

The IMG considered the terms and conditions of allocation, the show cause notice issued, the reply and the presentation made by the company alongwith the status paper placed before the IMG. The IMG noted that 5 years have elapsed from the date of allotment i.e. 25.07.2007. JV has been constituted in November, 2008. IMG also noted that the company has purchased the GR and the mining plan is approved on 2.8.2009, EC and FC clearances are

pending and no land has been possessed. Investment made in the coal block as per CA certificate submitted by the company is Rs.57.09 crore consisting of Rs.19.84 crore deposited to Collector as service charge on 27.1.2011 for land acquisition, BG deposit, interest and other expense. However, in its report to the Coal Controller, the company has shown an investment of Rs.120.59 crore in the statement for quarter ending June, 2012. During presentation also, the company mentioned investment of Rs.57 crore only and argued that the entire delay was not attributable to them. They assured that they will be in a position to open the mine by December 2013 whereas the normative date for start of production was 25.1.2011.

IMG noted that neither EC nor FC is yet obtained nor has any land been taken in possession after elapse of 3 years since approval of the mining plan in 2009. There is discrepancy in the figure of investment as contained in the CA certificate and reported to the Coal Controller and it is wrongly reported to Coal Controller that land acquisition has been completed. In view of the unsatisfactory progress in development of coal mine and taking into account all factors including misrepresentation of facts, the IMG recommends that the coal block may be de-allocated in accordance with the terms and conditions of the letter of allocation. The IMG noted that the allocation letter provides for 50% deduction linked to milestone and 50% to the guaranteed production, once production commences. In view of this the IMG recommends that 50% of the BG related to development of the coal block may be forfeited."

The recommendation of the IMG has since been considered and accepted by the Government.

*Accordingly, **Shankarpur (Bhatgaon-II) & Extn. coal block allocated to M/s Chhattisgarh Mineral Development Corporation Ltd.** Is de-allocated. The company shall not be eligible for allocation of coal block in lieu of the de-allocated coal blocks. The Bank Guarantee (BG) as per recommendation of the IMG as mentioned in para 6 above to the extent of Rs.1.59 crore (Rupees One crore fifty nine lakhs only) (i.e. **50% of the BG related to development of the coal block**) be forfeited and be deposited with the Government in the relevant head of Account. Remaining BG may be returned."*

6. The origin of the present dispute lies in the said decision dated 30.11.2012 but since certain subsequent developments had taken place in the meanwhile during the pendency of this writ application, the present dispute cannot be decided

in isolation. The allotment of the coal block to the Petitioner was a part of the decision taken by the Government of India to allot the coal block to many companies or individuals, private or public, which became matter of controversy and a series of cases came to be filed before the Hon'ble Supreme Court. The lead case being the case of ***Manohar Lal Sharma v. Principal Secretary & Others*** reported in **(2014) 9 SCC 516**. It is a rather detailed judgment but we are going to confine ourselves to the portions which has bearing on the issue raised on behalf of the Petitioner. The relevant paragraphs are reproduced hereinbelow:

“162.10 Moreover, the State PSUs, besides having been allocated coal mines for commercial purpose, have also been allowed to form joint venture companies, i.e., 51% shareholding of State PSUs and 49% of private company. However, in the joint venture agreements between the State PSUs and the private companies, mining operations have been given to private company. For example, the notice inviting offer dated 02.07.2008 issued by Chhattisgarh Mineral Development Corporation (CMDC) for selection of partner for formation of a joint venture company for exploration, development, mining and marketing of coal from coal blocks provided that the Joint Venture Company (JVC) to be formed by CMDC and the selected offerers / bidder will explore, develop and operate such coal deposits and the coal produced by JVC will be sold commercially to various consumers in the open market. CMDC was allocated Sondiha coal block and coal blocks Bhatgaon-II and Bhatgaon-II (Extension). Similarly, the Joint Venture Agreement between the Madhya Pradesh State Mining Corporation Limited and Monnet Ispat and Energy Limited reveals that Joint Venture Company has been further allowed to enter into Mine Development Operation Agreements with other private partner or sister concern. This modus operandi has virtually defeated the legislative policy in the CMN Act and winning and mining of coal mines has resultantly gone in the hands of private companies for commercial use.

162.11 As indicated above, by 1976 amendment in the CMN Act, other than the Central Government or Central Government undertakings, a company engaged in the production of iron and steel was permitted to carry on coal mining operations in any form. By subsequent amendments in Section 3 of the CMN Act, besides a company engaged in the production of iron and steel, a company engaged in generation of power or a company engaged in washing of coal obtained from a mine or such other

end-use, as the Central Government may by notification specify, no other company can “carry on mining operation in coal”. Allocation of coal blocks to the State PSUs which ultimately on getting mining leases may enable them to win or mine coal commercially is clearly in breach of the provisions of the CMN Act.

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

(emphasis supplied)

164. The allocation of coal blocks through Government dispensation route, however laudable the object may be, also is illegal since it is impermissible as per the scheme of the CMN Act. No State Government or public sector undertakings of the State Governments are eligible for mining coal for commercial use. Since allocation of coal is permissible only to those categories under Section 3(3) and (4), the joint venture arrangement with ineligible firms is also impermissible. Equally, there is also no question of any consortium / leader / association in allocation. Only an undertaking satisfying the eligibility criteria referred to in Section 3(3) of the CMN Act, viz., which has a unit engaged in the production of iron and steel and generation of power, washing of coal obtained from mine or production of cement, is entitled to the allocation in addition to Central Government, a Central Government company or a Central Government corporation.”

7. From the above noted paragraphs, the essence of the decision is that all coal blocks which were allotted through the Government dispensation even to State

Public Sector Undertakings or even a State for mining coal for commercial use, was held to be illegal.

8. Taking cue from the above development, the Petitioner filed amendment application on 25.04.2015 seeking an amended prayer to the original writ application in following terms:

“10.4 Pass an appropriate writ, order or direction directing the respondent No.1 to restore and refund the Bank Guarantee amount of Rs.1.59 Crores with interest @ 18%; and

10.5 Pass an appropriate writ, order or direction directing the respondent to restore and refund the amount of Rs.10,92,04,449/- (Rupees Ten Crores Ninety Two Lakhs Four Thousand Four Hundred Forty Nine only) incurred by the petitioner towards the Geological Survey of India report with interest.”

9. The amendment application which was I.A. No.04 of 2015 was allowed by the Division Bench on 27.04.2015 and is part of record now.

10. Submission now being made on behalf of the Petitioner is that taking into consideration the totality of the position which stands now and after the declaration made by the Hon'ble Supreme Court in the case of *Manohar Lal Sharma (supra)*, the impugned order contained in Annexure P/1 dated 30.11.2012 has to go in its entirety. The argument advanced on behalf of the Petitioner is that the allocation made by the Ministry of Coal was a contract, if not an agreement, between the parties and since the contract or agreement itself has been held to be void being illegal by the Hon'ble Supreme Court, therefore, the rights and obligations created by such agreement or contract would not be enforceable including the forfeiture clause which was incorporated in the letter of allocation dated 25.07.2007. Counsel for the Petitioner takes such a stand on the factual matrix of the whole dispute and from what the Hon'ble Supreme Court had had to say with regard to the allotment made by the Union of India in making the allotment of the coal blocks, where even the allocation made to the State Public Sector Undertakings were not exempted.

Since the entire allocation of coal blocks were held to be illegal *per se*, therefore, the stand of the Petitioner's counsel is that Section 65 of the Indian Contract Act, 1872 will come into play and the decision contained in Annexure P/1 to the writ application would be required to be set aside even otherwise in relation to the forfeiture clause.

11. Section 65 of the Indian Contract Act, 1872 reads as under:-

“65. Obligation of person who has received advantage under void agreement, or contract that becomes void. - When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.”

12. It is submitted at the Bar on behalf of the Petitioner that the agreement or the contract for allocation of the coal blocks between the Union of India and the Petitioner which is a State Public Sector Undertaking became void by a declaration of law made by the Hon'ble Supreme Court. That being so, any person which has received any advantage under such agreement or contract is bound to restore it or to make compensation for it to the person from whom he received it. The sum essence of the argument is, therefore, that the Respondent-Union of India cannot enforce the agreement nor can it create a liability by invoking the forfeiture clause and retain the amount deposited by the Corporation, as a condition for such allotment, which has been done in terms of the decision of de-allocation dated 30.11.2012.

13. The stand of learned Assistant Solicitor General representing the Union of India is that the impugned order contained in Annexure P/1 is a legal and valid decision which gives the reasons in quite a detail as to why the decision for de-allocation of the coal block was required to be taken and 50% of the forfeiture was required to be made since there was a failure on the part of the Petitioner to meet any

of the obligations within the extended time. The subsequent development which may have taken place including the decision of the Hon'ble Apex Court in *Manohar Lal Sharma* (supra) cannot have any reflection on a decision which was already in place, prior to the judgment which was rendered on 25.08.2014. He also points out that some similar matters had also arisen before the High Court, one of them being the case of ***M/s. Ultratech Cement vs. Union of India and Others*** i.e. WP(C) No.2136 of 2012 disposed off on 15.11.2017. The Division Bench while reproducing paragraph 163 of *Manohar Lal Sharma* (supra) had this to say in the concluding part of the said order.

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

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

14. The stand of the learned Assistant Solicitor General, therefore, is that even the present writ application should be disposed off in similar terms and the extent of relief which has been extended in the case of *M/s. Ultratech Cement (supra)* and some other similarly situated cases is required to be done, even in the present writ application.

15. Learned counsel for the Petitioner submits that the question of law which has been raised in this writ application was not raised in those cases. Applicability of Section 65 of the Indian Contract Act, 1972 as well as impact of what the Hon'ble Supreme Court had had to say in *Manohar Lal Sharma (supra)*, was not the issue. Besides an amendment application was filed modifying the reliefs and prayer and the same was allowed. Since this question was not raised by those Petitioners and therefore, neither considered nor answered, this writ application cannot be disposed off in similar terms as the case of *M/s. Ultratech Cement (supra)*.

16. It is also argued that the subsequent decision or declaration of law in relation to allotment of coal blocks made by the Hon'ble Supreme Court in *Manohar Lal Sharma (supra)* cannot be read in isolation and there is a direct nexus and fall-back on the decision taken by the Ministry of Coal to allot coal blocks to this Public Sector Undertaking as well. Since the allotment of the coal blocks which was sought to be de-allocated through the impugned order was also an issue before the Hon'ble Supreme Court and the Hon'ble Supreme Court in no uncertain terms declared that the allocation of the coal blocks based on the recommendation made in all the 36 meetings of the Screening Committee to be illegal, therefore, the impugned order dated 30.11.2012 contained in Annexure P/1 cannot be seen in isolation. It is also highlighted that since the decision of the Hon'ble Supreme Court goes to the root of the decision of making allocation of coal blocks which means that it relates back to the time when the allocation of the coal blocks was made, therefore, the decision of the Hon'ble Supreme Court rendered in the case

of *Manohar Lal Sharma (supra)* squarely also covers the situation and predicament of the present petitioner.

17. This factual and legal position now no longer can be the matter of debate or argument. By virtue of law and the declaration made by the Hon'ble Supreme Court since the allocation made to the Petitioner-Corporation was held to be illegal, therefore, any right or obligation which flows from the letter of allotment dated 25.07.2007 will be *non est* in law and as if no such offer or agreement ever took place.

18. In view of the above, the impugned order dated 30.11.2012 i.e. Annexure P/1 to the writ application stands quashed. The decision of the Respondent-Union of India to forfeit any of the amount which was by way of invocation or encashment of bank guarantee *etc.* would be also held to be bad in law.

19. The writ application stands allowed as above.

20. Before parting, learned counsel for the Petitioner submits that there were some other obligations by way of payment made to Union of India under different heads. The Court does not express any opinion about those payments or deposits as individual items or issue, but has answered the question of law broadly.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE