

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**W.P.(C) No.10260 of 2022**

***NALCO Officers' Association,*** .... ***Petitioner***  
***Angul***

Mr. Subir Palit, Advocate

*-versus-*

***Union of India and others*** .... ***Opp. Parties***

Mr. P.K. Parhi, ASGI

Mr. Debaraj Mohanty, Advocate for MCL

Ms. Pami Rath, Advocate for NALCO

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE R.K.PATTANAİK**

**Order No.**

**ORDER**  
**11.05.2022**

06. 1. Alarmed by the severely restricted supply of coal by the Mahanadi Coalfields Ltd. (MCL) to the Captive Power Plants Units (CPP Units) of the National Aluminium Company Ltd. (NALCO), contrary to the arrangements put in place by the fuel supply agreement (FSA) between MCL and NALCO, the NALCO Officers' Association approached this Court with the present petition seeking its intervention so that the alumina plants of NALCO at Angul and Damanjodi are not pushed to a critical stage of shut down. Acknowledging the public interest involved in the crises faced by NALCO, the leading public sector undertaking in the aluminium industry, this Court considered it appropriate to intervene in the matter on 22<sup>nd</sup> April, 2022 and issued notice to the Opposite Parties viz., the various departments of the Central Government and the Railways.

2. Thereafter, on 25<sup>th</sup> April, 2022 the following order was passed:

“1. Pursuant to the order passed by this Court on 22<sup>nd</sup> April, 2022, East Coast Railway (ECoR) supplied one rake on 23<sup>rd</sup> April for carrying the coal from the pit head of MCL at Bharatpur and Talcher to NALCO’s Smelter plant at Angul and four rakes on 24<sup>th</sup> April, 2022. It is stated that today three rakes are being arranged for the purpose.

2. Ms. Pami Rath, learned counsel appearing for the NALCO points out that the coal supply from MCL has been reduced 60% of the contracted demand and NALCO is, in fact, making up the remaining required quantity by purchasing it through e-auction. She states that NALCO’s Smelter plant totally depends on its Captive Power Plant (CPP) which is a thermal power plant which in turn depends entirely on coal supply from MCL. If the CPP does not generate enough power to keep the smelter plant going, it will have to shut down. She points out that the NALCO has exports orders which have to be met and which have potential for generating huge revenue for the country. The same crisis faces NALCO’s Alumina refinery at Damanjodi. It is stated that right now, the stocks available with the NALCO can keep its units going only for three more days. It is therefore earnestly pleaded that MCL should be asked to restore the full supply of coal as agreed between the parties so that the smelter plant does not shut down.

3. Mr. Debaraj Mohanty, learned counsel appearing for MCL, on the other hand, seeks modification of the interim order passed by this Court on the ground that MCL should not be compelled to supply only to NALCO through rakes as MCL is required to supply coal to power plants as well. He urges that NALCO should be asked to lift coal as per the reduced agreed quantity by other modes, viz., by road and the ‘Merry

Go Round'(MGR), which is an exclusive dedicated rail line connecting the coalmine pit head with NALCO's Smelter plant. Both Mr. S. Palit, learned counsel appearing for the Petitioner and Ms. Pami Rath, learned counsel appearing for NALCO inform the Court that the MGR is not fully functional and transporting by road would be both cumbersome and hazardous.

4. Meanwhile, the Court has on its board today two more petitions, i.e. W.P.(C) No.10423 of 2022 by the Utkal Chamber of Commerce and Industry Ltd. and the other W.P.(C) No.10424 of 2022 by the District Small Scale Industries Association. Both these petitions seek to espouse the cause of the Medium and Small Scale Manufacturing Enterprises (MSMEs), who are likely to be severely affected in a cascading manner if the major alumina and smelter plants in Odisha cease to function because of shortage of coal supply which in turn will affect the power supply.

5. Since the essential dispute concerns two Central Government Public Sector Undertakings (PSUs) i.e. MCL on the one hand and NALCO on the other, and also involves the role of the Railways which is the third Central Government undertaking in the picture, the Court considers it appropriate to direct that the Secretary Power, the Secretary Coal, the Secretary Mines and the Chairman, Railway Board will sit together in virtual or hybrid mode with the Managing Directors (MDs) of MCL and the NALCO not later than 6 p.m. tomorrow i.e. 26<sup>th</sup> April 2022 to find the way of resolving the crises with a view to ensuring that the smelter plant of NALCO at Angul and make arrangement put in place so that the smelter plant of NALCO at Angul and its Alumina refinery at Damanjodi are not pushed to the brink of a shut down. The minutes of the deliberations of the above meeting will be placed before the Court on the next date.

6. List on 27<sup>th</sup> April 2022 at 2 pm.

7. Till then, the interim arrangement in terms of our order dated 22<sup>nd</sup> April 2022 will continue.

8. Mr. Parhi will arrange to communicate by e-mail this evening itself this order to the concerned Secretaries and the Chairman, Railway Board.”

3. Then on 27<sup>th</sup> April, 2022 the following order was passed:

“1. Pursuant to the order passed by this Court, a meeting was convened at 12 Noon on 26th April, 2022 which was attended by the Union Secretaries, Mines, Coal, Power; Chairman Railway Board, the CMDs of NALCO and MCL and other officials of the concerned Ministries.

2. The minutes of the said meeting have been placed before this Court by Mr. P.K. Parhi, learned ASGI. As per the minutes, after discussion of all the issues concerning the supply of coal to NALCO as per FSA provisions, the following decisions are stated to have been agreed upon by all the parties to:

“Railways to maintain the supply of 58-60 rakes/day to Talcher Coal field area. Page 2 of 3 MCL to ensure on an average of 0.8 rakes/day (1 railway rake (BOXN) = 3890 tons approx. for the Refinery at Damanjodi.

The coal requirement of Angul, CPPs would be met by a combination of supply through MGR/Road Transport/ Wharfwall system as per the following details:

Supply through existing MGR System: 5000-6000 tons/day

Supply through road transport: 5000-6000 tons/day

Supply through Wharfwall :1000-2000 tons/day  
MGR system to be strengthened/repared by  
MCL and NALCO so as to suitably increase the  
throughput further.”

3. A copy of the above minutes be made available to  
learned counsel for the NALCO as well as learned  
counsel for the Petitioner.

4. The Court records appreciation of promptness with  
which its order has been acted upon and a short-term  
solution arrived at in the above manner.

5. In order to ensure that the above solution is  
implemented immediately, the Court considers it  
appropriate not to continue the interim order already  
passed and to await the result of implementation of the  
above arrangement.

6. There is an apprehension expressed that since a  
large amount of coal is required to be transported by  
road there should not be any resistance from the local  
administration. Considering that this is an Page 3 of 3  
emergency measure that has been decided on by the  
parties, it is directed that a copy of this order along  
with the copy of the minutes of the aforementioned  
meeting be provided by NALCO to the Collector,  
Angul for his information and action.

7. List on Monday 2nd May, 2022 at 2 pm.

**I.A. Nos. 5615, 5616 and 5617 of 2022**

8. Issue notice. Learned counsel appearing for the  
respective parties i.e. Petitioner (NALCO Officers  
Association), Opposite Parties (Union of India,  
NALCO and MCL) accept notice. Extra copies of  
these applications be served on them in course of the  
day.

9. List these applications along with the main petition on the date fixed above.”

4. Thereafter affidavits have been filed by the NALCO Officers’ Association, NALCO as well as MCL placing on record their respective stands on how they have adhered to the decisions taken at the joint meeting and as recorded the minutes of meeting (MoM) dated 27<sup>th</sup> April, 2022. Even today, three more additional affidavits, one by each of them, have been placed before the Court.

5. The Court notices from the said affidavits that while the average supply of coal to NALCO’s CPP Unit at Angul between 27<sup>th</sup> April and 10<sup>th</sup> May 2022 has averaged at 17,753 metric tons (MT), the supplies have witnessed a steady decline after 5<sup>th</sup> May, 2022 and on 10<sup>th</sup> May, 2022, as against the required quantity of 18000 metric tons, NALCO’s CPP unit at Angul only received 8994 MT of coal. The concerns expressed on behalf of the Petitioners as well as the NALCO are that the MCL should be asked to adhere to the MoM dated 27<sup>th</sup> April 2022 and not allow the total supply of coal to fall below the trigger quantity and, in particular, the quantity supposed to be supplied towards FSA and the bridge linkage contractual quantity.

6. Mr. Debaraj Mohanty, learned counsel for the MCL, states that MCL will adhere to the MoM dated 27<sup>th</sup> April, 2022 and ensure that the coal supply quantity does not fall below the minimum required quantity per day as agreed in the MoM.

7. The purpose for which the Court entertained the present petition in public interest was to facilitate the meeting of the various Ministries of the Government of India including the Railways with NALCO and MCL to work out an interim solution. That essential purpose appears to have been served for the moment.

8. Acknowledging the limits of judicial intervention in the matters of this kind, the Court would not like at this stage to issue any further directions expect impressing on all the parties to the MoM to adhere to the decisions taken on 27<sup>th</sup> April 2022.

9. This order will not prevent the parties from seeking appropriate remedies if the situation so warrants, in accordance with law.

10. The writ petition is disposed of in the above terms. Consequently, all the applications are also disposed of.

***(Dr. S. Muralidhar)***  
***Chief Justice***

***(R.K. Pattanaik)***  
***Judge***