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HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 02-11-2018****Order delivered on 17-05-2019****WPC No. 1657 of 2016**

1. Prakash Industries Limited A Company Incorporated Under The Companies Act, 1956 and having its Registered Office at 15 Kms. Stone, Delhi Road, Hissar, Haryana -125002 and Its Corporate Office At Srivan, Near IOCL Depot, Bijwasan, New Delhi- 110061.

---- Petitioner**Versus**

1. South Eastern Coalfields Limited A Company Registered Under The Companies Act, 1956 And Having Its Registered Office At Seepat Road, Bilaspur, Chhattisgarh 495006.
2. Union Of India, Through Its Secretary, Ministry Of Coal (India), Govt. Of India, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi 110001.

---- Respondents**WPC No. 254 of 2018**

1. Prakash Industries Limited A Company Incorporated Under The Companies Act, 1956 And Having Its Registered Office At 15 Kms Stone, Delhi Road, Hissar Haryana- 125002 And Its Corporate Office At Srivan, Near IOCL Depot, Bijwasan, New Delhi-110061.

---- Petitioner**Versus**

1. Union Of India Through Its Secretary, Ministry Of Coal, (India) Government Of India , Shastri Bhawan, Dr. Rajendra Prasad, Road, New Delhi- 110001.
2. South Eastern Coalfields Limited, A Company Registered Under The Companies Act, 1956 And Having Its Registered Office At Seepat Road, Bilaspur, Chhattisgarh- 495006.

---- Respondents

For Petitioner(s)	Shri Chetan Sharma, Senior Advocate With Shri Alok Singh & Ms Ruchi Nagar, Advocates
For Respondent-UIO	Shri B. Gopa Kumar, ASG and Shri Vaibhav P. Shukla, Advocate
For Respondent-SECL	Shri Vaibhav Shukla, Advocate

Hon'ble Shri Prashant Kumar Mishra, J

Hon'ble Smt. Vimla Singh Kapoor, J

C A V Order

The following order of the Court was passed by
Prashant Kumar Mishra, J.

1. The petitioner, who is engaged in diverse business activities including the manufacturing of Sponge Iron, has filed these two writ petitions. In WPC No.1657/2016, the petitioner has sought quashment of the communication dated 03.05.2014 of the respondent/SECL offering supply of coal to the petitioner at the current price under the tapering linkage as per the tapering policy. The petitioner would further pray for a direction to the respondent to renew the Fuel Supply Agreements (FSAs) with the petitioner as per the normal linkage policy with further prayer to resume coal supply on the basis of normal linkage in compliance with the reasoned order dated 24.03.2011 passed by the Director (Marketing),

Coal India Limited (CIL) under the orders of the High Court of Calcutta.

2. In the second writ petition i.e. WPC No.254/2018, the petitioner has sought quashment of the Final Order dated 31.07.2017 of the Ministry of Coal, Government of India together with other reliefs which are the same as prayed in the first writ petition.
3. Facts of the case, as projected in the writ petitions, are that the respondent/SECL is a subsidiary of CIL, who has been delegated the power to allocate coal supplies to various users depending on the nature of use of coal (fuel) either on long term linkage, popularly known as normal linkage or short term linkage i.e. tapering linkage. To decide the nature of linkage to a user for supply of coal, Linkage Committees have been formed by the Government of India (GOI). Under the National Coal Distribution Policy, 2007 the GOI decided to supply coal through FSAs at the notified price fixed by the CIL. According to the petitioner, it was granted linkage categorized as normal linkage at all relevant times for which the orders dated 21.06.2002 and 07.10.2003 (Annexure P-7) were passed by the GOI. Pursuant to the said order FSA/Coal Supply Agreement was executed between the SECL and the

petitioner on 31.07.2008 (Annexure P-8). On 26.02.2010 (Annexure P-9) the GOI issued Guidelines/Policy relating to issuance of Letter of Assurance (LOA)/allocation of coal on “tapering basis” to various consumers of Power, Cement and Sponge Iron. This is popularly known as tapering policy. By Notice dated 09.03.2010 (Annexure P-10) the SECL informed that pursuant to the tapering policy released by the GOI, for the period subsequent to normative date of commencement of production from coal block, supplies would be on tapering basis and Coal Controller shall be responsible for quantification and regularization of tapering linkage in consultation with CIL.

4. Pursuant to the above notice dated 9.3.2010 of SECL, the petitioner represented to the GOI stating that they have been granted long term linkage by the GOI for its 15 MW and 50 MW Captive Power Plant (CPP), however, the SECL has issued notice on 09.03.2010 withholding further booking on the basis of long term linkage mentioning that the petitioner has been allocated Chotia and Madanpur North Coal Blocks, which is not true because petitioner has not been allocated any of the coal blocks for the existing capacity of 65 MW (50+15 MW) of CPP for which it is obtaining coal from SECL

against long term linkage & FSA signed with SECL. It was the categorical stand of petitioner that its linkage for CPP is normal linkage and not tapering linkage. Similar representations were made on 12.06.2010, 02.07.2010 and thereafter on 12.11.2010.

5. The petitioner, thereafter, filed writ petition before the High Court of Calcutta bearing WP No.57/2011 for issuance of direction to treat the coal linkage of CPP of the petitioner company as normal linkage and not to discontinue supply of coal. The Calcutta High Court vide its order (Annexure P-14) disposed of the writ petition directing the Director (Marketing), CIL to give a decision dealing with the petitioner's grievance stated in representation dated 12.11.2010 after providing an opportunity of hearing and communicate a reasoned decision within a fortnight.
6. In compliance of the order passed by the High Court of Calcutta, the Director (Marketing), CIL passed a reasoned order on 24.03.2011, which reads thus :

24-3-2011

REASONED ORDER

Sub:- Compliance of Order dated 3 February 2011 passed in W.P. No.57 of 2011 in regard to M/s. Prakash Industries Ltd. Vs. Union of India & Ors.

In compliance of order dated 3.02.2011 of Hon'ble High Court of Kolkata in the W.P. No.57 of 2011, the undersigned gave the opportunity of hearing to the Petitioner, M/s. Prakash Industries and held hearing in his office at 15 Park Street, on 17 March 2011 and 24 March 2011.

Mr. A.K. Chaturvedi, Director (Corporate Affairs), M/s/ Prakash Industries Ltd. And Mr. Rohit Choudhry, Advocate represented the petitioner and were present during the hearing on 17th & 24th March 2011.

Upon hearing on 17 March 2011, it transpired that whether, the petitioner was given normal linkage or tapering linkage was to be clarified with reference to the original allocation letter and related documents. As these were not readily available on 17 March 2011. It was directed that the petitioner should submit the related documents positively within seven days from the date of hearing i.e. 24 March 2011. Accordingly, the petitioner submitted the related documents through an affidavit on 24 March 2011, copy of which is enclosed herewith.

Consequent upon hearing on 24 March 2011, and after scrutiny of the affidavit dated 24 March 2011 submitted by the petitioner, I am convinced that the petitioner was allocated coal block (Madanpur (North) for the purpose of Sponge Iron Plant and not for their existing Captive Power Plant (15 MW & 50 MW). Thus, I conclude that the linkage of CPP of M/s. Prakash Industries Ltd. is a normal linkage and not a tapering linkage and hence, direct SECL to resume the normal coal supplies to CPP (15MW & 50 MW) to M/s. Prakash Industries Ltd. with immediate effect.

Encl- Annexure-I

Sd/-
(Dr. A.K. Sarkar)
Director (Marketing)
Coal India Limited
15 Park Street, Kolkata-70016

No. CIL DM(Secy)/RO/014
Date-24.03.2011

c.c.to:

1. M/s Prakash Industries Limited
2. CMD, SECL
3. CGM(S & M), CIL
4. GM(Legal)- PI inform the concerned Hon'ble High Court accordingly.

7. The Director (Marketing), CIL thus found, upon scrutiny of the affidavits, that the petitioner was allocated coal block (Madanpur North) for the purpose of sponge iron plant and not for the existing CPP (15 MW & 50 MW), therefore, the linkage of CPP of the petitioner is a normal linkage and not a tapering linkage. The Director (Marketing), CIL, thereafter, directed the SECL to resume normal supply of coal to the CPP of the petitioner. Soon after the above order of the Director (Marketing), the petitioner made several requests by way of representations for refund of excess amount charged by SECL for releasing delivery orders for supply of coal against long term normal linkage.

8. The SECL although resumed supply of coal to the petitioner pursuant to the order of Director (Marketing), CIL and continued to supply the coal for a certain period, but again kept the supply in abeyance by its communication dated 09.11.2011 for the reason that the Inter Ministerial Committee (IMC) has found diversion of coal produced from Chotia Coal Block for use by the petitioner in its CPP which is otherwise covered under the FSAs dated 31.07.2008.
9. This order of the SECL dated 09.11.2011 was assailed by the petitioner by preferring WPC No.7413/2011. The learned Single Judge of this Court allowed the writ petition by order dated 13.02.2012 quashing the order dated 09.11.2011 with consequential relief on the ground that the said order of SECL is not accordance with the provisions of the FSA and also without any authority of law.
10. The order passed by the learned Single Judge was challenged by the SECL before the Division Bench of this Court in WA No.127/2012. The said writ appeal was disposed of by order dated 31.01.2013 observing thus in paras 22 to 27 :

22. Considering the circumstances of the case, even if it is taken that there was power of suspension then it was not a fit case, where the suspension order ought to have been passed.

Had the Prakash-Industry diverted the coal to the open market by selling it for a benefit then the matter would have been different. In view of this, there is no justification to set-aside the order passed by the single judge, quashing the order of suspension.

23. We are informed that the Prakash-Industry was not supplied coal from 1st of October, 2011 till today and contempt application No.420/2011 is pending for wilful disobedience of the order passed by the Single Judge.

24. The counsel for the Prakash-Industry informs that during the aforesaid period, the Prakash-Industry has purchased coal from E-auction from coal India Ltd. However, it was for the price higher than it had to pay under the Agreements. In view of same, we deem appropriate that the SECL be directed to restore the supply of coal from the January, 2013. So far as, claim relating to past period from October, 2011 to December, 2012 is concerned, it will not be necessary for the SECL to supply the coal, but it has compensate the Prakash-Industry.

25. The compensation will be the difference in price between the coal purchased by the Prakash-Industry in E-auction and the price on the same quantity of coal under the Agreements. This compensation will be determined under clause number 15 of the Agreements that provides for settlement of dispute. The Prakash-Industry will also be entitled to get 6% interest on the compensation from 1st of July, 2012 till payment.

26. Considering that the order that we have passed today, the Single Judge may drop the contempt proceeding.

27. With the aforesaid observations, the writ appeal is disposed of.

11. The above order of the Division Bench was further challenged by the SECL before the Supreme Court in Special Leave to Appeal (Civil No.8436/2013), which was disposed of by the Supreme Court by its order dated 09.04.2014 in the following manner :

O R D E R

Heard learned senior counsel for the parties at length.

We are not inclined to interfere with the order passed by the High Court in exercise of our jurisdiction under Article 136 of the Constitution of India.

We, however, make it clear that the order passed by the High Court shall not be treated as a precedent in future. All questions of law raised in the Special leave petition are kept open.

We further clarify that the petitioners shall be at liberty to supply coal to the respondents at the current rate, in lieu of the compensation granted, for the period during which the supply of coal was suspended as we are informed that the Fuel Supply Agreement has expired by efflux of time.

Let the coal supply be commenced within a period of four weeks from today.

We further direct that if the petitioners chose to supply coal, the necessary Fuel Supply Agreement be entered into between the parties for the period during which supply of coal was suspended at the current rate, in accordance with the prevalent policy.

The special leave petition is disposed of with the above observations.”

12. Pursuant to the above order of the Supreme Court passed on 9.4.2014, the petitioner moved a representation on 15.4.2014 before the SECL & CIL for resumption of coal supply against the petitioner's normal linkage by renewing the same. Such representations were again moved before the SECL on 18.4.2014 & 22.4.2014. The petitioner also represented for refund of excess amount paid by it in purchase of coal through e-auction.
13. In purported compliance of the Supreme Court's order dated 9.4.2014, the SECL issued a communication to the petitioner on 3.5.2014 (Annexure – P/1 to the 1st petition) to the effect that FSAs were signed for the CPPs on 31.7.2008 for a period of five years, however, the petitioner having been allocated Madanpur North Coal Block against 15 MW & 50 MW CPPs, the SECL has already issued a communication dated 24.4.2014 for quantification of entitled quantity to the CPPs during tapering period. In this communication, the SECL offered to commence coal supply by treating the petitioner's linkage as tapering linkage.

14. Copy of the letter dated 24.4.2014 of the Deputy Assistant Coal Controller, GOI, Department of Coal stated that Madanpur North Coal Block has been allocated for sponge iron product and captive power generation, therefore, quantification of tapering linkage in respect of petitioner for CPP is calculated considering existing linkage of EUP (End User Plant). It is also important to notice that the Deputy Assistant Coal Controller, GOI issued a letter on 2.5.2014 with reference to its letter dated 24.4.2014 and superseded the said letter to inform the CIL that Hon'ble Court's order, if any, regarding the above issue should be implemented immediately.
15. Challenging the communication dated 3.5.2014 and with further prayer to direct SECL to renew the FSAs or enter into fresh FSAs with the petitioner as per the normal linkage policy on the basis of decision dated 24.3.2011 of the Director (Marketing), CIL, the petitioner preferred WPC No.1066 of 2014. The said writ petition was disposed of by the Division Bench, of which one of us (Prahant Kumar Mishra, J.) was a member, on 11.9.2015 in the following manner :

- 1) We have heard Learned Senior Counsel for the Petitioner and Learned Counsel for the Respondent.
- 2) The writ petition does not raise any questions of law for consideration but is based only on bundle of facts including earlier orders by the authorities and Courts. In the nature of order that we propose to pass, it is not considered necessary to deal with the entire facts of the case except to the extent necessary for purposes of the present order so as not to prejudice the case either of the Petitioner or the Respondent on remand.
- 3) A fuel supply agreement in August 2008 for five years led to a controversy in March 2010 regarding Long Term Linkage and Tapering Linkage before the Calcutta High Court culminating in an order inter parties by the Director (Marketing) Coal India Ltd. dated 24.3.2011. The Respondents did not question the same leading to resumption of supplies and fresh stoppage of the same again under a general Inter Ministerial Committee letter dated 9.11.2011 and not specific with regard to the Petitioner. Fresh orders followed by the Learned Single Judge and the Division Bench culminating in the orders of the Supreme Court dated 9.4.2014 after which the Deputy Assistant Coal Controller has issued letter dated 2.5.2014.
- 4) Suffice it to notice that the question with regard to Long Term Linkage/Tapering Linkage has more than adequately already engaged attention of the authorities and the discussions contained in the aforesaid orders.
- 5) It is considered necessary to set out the letter dated 2.5.2014 in its entirety:

"To,

Shri L.K.Mishra,
General Manager (S&M)
Coal India Ltd.

Apeejay House, B-Block, 6th Floor,
15 Park Street,
Kolkata 700 016

Sub: Quantification of tapering linkage in
respect of CPP units of M/s. Prakash
Industries Ltd.

Ref: (i) Your letter No. CIL/S&M/Tapering
Linkage/159 dated 22.04.2014

(ii) This office letter No. CC/MCBA/
101/04/06/Policy/Linkage/Vol. IV dated
24.04.2014

Sir,

Please refer to this Office Letter No.
CC/MCBA/101/04/ 06/Policy/Linkage/
Vol. IV dated 24.04.2014 regarding
Quantification of tapering linkage in
respect of CPP units of M/s. Prakash
Industries Ltd.

In supersession of this office above
letter, it is hereby 3 informed that Hon'ble
Court's order, if any, regarding the above
issue should be implemented immediately.

Please treat this as most urgent.

Yours faithfully
Sd/-

Dy. Asstt. Coal
Controller

Copy to: The General Manager (S&M)
SECL Bilaspur 495006 Chhattisgarh. "

6) A bare reading of it reveals that it was
being passed in the background of the
controversy with regard to Normal and Tapering
linkage coupled with certain orders dated
22.4.2014 and 24.4.2014 by the Respondent and
the office of the Deputy Assistant Coal

Controller and superseding the same in view of the Court orders.

7) We are satisfied to hold that if the Deputy Assistant Coal Controller was in seisin of the entire facts of the matter which lay in the background, nothing prevented him from spelling out what was being superseded and the resultant of the same rather than leaving things deliberately ambiguous declining to take final decisions and generating completely avoidable litigation thereby.

8) The Deputy Assistant Coal Controller under the Government of India in the Ministry of Coal or the Union of India, Ministry of Coal are not party Respondents before us. We are not satisfied that the Court must take over the responsibility of the executive to decide what the letter dated 2.5.2014 means in the background of the facts of the case especially the order of the Supreme Court in which it has culminated. We are also not satisfied in the facts of the case to remit the matter to the Deputy Assistant Coal Controller for clarification as suggested by the Respondent. To give a quietus to the matter it is considered essential that the matter be referred only to the Secretary, Ministry of Coal, Government of India to pass final appropriate orders with regard to intent, scope, purpose and purport of the letter dated 2.5.2014 in so far as question of linkage is concerned.

9) Let the Secretary grant hearing to the parties, if they so request, and pass appropriate final orders in the manner discussed within a maximum period of 12 weeks from the date of receipt and/or production of a copy of this order.

10) The writ petition stands disposed.

16. According to the petitioner, consequent upon the order passed by this Court in WPC No.1066 of 2014, the Secretary,

Ministry of Coal was required to pass appropriate final orders within a maximum period of 12 weeks, but no order was passed within this time albeit proceeding began by affording personal hearing to the petitioner before a person subordinate to the Secretary. This, according to the petitioner, is in violation of this Court's order because the personal hearing should have been afforded by the Secretary, who was directed to pass the order and not by any subordinate officer who is not competent to pass appropriate final orders.

17. At this stage, the petitioner preferred WPC No.1657 of 2016 (1st petition) for quashment of the order dated 3.5.2014 but during pendency of this petition, the Secretary, Ministry of Coal, passed the final order on 31.7.2017, which is under assail in WPC No.254 of 2018 (2nd petition).
18. Learned senior counsel appearing for the petitioner, would argue that the Secretary was only directed to pass final appropriate orders with respect to the intent, scope, purpose and purport of the letter dated 2.5.2014 in so far as linkage is concerned, however, the Secretary instead of deciding the issue referred the matter on 5.4.2017 to the Standing Linkage Committee (Long Term) {in short 'SLC (LT)'} for passing order (Annexure – P/23 in 2nd petition). In this order dated

5.4.2017, the Secretary observed thus in concluding paras at 25 to 28 :

25. The order dated 14.10.2011 of Ministry of Coal addressed to PIL regarding allocation of Vijay (Central) coal block to PIL (with copy to SECL for information and necessary action) findings were as follows:

“ ...

(iii) M/s PIL has been allotted Chotia Coal Block in 2003 for their Expansion Capacity of 0.4 MTPA without disturbing the existing linkage. The Coal production from the block started in 2006 whereas capacity addition of 0.15 MTPA is made only in 2009. A significant portion of coal produced from the block is reported to be used in Captive Power Plant. Table 11 at Pg. 21 of IMC report refers. This is a clear violation of terms of allotment of Coal Block.”

The order concluded as follows:

“27. Apart from the fact that adequate coal has already been allocated, the other facts as brought out in the IMC report and noted above need consideration. Misrepresentation of facts, misrepresentation of capacities and diversion of coal in contravention of terms of allotment by PIL have been taken on record for taking action as deemed appropriate.

28. In view of above, no further allocation of coal is made from the Vijay Central Coal Block to M/s Prakash Industries Ltd.”

Chotia coal block was allocated to PIL for use of coal in their SIPs and as mentioned

in above, IMC found that coal was being diverted from Chotia coal block to 15 MW and 50 MW CPP units, where SECL was already supplying coal under the said linkage. In view of this, SECL vide their letter dated 09.11.2011 kept the coal supplies in abeyance in respect of the two linkages. However, this letter dated 09.11.2011 was quashed by High Court vide orders dated 13.02.2012 (WP No. 7413/2011) and 31.01.2013 (Writ Appeal 127/2012 filed by SECL) and this decision of High Court was upheld by Hon'ble Supreme Court vide order dated 09.04.2014.

(emphasis supplied)

26. Besides the lapses of due diligence, another issue which is not clear is, on what basis and based on which papers Director (Marketing), CIL decided it to be a regular linkage and coal was supplied by SECL and then on what basis and based on which papers, SECL/CIL veered round to the view that it was tapering linkage and requested CCO to quantify tapering linkage coal. There is nothing on record that could convey to the undersigned any possible reason for the change in view.

(emphasis supplied)

27. As per the NCDP, 2007 and the Guidelines/Policy relating to issuance of LoA/allocation of coal on Tapering basis dated 26.02.2010, the appropriate authority to make recommendation with regard to regular linkage or tapering linkage is Standing Linkage Committee (Long Term) [SLC (LT)] which does not appear to have been consulted in this matter.

28. In view of the above findings, it emerges that an order to settle the matter finally can be passed only after the issue of nature of linkage is examined by SLC (LT) in this case and their recommendations are received. In compliance of the directions dated 11.09.2015 of Hon'ble High

Court of Chhattisgarh, the following orders, therefore, are passed in the interim.

i. “Prima facie no mala fide is attributable to CCO, with respect to intent and purpose while issuing impugned letter order dated 02.05.2014. In order to arrive at a reasoned and logical conclusion on the issue referred to the undersigned by Hon'ble High Court, it is hereby directed that the matter be referred to SLC (LT) to decide the nature of linkage to PIL as per the extant policy and other relevant facts in this regard in the next meeting of SLC (LT) to be convened latest within a month from the date of this order. Final order in compliance of the directions of Hon'ble High Court will be issued after receiving the recommendations of SLC (LT).”

ii. “CIL/SECL and Coal Controller are directed to look into the reasons as to why due diligence was not done while deciding about the linkage of PIL, requesting for and quantifying the linkage of PIL and take suitable action as deemed appropriate. The report should be sent within a month from this order.”

19. The SLC (LT) made recommendation on 4.7.2017 (Annexure – P/24 to 2nd petition) opining that petitioner's normal linkage for the capacity of 15 MW & 50 MW CPP were to be tapered off as per the extant policy. The recommendation was on the reasoning that the petitioner had to set up a coal washery and the middlings generated there from were to be used in CPP.
20. Based on the above facts, it is argued by the learned senior counsel appearing for the petitioner that the order passed by

the Secretary on the basis of recommendation of SLC (LT) is contrary to the letter dated 24-3-2011 of the Director (Marketing), CIL and that of the Single Bench, Division Bench and Supreme Court's order in the previous petitions.

21. Learned senior counsel would also urge that the Secretary, GOI was directed to pass final appropriate orders with regard to intent, scope, purpose and purport of the letter dated 2.5.2014 and not to pass fresh order on petitioner's normal linkage. Learned senior counsel would next submit that the order passed by this Court in WPC No.1066 of 2014 has to be read as a whole and not in isolation.
22. It is also putforth that the basis for recommendation of SLC (LT) dated 4.7.2017 that the petitioner was required to set up a coal washery and the middlings generated there from were to be used in CPP was never a reason or ground before any of the authority nor was an issue between the parties, therefore, the recommendation against the petitioner is bad in law and for the same reason the final order passed by the Secretary, GOI on 31.7.2017 deserves to be quashed.
23. Learned counsel appearing for the respondents, *per contra*, would submit that the order dated 24.3.2011 passed by the

Director (Marketing), CIL would not confer any legal right upon the petitioner to claim long term linkage and that the linkage of the petitioner was a tapering linkage in view of the tapering policy dated 26.2.2010. Learned counsel would further argue that the tapering linkage have been provided to the consumers who have been allocated coal blocks for meeting coal requirements of its linked EUP, therefore, since the Madanpur North Coal Block was allocated to the petitioner it's coal linkage would be a tapering linkage. Learned counsel would also argue that the middlings generated in the process of washing coal is to be used for power generation meaning thereby 15 MW & 50 MW CPP of the petitioner was linked with the Madanpur North Coal Block as the middlings can only be used in power plant. Thus, the finding of SLC (LT) would not amount to setting up a new ground by the respondent.

24. Learned counsel would next submit that irrespective of the fact that middlings were generated from the Madanpur North Coal Block and whether or not the petitioner has actually used the middlings in the CPP, the tapering policy will apply because the petitioner's coal block was linked to the EUP and, thus, the actual consumption of coal from the coal block is

immaterial. According to the respondents, even if normal supplies were made by the SECL/CIL from 24.3.2011 to 9.11.2011 on the basis of order of Director (Marketing), CIL, the said order of Director (Marketing), CIL, would not confer any right on the petitioner because the said officer was not competent to decide the nature of linkage. It is also submitted that the said order of Director (Marketing), CIL, was procured by the petitioner by material suppression and misrepresentation of facts.

25. It is further put forth by the learned counsel appearing for the respondents that no Court has ever decided the nature of linkage of the petitioner, therefore, the SLC (LT) was fully justified in taking the decision in the matter pursuant to the direction by the Secretary to the GOI, Ministry of Coal.
26. The facts emerging from the pleadings, documents and arguments would reveal that the coal linkage of the petitioner was a normal linkage under the FSA dated 31.07.2008. The dispute arose after introduction of policy dated 26.2.2010 popularly known as tapering policy. Thereafter, the SECL informed the petitioner on 9.3.2010 that pursuant to the tapering policy of the GOI, for the period subsequent to normative date of commencement of production from coal

block, supplies would be on tapering basis and Coal Controller shall be responsible for quantification and regularization of tapering linkage in consultation with CIL.

27. When the SECL withhold supply to the petitioner on 9.3.2010 on the basis of long term linkage on the ground that the petitioner has been allocated Coal Blocks for 65 MW CPP, the petitioner preferred writ petition before the High Court of Calcutta, which was disposed of directing the Director (Marketing), CIL to give a decision dealing with the petitioner's grievance. It is also apparent that by order dated 24.3.2011 the Director (Marketing) CIL held that the petitioner was allocated coal block (Madanpur - North) for the purpose of Sponge Iron Plant and not for existing Captive Power Plant (15 MW & 50 MW), therefore, linkage of the petitioner is a normal linkage and the SECL was directed to resume normal coal supply to the petitioner. This order was never challenged by the SECL and instead complied the order by resuming the coal supply which continued till 9.11.2011 when the supply was suspended for some other reason regarding diversion of coal produced from Chotia Coal Block. Even this order dated 9.11.2011 was set aside by this Court in WPC No.7413 of 2011, which was affirmed by the Division

Bench in WA No.127 of 2012 and further SLP preferred by the Supreme Court was disposed of by the Supreme Court without interfering with the orders.

28. When supplies were not resumed on the basis of normal linkage, the petitioner preferred WPC No.1066 of 2014 challenging the communication dated 3.5.2014 whereby the SECL offered to supply coal as per the tapering policy. The Division Bench directed the Secretary, Ministry of Coal, GOI, to pass final appropriate orders with regard to intent, scope, purpose and purport of the letter dated 2.5.2014 (reproduced at para 15 of this order) by which the Dy. Assistant Coal Controller superseded the CIL's earlier referred letter dated 22.4.2014 and its own letter dated 24.4.2014 and directed that Hon'ble Court's order regarding the issue should be implemented immediately. In CIL's superseded letter dated 22.4.2014 and the Dy. Assistant Coal Controller's letter dated 24.4.2014 it was directed that since the petitioner has been allocated coal blocks for 15 MW & 50 MW CPP the quantification of tapering linkage in respect of coal blocks of petitioner is required to be confirmed and needful action is required to be done by SECL. It is, thus, clear that tapering policy was applied on the petitioner for the reason that

Madanpur North Coal Block was allocated to the petitioner mentioning the CPP as EUP.

29. During pendency of the proceedings before the Secretary, Ministry of Coal, GOI, for compliance of the direction issued by this Court in WPC No.1066 of 2014 the Secretary passed an interim order on 5.4.2017 mentioning at para 14.3 that the tapering linkage was to be granted from the date of allocation of coal blocks till the normative date of commencement of production of such coal block. Subsequent to the normative date of commencement of production, the maximum period for which tapering linkage was allowed under the policy was three years reducing over the years; 75% of normative quantity of first year, 50% in second year and 25% in third year. In para 14.8, referring to SECL's submission, it was noted that the petitioner was supplied coal on the basis of normal linkage till 9.11.2011 when the supplies were suspended. Before the Inter Ministerial Committee (IMC) it was found that the petitioner has diverted coal from Chotia Coal Block for use in CPP, however, this part has been laid to rest after decision of Single Bench, Division Bench and the Supreme Court where suspension of coal by order dated 9.11.2011 was struck off. In para 16 it is mentioned that

Madanpur (North) Coal Block was allocated on 13.1.2016 jointly to the petitioner – Prakash Industries Limited (PIL) with seven other companies to meet their proportionate share from the coal reserves of 37 MT for the use in their plants for Sponge Iron Plant and CPP.

30. The order records that it is not clear as to on what basis and based on which papers the Director (Marketing), CIL decided it to be a regular linkage and coal was supplied by SECL and then on what basis and based on which papers, SECL/CIL veered round to the view that it was tapering linkage and requested CCO to quantify tapering linkage coal. It further records, there is nothing on record that could convey to the undersigned any possible reason for the change in view. Thus, it is absolutely clear that the Secretary did not find any reason with the SECL/CIL to change the view for treating the petitioner's normal linkage as tapering linkage, however, instead of putting a full stop at this stage, the Secretary directed that the SLC (LT) should decide the nature of linkage. This was in clear abdication or delegation of its authority and duty for which this Court had directed the Secretary in its order dated 11.9.2015 passed in WPC No.1066 of 2014. The Secretary instead of deciding the issue

and, as a matter of fact, having held that there was no reason to treat the petitioner's normal linkage as tapering linkage, decided to refer the matter to SLC (LT) in complete disregard of this Court's order.

31. The recommendation dated 4.7.2017 of SLC (LT) would manifest that in the letter (dated 13.1.2006) allocating Madanpur (North) Coal Block to the petitioner and other companies jointly the mention of CPP in allocation letter was general in nature without mentioning specific CPP linked in the allocation letter. However, the SLC (LT) recorded a further finding that the petitioner has planned to wash coal before use in SI Plant and use the middlings in the CPP. It further records that status report submitted for the petitioner on 5.7.2012 confirmed the same wherein it was stated that the middlings shall be used in the CPP. Noting further that in the columns where details about the status of the EUP was required to be mentioned, the petitioner has given details only about the Sponge Iron plant and has made no mention of the CPP. The same was also reflected in the status report dated 5.4.2011. SLC (LT), thereafter, concluded as follows :

“.....Thus, it may reasonably be concluded that the middlings generated from the washery were to be used in the 65 MW CPP.

This CPP capacity had regular linkages from CIL. Thus, these linkages for this capacity of the CPP were to be tapered off as per the extant policy.”

32. It is strange, since very beginning the respondents were treating allocation of Madanpur (North) Coal Block as the reason for applying the tapering policy, but having found that mention of CPP in the allocation letter was general in nature without mentioning specific CPP in the allocation letter, the respondents, through SLC (LT), devised a new ground that the petitioner planned to wash coal to be obtained from Madanpur (North) Coal Block, before its use in the Sponge Iron plant, and use the middlings in the CPP, therefore, even if no specific CPP was mentioned in the allocation letter it can reasonably be concluded that Madanpur (North) Coal Block was allocated for 65 MW CPP. This was never the case of any of the party at any point of time in any of its previous communication throughout the period of litigation. Thus, the reason assigned for applying the tapering policy has been culled out without any basis and the petitioner has never been heard nor it was called upon to explain this particular aspect of the matter. It is also to be noted that the tapering linkage was to be granted from the date of allocation of such coal block, subsequent to the normative date of commencement of

production, the maximum period for which tapering linkage was allowed under the policy was three years reducing over the years; 75% of normative quantity of first year, 50% in second year and 25% in third year.

33. In the case of the petitioner the normative date of commencement of coal production from Madanpur (North) Coal Block is 13.7.2009, however, concededly, coal production never started from this coal block and eventually allocation of this coal block has subsequently been cancelled by the Supreme Court in **Manohar Lal Sharma v Principal Secretary and Others**¹ treating the same as illegal and arbitrary. If allocation of coal block has been set aside by the Supreme Court and otherwise also production of coal never started from the said coal block, applying tapering policy subsequent to the normative date of commencement of production, which has never occurred, is wholly illegal and arbitrary. Tapering policy cannot be fastened on the petitioner on the basis of allocation of coal block, which has never seen the light of the day.

34. *Ex-consequenti* the above discussions, both the writ petitions deserve to be and are hereby allowed. The order/

¹ (2014) 9 SCC 516

communication dated 3.5.2014 (Annexure – P/1 to 1st petition) of SECL and the order dated 31.7.2017 (Annexure – P/1 to 2nd petition) passed by the Secretary, Ministry of Coal, GOI, are set aside. Respondent SECL is directed to supply coal to the petitioner for the period during subsistence of the petitioner's normal/regular coal linkage at the current rate, in accordance with the prevalent policy.

Sd/-
Judge
Prashant Kumar Mishra

Sd/-
Judge
Vimla Singh Kapoor

Gowri