

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.10779, 10423, 10424 & 10930 of 2022

W.P.(C) No.10779 of 2022

Vedanta Ltd. ***Petitioner***
Mr. Dhruv Mehta, Sr. Advocate
-versus-
Union of India and others ***Opp. Parties***
Mr. P.K. Parhi, ASGI
Mr. Debaraj Mohanty, Advocate for MCL

W.P.(C) No.10423 of 2022

Utkal Chamber of Commerce and Industry Ltd. ***Petitioner***
Mr. D.P. Nanda, Sr. Advocate
-versus-
Union of India and others ***Opp. Parties***
Mr. P.K. Parhi, ASGI
Mr. Debaraj Mohanty, Advocate for MCL

W.P.(C) No.10424 of 2022

District Small Scale Industries Association ***Petitioner***
Mr. S.P. Mishra, Sr. Advocate
-versus-
Union of India and others ***Opp. Parties***
Mr. P.K. Parhi, ASGI
Mr. Debaraj Mohanty, Advocate for MCL

W.P.(C) No.10930 of 2022

Hindalco Industries Ltd. and another ***Petitioners***
Mr. Kumar Kislay, Advocate
-versus-
Union of India and others ***Opp. Parties***
Mr. P.K. Parhi, ASGI
Mr. Debaraj Mohanty, Advocate for MCL

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

**ORDER
11.05.2022**

Order No.

04. 1. In these writ petitions, on 2nd May 2022, this Court had passed the following order:

“1.W.P.(C) No.10779 of 2022 is by Vedanta Ltd. W.P.(C) No.10423 and 10424 of 2022 are connected with W.P.(C) No.10779 of 2022 as they concern the impending crisis faced by buyers Vedanta Ltd. on account of precipitous drop in the supply of contracted quantity of coal.

2. Mr. Dhruv Mehta, learned Senior Counsel for Vedanta Ltd. points out that with the sharp drop in the supplies there is a real and imminent threat to the smelter plants of Vedanta Ltd. at Jharsuguda and Lanjigarh which will in turn have a cascading effect on all the ancillary industries including the MSME units and a huge work force involved in all these units.

3. W.P. (C) No.10930 of 2022 is by the Hindalco Industries Ltd. (HIL) as well as Utkal Alumina International Limited (UAIL) voicing a similar grievance in connection with their smelter plants at Rayagada, Lapanga and Hirakud.

4. Vedanta's representation dated 21st April 2022 and Hindalco's representation dated 28th March, 2022 are stated to be pending with the Central Government. The representations dated 21st April, 2022 of the Petitioners in W.P.(C) Nos.10423 and 10424 of 2022 are also stated to be pending with the Central Government.

4. The Court is entertaining these petitions essentially for the reason that it involves not just the industries themselves but the issues concerning them of affecting the livelihoods of lakhs of workers and several ancillary units. While in entire country there is a crisis being faced by industry in general, and the power sector industries in particular, on account of the drop in coal supplies, there will be a need to balance the competing demands which are all in public interest. This can perhaps be achieved by having the Central Government constitute panels of bureaucrats representing the different interests who can give a hearing to the Petitioners and address their concerns to find workable solutions. The Court can at best facilitate such solutions.

5. Accordingly, it is directed that on the next date of hearing, the Central Government - which will include the Ministry of Coal, the Ministry of Mines, the Railway Board, the Ministry of Power speaking through Mr. P.K. Parhi, learned Asst. Solicitor General of India - will inform the Court the date/dates on which Vedanta Ltd., HIL and UAIL, the Utkal Chamber of Commerce and Industry Ltd. and District Small Scale Industries Association, can each be heard through their authorized representatives by a panel of the Central Government comprising the aforementioned Ministries and the Railway Board and for working out an interim arrangement till such hearing is completed and a workable solution found.

6. For the above limited purpose, Mr. Parhi says that he can get back with instructions on 5th May, 2022.

7. List on 5th May, 2022 at 2.00 p.m.

8. Copies of this order be made available today itself. Mr. Parhi says that he will communicate this order today itself to the concerned Ministries and the

Railway Board. It will be open to the Petitioners to file additional affidavits in the meanwhile.”

2. Pursuant to the above order, a joint meeting through Video Conferencing (VC) was held with the two sets of Petitioners i.e. Vedanta Ltd., Hindalco Industries Ltd. (HIL) and Utkal Aluminium International Ltd. (UAIL) along with the two other Petitioners in the presence of the Chairman, Railway Board, the Secretary, Ministry of Mines, the Secretary, Ministry of Coal, Secretary, Ministry of Power and Mahanadi Coalfields Ltd. (MCL)

3. Mr. P.K. Parhi, learned ASGI has placed, before the Court the minutes of the said meeting. The minutes record the detailed submissions of all the persons attending the meeting and the following conclusions:

“Based on the above discussions, following were agreed upon to meet the supply of coal to M/s.Vedanta, M/s.HIL and M/s. UAIL as per FAS provisions;

- Coal company to supply coal at least at trigger level of the FSA. In case of non-availability of rakes, the coal quantity up to trigger level may be offered through road mode and consumer may lift coal after following laid down procedure.
- Considering the critical coal stock at power houses and priority to improve supply to power sector, all effort would be done to maintain the existing supply of rakes to non power sector including Aluminium Industries.”

4. Mr. Dhruv Mehta, learned senior counsel appearing for the Vedanta Ltd., and Mr. Kumar Kislay, learned counsel

appearing for the HIL as well as Mr. S.P. Mishra, learned senior counsel and Mr. S.P. Nanda, learned senior counsel appearing for the Petitioners in the companion writ petitions make a grievance that the decisions arrived at the above meeting do not actually address the problems faced by the two sets of Petitioners. In particular, grievance is voiced about the non-availability of rakes for transporting the coal which is already in short supply and about diversion of rakes by the MCL, on the instructions of the Central Government, for supply to the power sector companies.

5. The Court would like to reiterate that these petitions have been entertained essentially on account of the issues of public interest pointed out in Writ Petitions 10423 and 10424 of 2022 i.e. representatives of the MSME sector on account of the cascading effect that would be felt by the ancillary industries and those working therein if the operations of the companies i.e. Vedanta Ltd. HIL and UAIL were to be adversely impacted by the shortage of coal. The purpose of intervention was also to facilitate a hearing being afforded to two sets of Petitioners by the Central Government and the Railways. That purpose has indeed been served and an interim solution has been arrived at in the manner extracted herein before. The Court is conscious that the issues in the realm of contract and the issues in the realm of constitutional law will require a fair balance to be maintained.

6. There are also issues of the limits of judicial intervention in matters of policy. The entire country is undergoing a critical phase of shortage of supply of coal to various sectors, primarily the power sector. The Railways is having to rearrange its priorities to meet the immediate crisis in the power sector. Since these are matters of policy, there are limits to judicial intervention which the Court must acknowledge.

7. The Court would expect all parties who attended the meeting on 2nd May, 2022 to adhere to the decisions arrived at and work the interim solution so that the operation of the aluminium industries who have approached this Court are not pushed to a critical stage. It would be open to the companies to approach the concerned Ministries on the basis of the decisions taken at the meeting on 2nd May 2022 with their specific demands. Beyond this, at this stage, the Court would not like to issue any further directions in the matter. It is made clear that this would not preclude the companies from seeking appropriate reliefs if the solutions are unable to be worked out for any reason whatsoever.

8. The writ petitions are disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge