



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 2708/2023 & CM APPLs. 10429/2023, 13166/2023, 19824/2023**

JINDAL STEEL AND POWER LIMITED & ANR Petitioners

Through: Mr. Dushyant Dave, Senior Advocate with Ms. Gauri Rasgotra, Ms. Shruti Choudhary, Ms. Priyashree Sharma PH, Mr. Saket Sikri, Mr. Siddhant Puri, Mr. Girish Ahuja, Mr. Dinesh Moorjani, Mr. Saurav Baisoya, Mr. Siddhant Puri and Ms. Priyal Chaturvedi, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG with Mr. Apoorv Kurup, CGSC, Mr. Amit Gupta, Mr. Saurabh Tripathi, Mr. Vikramaditya Singh, Mr. Ojaswa Pathak and Mr. Aakarsh Srivastava, Mr. Pranshu Dhingra, Mr. Manish Bhardwaj, Ms. Swati Bhardwaj, Ms. Kirti Dadeech, Advocates for UoI.

Ms. Sonia A. Menon and Mr. Madhav Bhatnagar, Advocate for R-3 and R-4 /MSTC Ltd.

Dr. Abhishek Manu Singhvi, Sr. Advocate and Mr. Sandeep Sethi, Sr. Advocate with Mr. Sandeep Devashish Das, Mr. Ayush Agarwal, Mr. Dhanajya Mishra, Mr. Biswaranjan Sahu, Mr. Peeyush



Agarwal, Mr. Vikram Singh Dalal,
Mr. Peeyush Agarwal, Ms. Shreya
Sethi, Mr. Sushant Tomar and Ms.
Anandini Kr. Rathore, Mr. Vikrant
Singh, Advocates for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Writ Petition has been filed under Article 226 of the Constitution of India by Jindal Steel and Power Ltd. i.e., the Petitioner herein, seeking the following reliefs: –

"a) Issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction directing the Respondent Nos. 1 to 4 to continue the bidding process from the point where the technical glitch arose and to ensure that the maximum price through this auction is realized;

b) Issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction quashing the "results of e-auction for commercial coal mines for day 1" declared by the Respondent No.2 on 28.02.2023 (Annexure P-14 herein) and any and all consequent steps/actions;

c) Pass such other order(s) or directions(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the Petitioners. "

2. The brief facts pertaining to and relevant for the adjudication of this dispute run as stated below: –

a. On 02.11.2022, the Ministry of Coal, Government of India (Respondent No. 1) through the Nominated Authority



(Respondent No. 2) issued a notice for auction of coal mines. The Notice stated that the Ministry of Coal would be launching an auction process on 03.11.2022 at 4:00PM, for the 16th Tranche and Second Attempt of the 15th Tranche under the Coal Mines (Special Provisions) Act, 2015 (**“2015 Act”**). It also stated that the 6th and second attempt for the 5th Tranche of auction under the Mines and Minerals (Development and Regulation) Act, 1957 (**“MMDR Act, 1957”**) would be opened up by the Ministry.

- b. A list of 133 explored and partially explored coal mines which were being auctioned by the Ministry was issued which included the Chhendipada (Revised) Coal Mine which was placed at serial number three of the list of coal mines issued by the Nominated Authority. Chhendipada (Revised) Coal Mine is a partially explored mine.
- c. On 14.11.2022, a Notice was issued by Respondent No. 2 informing that a pre-bid conference would be conducted virtually on 16.11.2022 wherein the bidders could raise their queries.
- d. On 15.11.2022, Respondent No. 2 issued the Tender Document for the Chhendipada (Revised) Coal Mine, to be auctioned as part of the 16th Tranche under the 2015 Act. The same *inter alia* detailed the entire tender process, the background in which the auction was being conducted, eligibility conditions and instructions to the prospective bidders.
- e. The Tender Document provided that the entire tender process



was to be conducted via electronic auction on a platform created by MSTC Ltd.

- f. Clause 3.3.1 of Annexure III of the tender document provided that the auction would be conducted in a two pronged process, i.e. I - Technical Bid - Wherein the bidders were required to provide details regarding compliance with the Eligibility Conditions mentioned in the Tender Document; and II - Financial Bid comprising of (i) the Initial Offer; and (ii) the Final Offer. The Initial Offer was required to be submitted along with the Technical Bid.
- g. Clause 3.3.1 (b) provided that the Financial Bid was to comprise of two rounds, at first, the Initial Offer was required to be submitted along with the Technical Bid. The Initial Offers submitted by Technically Qualified Bidders were to be opened and ranked on the basis of descending order for determination of Qualified Bidders, in the manner provided for in Clause 3.3.2 (b). Further, only once the Qualified Bidders had 'Qualified' in terms of Clause 3.3.2 (b) would they be eligible to take part in the second part of the financial bid, thereby submitting their 'Final Offer'.
- h. For a better understanding of the Ranking and Qualification method provided for in Clause 3.3.2(b), the same is being reproduced hereunder for reference:-

" 3.3.2 (b) Ranking and Qualification:

The Bidders who meet all the Eligibility Conditions



(the “Technically Qualified Bidders”) shall be ranked, and thereafter a determination shall be made in the following manner to identify the qualified bidders, who shall be qualified for participating in the electronic auction and shall be eligible to submit a Final Offer (the “Qualified Bidders”):

*I. **Ranking:** The Technically Qualified Bidders shall be ranked in a descending order on the basis of the respective Initial Offer. The Technically Qualified Bidders who have submitted the same Initial Offer, shall be assigned the same rank.*

*II. **Determination of Qualified Bidders:***

(i) If there are only 2 or 3 Technically Qualified Bidders, all the Technically Qualified Bidders shall be considered as Qualified Bidders."

- i. It is also pertinent to note that Clause 3.3.2 (a) gave the sequence for conduct of the Tender Process and had stated that in the first stage, the Bidders would be required to submit (i) Bid Security; (ii) the Technical Bid in the form and substance as specified in Annexure IV of the Tender Document and (iii) the Financial Bid to the extent of specifying the Initial Offer which should be higher than the Floor Price in multiples of 0.5 % of revenue share till Initial Offer reaches 10 %, and thereafter in multiples of 0.25 % of revenue share. The Floor Price for the Coal Mine was stated to be 4% of revenue share.
- j. Once the prospective Bidders have been determined to be qualified, and ranked in a descending order on the basis of their respective Initial Offers, Clause 3.3.2(c) states that the



‘Applicable Floor Price’ with respect to electronic auction for submission of Final Offer is to be the highest Initial Offer received from the Qualified Bidders. It is herein, on the e-platform that the Qualified Bidders would be permitted to place their Final Offer, which is higher than the Applicable Floor Price. The Final Offer too, shall be accepted in multiples of 0.5% of revenue share till the Final Offer reaches 10 % and thereafter in multiples of 0.25 % of revenue share. The Qualified Bidder submitting the highest Final Offer during the e-auction process is to be declared as the ‘Preferred Bidder’ though the same would not entitle him to become the Successful Bidder in certain cases, as elucidated in Clause 3.3.2 (e). However, in terms of Clause 3.3.2 (d), the Nominated Authority is bound to recommend the name of the Preferred Bidder to the Central Government and upon receipt of a direction from the Central government that a Vesting Order should be issued to the Preferred Bidder, such bidder shall be declared the Successful Bidder.

- k. The manner in which the e-auction is supposed to be conducted, for submission of Final Offer as stated above, has been elucidated in detail in Annexure III of the Tender Document. It states that for the submission of Final Offer vide e-auction, the Qualified Bidders are required to place their bid through the relevant portal on the internet. The Qualified Bidders would be able to submit their Final Offer as many times as it wishes to against the concerned coal mine and the bidders shall remain



anonymous to each other. All the Qualified Bidders are able to see the prevailing highest Floor Price as per the last bid submitted by a Qualified Bidder on the platform, and they shall have to submit a Final Offer over and above the displayed highest bid in multiples of 0.5 % of revenue share till the Final Offer reaches 10 % and thereafter in multiples of 0.25 % of revenue share. The portion of Annexure III elucidating the process for conduct of Final Offer also states that the e-auction process for the mine is to have a stipulated start and finish time, which shall be displayed on the screen and a qualified bidder will be able to submit its Final Offer only within the stipulated time period, from the opening time till the closing of the bid. However, in the event that a bid is received during anytime within the last 8 minutes of the bid closing time, the closing time of the auction for the coal mine will automatically stand extended by another 8 minutes from the last received bid time. It is stated that this process of auto-extension of bidding time will keep occurring till there is a period of 8 minutes prior to the closing time of the auction during which no Final Offer is received. The example as contained under Annexure III of the Tender Document, elucidating the above explained process of conduct of the submission of Final Offer is being reproduced hereunder for better comprehension of the entire process: –

" For example, assuming that the initial scheduled close time for a particular electronic auction is 1:00 pm and a Final Offer is received at 12:55 pm, the scheduled close time shall be revised to 1:03 pm.



Again if a Final Offer is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that there is no further Final Offer received till 1:09 pm, the electronic auction will close at 1:09 pm. The revised close time will be displayed on screen and the Qualified Bidders are advised to keep refreshing its webpage to get the latest information."

- l. Annexure III also states that in order for a Bidder to submit its bid, it is required to possess a valid Digital Signature Certificate (“DSC”) of signing type. The Digital Signature Certificate is to be used to sign the bids that the Bidders shall submit online.
- m. Pursuant to the Tender Document being released, the Competent Authority released a notice dated 27.01.2023 stating that the due date for submission of bids has been extended to 30.01.2023.
- n. It is stated that, the Petitioner No. 1 herein duly submitted its Technical and Financial (Initial Offer) bids, including the Bid Security of Rs. 1.26 Crores, on 30.01.2023.
- o. On 22.02.2023, a list of Technically Qualified Bidders was published for various coal mines. For the concerned Coal Mine, i.e., Chhendipada (Revised) Coal Mine, three bidders including the Petitioner No. 1 and Respondent No.5 herein were declared as qualified bidders. Further, a calendar laying out the date and time for the second stage of bidding, i.e., the e-auction for submission of Final Offer, for all coal mines, was published. The same stated that the e-auction for the Chhendipada (Revised) Coal Mine shall take place on 27.02.2023.



- p. The final stage of e-auction for the Chhendipada (Revised) Coal Mine commenced on 27.02.2023 at 11:04:28 hrs and the Petitioner and the Respondent No.5 herein were competing against each other. Material on record discloses that the seventh bid for 8.5% of the revenue share was placed by the Petitioner herein at 13:18:09 hrs; the eighth bid for 9% of the revenue share was placed by the Respondent No.5 at 13:23:51 hrs; the ninth bid for 9.5% of the revenue share was placed by the Petitioner at 13:30:25 hrs; the tenth bid for 10% of the revenue share was placed by the Respondent No.5 at 13:36:03 hrs; the eleventh bid for 10.25% of the revenue share was placed by the Petitioner at 13:42:35 hrs; the twelfth bid for 10.5% of the revenue share was placed by the Respondent No.5 at 13:47:38 hrs; the thirteenth bid for 10.75% of the revenue share was placed by the Petitioner at 13:53:44 hrs; the fourteenth bid for 11% of the revenue share was placed by the Respondent No.5 at 13:59:50 hrs; the fifteenth bid for 11.25% of the revenue share was placed by the Petitioner at 14:06:27 hrs; the sixteenth bid for 11.5% of the revenue share was placed by the Respondent No.5 at 14:12:31 hrs; the seventeenth bid for 11.75% of the revenue share was placed by the Petitioner at 14:18:49 hrs; the eighteenth bid for 12% of the revenue share was placed by the Respondent No.5 at 14:24:59 hrs; the nineteenth bid for 12.25% of the revenue share was placed by the Petitioner at 14:31:49 hrs; the twentieth bid for 12.5% of the revenue share was placed by the Respondent No.5 at 14:37:56 hrs; the twenty-first bid for



12.75% of the revenue share was placed by the Petitioner at 14:42:34 hrs and the twenty-second bid for 13% of the revenue share was placed by the Respondent No.5 at 14:48:09 hrs. It is stated by the Petitioner that it could not place the twenty-third bid for 13.25% of the revenue share till 14:56:09 hrs. It is stated by the Petitioner that while placing the twenty-third bid for 13.25% of the revenue share at 14:53:00 hrs, a web page dialogue box appeared on the computer screen which showed *"please sign your bid with your registered DSC. Please confirm to proceed"*. It is stated that the Petitioner tried to click on *'please proceed to sign your bid'*, but a further window to insert the PIN of DSC did not appear as the window froze and did not receive any commands. It is stated that efforts were made by the Petitioner to click on *'please proceed to sign your bid'* but it did not yield any result. It is stated that the Petitioner logged out of the portal and logged in again at about 14:54:30 hrs and upon logging in when the Petitioner tried to place its bid for 13.25% of the revenue share at about 14:55:10 hrs, the same dialogue box with *"please sign your bid with your registered DSC. Please confirm to proceed"* re-appeared. It is stated that the Petitioner once again tried to click on *'please proceed to sign your bid'* but the portal was not responsive. It is stated that since the time had lapsed a higher bid could not be placed. It is stated that the Petitioner tried to contact an officer of SBI Capital Markets Ltd. who in turn advised the Petitioner to contact MSTC officials. It is stated that the Petitioner



telephonically contacted the MSTC official and informed them about the technical lapse in the e-auction portal and requested them to take corrective actions. It is stated that the Petitioner also wrote to the Nominated Authority as well as the MSTC on the same day highlighting the technical glitch faced by the Petitioner. It is stated that a representation was also made by the Petitioner on the very same day regarding the technical glitch but no response has been received. It is stated that on 28.02.2023, Respondent No.2 uploaded the result of the e-auction declaring Respondent No.5 as the highest bidder. The Petitioner has thereafter approached this Court by filing the instant Writ Petition.

Submissions on behalf of the Petitioner

3. Mr. Dushyant Dave, Ld. Senior Counsel while opening his arguments for the Petitioner has stated that it was on account of a technical glitch, that the Petitioner No. 1 could not place a bid higher than that of Respondent No. 5 herein. He submits that the Petitioner No. 1 was able to submit numerous bids in the e-auction process until 14:42:34 PM, i.e., when MSTC's portal encountered a technical glitch which prevented the Petitioner from placing its next higher bid. He submits that the Petitioner was willing to go much higher in its bid to become the highest bidder, however, it was unable to do so for no fault of its own.

4. It is submitted that the window of the Petitioner No.1 froze because of the technical glitch in MSTC's portal and despite the Petitioner's repeated attempts, it was unable to submit its next higher bid, which led to a premature conclusion of the auction.



5. It is submitted that the Petitioner No. 1's representative immediately telephonically contacted SBI Capital Markets Ltd. ("SBICAPS") an entity which is advising Respondent Nos. 1 & 2 in the instant auction process and is instrumental in designing the complete bid process, preparation of tender conditions and documents, conducting pre bid meetings etc. It is submitted that SBICAPS informed the Petitioners to contact MSTC. Thereafter, the Petitioner immediately contacted MSTC about the technical lapse in the e-auction portal and requested it to take corrective action.

6. It is submitted that the Petitioner No. 1 even wrote to the Nominated Authority and MSTC, and also gave a representation highlighting the technical glitch, stating that by virtue of it, the Petitioner was denied a fair opportunity to participate in the e-auction and therefore it has created an unjust situation. However, the multiple pleas of the Petitioners fell on deaf ears and the Respondent No. 2 has, without heeding to the representations and pleas of the Petitioners, proceeded to declare the result of the e-auction on 28.02.2023.

7. It is submitted by Mr. Dave that the technical glitch was that a window freeze occurred on the portal of MSTC.

8. Vide an Affidavit dated 02.03.2023 which has come to be filed by the Petitioner No. 1 through Mr. Wasim Raja, its Dy. Manager, the said technical glitch has been elucidated further. It is stated that the Petitioner logged on to the MSTC website at 11:00:00 AM hrs. for the e-auction and that the scheduled time of the e-auction was between 11:00:00 hrs to 13:00:00 hrs which could be further extended as per the tender conditions.

9. The Petitioner No. 1 has also gone ahead and stated all the 11 bids which were placed by it during the time period in which the e-auction was



live. In total, it is stated that 11 bids were placed by the Petitioner. The same, as stated in the affidavit filed by the Petitioner No. 1 through Mr. Wasim Raja, is reproduced hereunder for reference: –

"4. The scheduled time of thee-auction was between 11:00:00 hrs. to 13:00:00 hrs which could be further extended as per the tender conditions. During the e-auction process, we placed the following bids on behalf of the Petitioner No. 1:

- i. First bid was placed for 5.5% at 11 :04:28 hrs;*
- ii. Third bid was placed for 6.5% at 12:56:08 hrs;*
- iii. Fifth bid for 7.5% at 13:06:23 hrs;*
- iv. Seventh bid for 8.5% at 13:18:09 hrs;*
- v. Ninth bid for 9.5% at 13:30:25 hrs;*
- vi. Eleventh bid for 10.25% at 13:42:35 hrs;*
- vii. Thirteenth bid for 10.75% at 13:53:44 hrs;*
- viii. Fifteenth bid for 11.25% at 14:06:27 hrs;*
- ix. Seventeenth bid for 11.75% at 14:18:49 hrs;*
- x. Nineteenth bid for 12.25% at 14:31 :49 hrs;*
- xi. Twenty First bid for 12.75% at 14:42:34 hrs;"*

10. Mr. Raja through his affidavit has stated that he could successfully place all bids on behalf of the Petitioner No.1 till 14:42:34. Pursuant to the 22nd bid placed by Respondent No. 5 for 13 % of the revenue share at 14:48:09 hrs., while placing the 23rd bid for 13.25 % of the revenue share at 14:53:00 hrs., a web page dialogue box appeared on the computer screen which stated *"please sign your bid with your registered DSC. Please confirm to proceed"*.

11. Mr. Raja has stated that he tried on clicking the *'please proceed to sign your bid'* dialogue box, however, at this point the further window to insert the PIN of the DSC did not appear as the window froze and was not responsive to any commands. He has stated that he tried on clicking the



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same a couple more times, however, to no avail. It is stated that he thereafter logged out of the website and logged in again at about 14:54:30 hrs. Upon logging in, yet again, he states that he tried to place the bid for 13.25 % of the revenue share at about 14:55:10 hrs. However, this time also the portal was not responsive and the window to insert the PIN of the DSC did not appear and the screen froze. It is stated that a screenshot demonstrating the same was taken at 14:55:58 hrs and the same was duly annexed with the Writ Petition. As further higher bids couldn't be placed, the auction prematurely closed at 14:56:09 hrs.

12. It is the submission of Mr. Dave that in light of the aforesaid technical glitch which transpired during the period when the e-auction was live, the Petitioners were denied a fair opportunity to participate in the auction process. Further, that as soon as the said technical glitch occurred during the e-auction process, the representatives of Petitioner No. 1 immediately attempted to contact the relevant persons of MSTC and SBICAPS, however, to no avail. It is submitted that till date the Nominated Authority has not responded to the Petitioner.

13. Mr. Dave has also directed the attention of this Court to a report which was sanctioned by the Petitioners from Truth Labs, a forensic science laboratory, for examination of data contained in the laptop which was used for the e-auction. It is submitted that from the Report, it is evident that the Petitioner No. 1 made at least seven attempts to submit the bid of 13.25 % of the revenue share starting from 14:53:26 hrs up till the premature closure of the bid at 14:56:09 hrs but a technical glitch prevented the submitted bid of 13.25 % of the revenue share from being digitally signed. It is submitted that the report also clearly records that there were no network connectivity issues



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in the laptop during the bidding period, i.e., from 11:00:00 hrs to 14:56:09 hrs and that the network status on the firewall at Petitioner No. 1's office indicates that both outbound and inbound traffic was active.

14. It is submitted that the Petitioner No. 1 actively participated in the entire bidding process and placed numerous bids till 14:42:34 PM, however, the Petitioner No. 1 was thereafter unfairly prevented from submitting the next higher bid owing to a technical glitch on MSTC's portal. Mr. Dave has vehemently submitted that the Petitioner No. 1 herein is a bonafide bidder, and it is not as if it is a fly-by-night operator, not knowing the rules of the game or is unaware of the method of participating in the bidding process for securing coal blocks. It is submitted by him that despite the Petitioner No. 1 taking all relevant precautions from its end, being vigilant, diligent, cognizant of the operative provisions of the Tender Document and the process for placing its bid, the said technical glitch has cropped up for no fault of its own and the same can be attributed to MSTC's portal.

15. It is submitted by Mr. Dave that he is challenging the e-auction process *inter alia* on the ground of procedural irregularity. It is submitted that owing to the technical glitch the Petitioner No. 1 has been unduly and unfairly prevented from participating in the bidding process, thereby gravely prejudicing it and depriving it of an equal and level playing field which the Respondent No. 1 & 2 are duty bound to offer all bidders.

16. Mr. Dave submits that but for the technical glitch, the Petitioner is prepared to bid as high as 20% of the revenue share but the same is not being allowed. He submits that despite the provisions of the Tender Document providing that the Highest Bidder need not be declared as the Successful Bidder, and the Petitioner No. 1 willing to offer a higher price for



the coal block, the Respondent No. 5 has been declared as the Successful Bidder. It is submitted that the Respondent No. 2 has the discretion to not take the Highest Bidder emerging in the auction as the Successful Bidder and can even suspend/ amend its tender process. However, the Respondent, for reasons best known to it, has not heeded the requests of the Petitioner No. 1 and not taken any of the aforesaid steps, nor has it responded to any of the pleas of the Petitioner No. 1 regarding the technical glitch or higher price, submitted by it.

17. Mr. Dave, placing reliance on Affidavit of Petitioner No. 2, i.e., Vice President of the Petitioner No. 1, has also gone ahead to submit that there have been multiple instances in the past wherein the State Government / Ministry of Coal have allowed a second round of e-auction on account of technical glitches/ irregularities to ensure a larger revenue share for the exchequer. In total, three instances have been given by the said affidavit in relation to Gare Palma IV, Purheibahal Iron Ore Block in the State of Odisha and Parbatpur Central. The said instances are being reproduced hereunder for reference: –

"A. (i) During the second round of e-auction of Purheibahal iron ore block in the State of Odisha conducted on September 24, 2021 one of the qualified bidders i.e. Rungta Mines Limited, had inadvertently submitted the highest final price offer as 1234% instead of 124%. This anomaly was noticed by the authorities, and they decided to intervene in the live e-auction process and stopped the e-auction. Copy of the notice regarding second round of e-auction dated September 22, 2021 is annexed hereto and marked as Annexure A.

(ii) A second round of e-auction was again conducted



for the same block on September 30, 2021. Copy of the notice regarding second round of e-auction dated September 29, 2021 is annexed hereto and marked as Annexure B.

(iii) The second round of e-auction process was successful and the block was awarded to the highest bidder. Copy of the declaration of the preferred bidder dated October 5, 2021 by the State of Odisha is annexed hereto and marked as Annexure C.

B. (i) Parbatpur Central coal mine is located in the State of Jharkhand. When the first round of e-auction was conducted, only one bidder participated. As per the tender terms in case only one bidder participates in an auction in the first round, the bids are to be invited again. The bid process was again conducted in which only one bidder could submit the documents online on the M STC portal within the timeline and offered a premium of 5%.

(ii) However, another potential bidder reached out to authorities mentioning that they could not upload the bid documents on account of the technical glitch encountered by them. The authorities believed that running another round of the bidding process would lead to increased revenue share and accordingly, as mentioned in Annexure P-14 attached to the writ petition (at page 127) the closing bid (percentage share of revenue) was 31.50%. This shows the approach taken by the authorities in larger public interest and for the benefit of the public exchequer.

C. (i) Gare Palma IV/ 2 & 3 is among the coal blocks in the State of Chhattisgarh for which the e- auction was conducted on the MSTC portal on February 28, 2023. (ii) Similar to the other auctions being conducted on the MSTC portal, the online auction began at 11 :00 AM and was slated to be closed at 1 :00 PM the same



day in case there were to be no higher bids in the last 8 minutes. In case of any higher bid in the last eight minutes to 1:00 PM, the auction window would get extended by 8 minutes each time a new higher bid is submitted.

(iii) When the live auction was underway, one of the bidders entered the bid at 12:59 PM, which led to the extension of bid time to 1:07 PM and in the next minute at 1:00 PM, another bidder entered a higher bid.

(iv) In normal circumstances, the auction window would have extended to 1:08 PM. However, to the surprise of everyone, the MSTC auction portal showed the auction closing time as next day 1 :00 PM rather than 1 :08 PM the same day.

(v) Upon enquiry MSTC admitted the operational issues at their end and extended the e-auction process till 1300 hrs on March 1, 2023. Copy of the notice dated February 28, 2023 issued by Respondent No.2 is annexed herewith and marked as Annexure D."

18. On account of the aforesaid, it is submitted that any online portal is prone to technical glitches and therefore a rational approach should always prevail to meet the underlying objective of the bidding process.

19. It is submitted that in view of the fact that only three bidders were declared as Qualified Bidders in the first round of bidding, it is incumbent and necessary that all the bidders are given a fair and equal playing field to bid for the subject coal mine and which process alone would be conducive to the state exchequer. It is submitted that on account of the technical glitch, the bid has been closed prematurely, thereby depriving the state exchequer of more monies which would have accrued to it if the bid would have carried on further, and had the Petitioner No. 1 been given the opportunity to



place its higher bid. It is submitted that the concerned coal block has been given away at a much lower price than the one which could have been discovered had the auction continued. It is submitted that the state exchequer is being deprived of monies in lieu of giving away of natural resources and that the mine is being given away at a much lower price than the one which could have accrued to the state vide grant of this largess. It is submitted that the manner in which the bidding has closed prematurely is against public/national interest.

20. It is submitted by Mr. Dave that the State acts as a trustee of natural resources and that natural resources of the country belong to the people of this nation. Thus, the state should ensure that allocation of natural resources should lead to maximization of revenue. In the past too, there have been instances where the highest/ preferred bidder has not been declared the successful bidder on the ground that such bidder doesn't reflect fair value.

21. Elucidating further, it was submitted by Mr. Dave that pursuant to the Judgement of the Hon'ble Supreme Court in the case of ***Manohar Lal Sharma v. Principal Secretary, (2014) 9 SCC 516*** whereby the Apex Court cancelled the allocation of coal blocks, the Coal Mines (Special Provisions) Ordinance, 2014 was promulgated and Tara Coal Mine was included in Schedule III of the ordinance. After this, the Nominated Authority floated the tender document for auction of the said mine. Jindal Power Ltd., a related party of Petitioner No. 1 herein submitted its bids and emerged as the Preferred Bidder, however, the government did not declare Jindal Power Ltd. as the Successful Bidder on the ground that the price offered did not reflect the 'Fair Value' of the mine. It is submitted that the said decision of the government was challenged by the aforesaid related party in the case of



Jindal Power Ltd. v. Union of India & Ors., W.P. (C) 3001-3002/ 2015 and this Court passed its Order in the case on 09.03.2017. Placing reliance on the case of ***Jindal Power Ltd.***(*supra*) it is submitted that the Respondent Nos. 1 & 2 are well within their rights to go ahead and reject a bid which does not represent the actual/ fair value of the coal block, even though a bidder may have emerged as L-1/ Preferred Bidder. In the aforesaid case, the decision of the government to not declare Jindal Power Ltd. was not interfered with as the same was not found to be *malafide* or arbitrary. It was also submitted that therein, placing reliance on Paragraph 36 of the Judgement, that the Government had submitted that the auction process was conducted to discover the best price possible for public resource, i.e., coal.

22. It is submitted by Mr. Dave that a mere 1 % increase in bid premium with respect to the concerned coal block means that the bid premium would lead to an additional income of up to Rs. 2628.56 Crores for the exchequer, considering that the available G-10 grade coal in the coal mine has a representative price of Rs. 2987 per tonne and geological reserves of 880 million tonnes.

23. It is submitted that an auction process by its very nature requires it to be a competitive process and allow bidders to submit a higher bid. However, if the bidder is unable to submit its bid due to technical glitches, it would result in an uncompetitive and less meaningful auction and a lower bid for the government, which is against public interest.

24. Mr. Dave, vide the Writ Petition has pointed out that had there been no such technical glitch, the auction would have enabled fetching a much higher price. He places reliance on other coal mines which were auctioned as part of the Tranches which came to be notified. Mr. Dave pointed out



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attention towards Utkal C which was won by his client, stating that it was won at a 45% premium by it. He states that procedural irregularities which cannot be attributed to the Petitioner No. 1 should not come in the way of public interest and that the state should not throw away the natural resources of India for a song. It is submitted that the same is against the objective of the government in obtaining the enhanced share of the value of mineral resources.

25. Pertinently, during the course of hearing of this instant Writ Petition, an Application to place certain additional documents on record also came to be filed on behalf of the Petitioner. The same was allowed by this Court and the affidavit so filed stated that in light of the hearing of 03.03.2023, as a demonstration of the Petitioner's commitment to keep national interest paramount, it had submitted a letter to the Respondent stating that the Petitioner No. 1 is willing to offer a premium of 20 % of revenue share as opposed to the 13 % of the revenue share closing bid for the Chhendipada (Revised) Coal Mine, in order to maximize revenue and promote national interest. The letter also stated that in light of the bid of 20 % of revenue share offered by the Petitioner No. 1, the Respondent is requested to reconsider the matter. It has been stated by the Petitioner No. 1 that the said premium offered, i.e., 20 % of revenue share, would translate to an effective additional revenue of approximately up to Rs. 20,000 Crores to the exchequer. The relevant portion of the said communication sent to Respondent Nos. 1 & 2 by the Petitioner, offering a premium of 20 % of revenue share is being reproduced hereunder for reference: –

"As on added demonstration of our commitment to keep national interest paramount, we would like to mention that the counsel appearing on behalf of JSP



has before the Court submitted that it is willing to offer 20% premium as opposed to the 13% closing bid, keeping in mind the true worth of the said Coal Mine. This will effectively translate into an additional revenue of approximately upto Rs. 20,000 crores to the exchequer. "

26. To buttress his submissions with respect to the monumental loss amounting up to Rs. 20,000 Crores which might be hit to the exchequer if the Petitioner No. 1 is not allowed to bid for the said coal mine , a chart was also handed over during the course of hearing on 09.05.2023. Vide the chart, the Petitioners have proceeded to demonstrate that at 20 % revenue share, the Petitioner No. 1 will pay a premium of Rs. 1249 Crores annually as opposed to the premium of Rs. 812.24 Crores annually, which will be paid by Respondent No. 5 at the current bid which has been accepted, i.e., at 13 % of revenue share. Thus, there would be a significant loss to the public exchequer amounting to Rs. 437 crores annually which amounts to Rs. 19243.84 Crores over the life of the mine. It is submitted that the offer of the Petitioner amounts to almost an additional 50 % of Rs. 812.24 Crores as annual revenue share. On the basis of the aforesaid, it is contended that there is a significant difference between what is being paid by the Respondent No. 5 herein annually for the mine and what shall be paid by the Petitioner No. 1.

27. Mr. Dave, placing reliance on the cases of ***Ram and Shyam Co. v. State of Haryana***, (1995) 3 SCC 267 and ***Kasturi Lal Lakshmi Reddy v. State of J&K***, (1980) 4 SCC 1, has also proceeded to submit that the discretion of the government in grant of largesses cannot be unlimited and that the government cannot grant these arbitrarily or at its own sweet will, or



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on such terms as it chooses. It is submitted that the grant of such largesses has to be for the public good as every activity of the government has a public element to it. It is submitted that every such action of the government in such grants, has to be tested on the touchstone of reasonableness and public interest. If the actions of the government in giving grants, falls afoul or fails to satisfy the aforesaid two tests, such grant would be invalid and unconstitutional. It is submitted that the government cannot act in a manner which would benefit a private party at the cost of the state and public property cannot be squandered away for a song by persons in power who hold the position of trust. It was submitted that a welfare State, such as ours exists for the largest good of the largest number and that the state must attempt to obtain the best possible price while disposing of its property since if the state has more revenue, it can proceed to carry on more welfare activities.

28. On the aspect of public interest, reliance has also been placed on the case of *Ajar Enterprises Pvt. Ltd. v. Satyanarayan Somani & Ors.*, (2018) 12 SCC 756. Vide the Judgement in the case of *Ajar Enterprises (supra)* it has been submitted that disposal of natural resources vide auction is in fact not the only method. If the statute provides for alternate modes of allocation, the choice taken by the competent authority for disposal of natural resources should be one which must facilitate fulfilment of public interest. Placing reliance on the Judgement of the Bombay High Court in the case of *Aurangabad Zilha Krushi & Auddhugik Bauuddeshiya Sarva Seva Sahakari Sansthanacha Sahakari Sangha Maryadit v. State of Maharashtra*, 2011 SCC OnLine Bom 1537, it has been further submitted that this Court under Writ Jurisdiction as per Article 226, can in no manner



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keep itself aloof from public interest which demands the best price be fetched when the state is disposing of its property.

29. While concluding, Mr. Dave has submitted that allocation of natural resources must subserve common good for the nation and a bonafide bidder in an e-auction cannot be left remedy less. A fair opportunity should be given to the Petitioner to bid and that the bidding process in this case closed prematurely. He states that it is not as if the sanctity and integrity of the tender process should not be preserved, but in this case the same was not preserved and was in fact vitiated as the bidding process was not completed properly. He has submitted that previously too, the authorities have condoned technical glitches and errors for the sake of larger public interest and have allowed rebidding. The Petitioner has repeatedly expressed its desire to continue to participate in the auction process and is a bonafide bidder, not some fly-by-night operator.

Submissions on behalf of Respondent No. 5

30. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of Respondent No. 5, on the other hand submits that the Petitioners herein have wholly failed to establish a case of a technical glitch either through their pleadings or at the time of oral arguments. It is denied by him that there was in fact any technical glitch which occurred during the time period when the e-auction was live.

31. Dr. Singhvi states that the Petitioner initially stated that the alleged technical glitch occurred at 14:42:34, when the Petitioner submitted its bid for 12.75 % of revenue share. However, Respondent No. 5 herein submitted its bid for 13 % of the revenue share at 14:48:09. Thus, the e-auction got auto extended at that juncture for a further period of 8 minutes, i.e., till



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14:56:09. He submits that the natural conclusion which flows from the aforesaid observation is that the contention of the Petitioner that the alleged glitch occurred at 14:42:34 is incorrect, since Respondent No. 5 has been able to successfully place a bid thereafter.

32. He submits that the Petitioners have, as an afterthought attempted to make out a new case and switched up their stance in a subsequent affidavit which was filed by them through Mr. Wasim Raja, alleging the glitch has in fact occurred at 14:53:00. However, besides such an averment in the affidavit, no substantive proof has been produced by the Petitioners to buttress its contention that a technical glitch occurred at 14:53:00.

33. Dr. Singhvi states that vide the affidavit of Mr. Wasim Raja, the Petitioners have further submitted that once they encountered the alleged technical glitch, it logged out and re-logged in at 14:54:30. This he states is entirely false as the affidavit filed by the Union of India shows that the re-login took place at 14:55:04 and not 14:54:30 as claimed by the Petitioners. He states that the aforesaid clearly shows that the averments made by the Petitioner vide the affidavit of Mr. Raja, are unreliable.

34. Dr. Singhvi submits that the case of the Petitioner that the screen allegedly froze at 14:55:58 ,i.e., 11 seconds before the closing time, which it has tried to substantiate through an annexed screenshot with the Writ Petition, cannot be paid heed to. He submits that the annexed screenshot merely shows that the Petitioner No. 1 is being asked to sign the bid with its registered DSC, which is nothing more than the mandatory requirement for the e-auction as per the Tender Document. He submits that vide the screenshot so annexed, in no manner can it be construed that the screen of the Petitioner froze.



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35. It is submitted that the bid squarely closed at 14:56:09 hrs., upon expiry of 8 minutes from the last successful bid by Respondent No. 5 at 13 % of revenue share, a bid which was made at 14:48:09. It may be noted that if the Petitioner encountered such a technical glitch whilst the bid was live, it still did not make any complaints during its subsistence. There was no complaint made by the Petitioner at any time between 14:42:43-14:56:09. He submits that this is despite the fact that admittedly, as stated by the Petitioner in the affidavit filed through Mr. Wasim Raja, four persons were working on the bid for Petitioner No. 1. Any one of them could have easily made a complaint either by phone or email before the closing time of the bid. It is submitted that the first complaint has been claimed to be made by the Petitioner only at 14:57:00 i.e., after the closing time.

36. Dr. Singhvi, relying on provisions of Annexure-III of the Tender Document has submitted that the language, spirit and tenor of the Tender Document clearly mandated that all bidders should complete their process of bidding well in advance to avoid last minute hiccups/ technical problems. The Petitioner's cannot be granted any benefit or their prayers in their Writ Petition for their own fault of attempting to complete all the formalities/ procedure for placing its bid at the eleventh hour.

37. He states that the case of a technical glitch which is attempting to be made out is visibly unreliable as the technical agency conducting the auction itself, i.e., MSTC has also categorically asserted that no such glitch ever occurred on its platform. Placing reliance on the affidavit filed by the Union of India, Dr. Singhvi states that at the relevant point in time, i.e., between 14:41 – 14:57, there was a sum total of 11 successful bids by different bidders across three different auctions. These being for the concerned mine



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herein, i.e., Chhendipada, for Parbatpur Mines and also Datima Mines. He submits that the affidavit also clearly mentions that on the said date of the e-auction, i.e., 27.02.2023 there were a total of 1868 bids across 243 bidders and 68 auctions on identical systems and rules. The affidavit also clearly states that no such glitch was found in any of the bids.

38. With respect to the allegation that there have been previous instances wherein authorities have re-started auctions *inter alia* on account of technical glitches, he submits that all such instances cited by the Petitioner through its pleadings and documents on record are irrelevant inasmuch as the facts of each of these instances are completely different and distinguishable from the factual matrix of this instant case.

39. He submits that the only evidence that the Petitioners have been able to place for perusal of this court has been a self-serving, self-commissioned report from a so-called technical agency called Truth Labs, almost 20 days after the auction. He submits that the said report also does not explicitly make clear that any glitch was prevalent on the portal of MSTC. It is also pertinent to note that the said report was only produced by the Petitioner through its rejoinder, without even taking the leave of this Court. The report can be clearly seen to be made as an afterthought by the Petitioner.

40. Dr. Singhvi submits that if on the basis of the bald averments of the Petitioner, without any substantive proof to establish a technical glitch, this Court grants a direction for re-tender, the effect of such an auction would be far and wide reaching, effecting more than 2000 auctions across diverse sectors and products, conducted all over the Country. He submits that such an Order could compromise the integrity of the auction process and could affect investor confidence, both domestically and globally. It could also lead



to a situation wherein several parties, knowing the identity and prevalence of the highest bid, wish to participate and offer a higher bid.

41. With respect to the figure of approximately Rs. 20,000 Crores worth of a loss as has been portrayed by the Petitioner, that would be posed to the public exchequer if re-tendering is not ordered by this Court, Dr.Singhvi has stated that the same is a bogey. He submits that this so-called loss theory which is being propounded by the Petitioner is illusory and dangerous. It is submitted that the Petitioner, having failed to establish a technical glitch which was the *sine qua non* of its case for interference by this Court, the Petitioner, as an afterthought has proceeded to resort to this illusory loss theory to invoke a facet of public interest to this instant case.

42. It is submitted that this figure is a red herring and the said figure of Rs. 20,000 Crores would only accrue over a period of 55.5 years, subject to multiple assumptions, uncertainties and probabilities. The said figure would only possibly realised by the exchequer if the mine operates for the entire period of the lease at full capacity. It is submitted that the same is evident vide the note which was handed over by the Petitioner during the course of hearing this Petition on 09.05.2023. It is submitted that assuming successful mining takes place, the amount of monies which would in fact be realised by the exchequer would only amount to approximately Rs. 400 Crores annually and is deliberately being aggregated to attempt to shock the conscience of this Court. It is clear that the said figure of Rs. 20,000 Crores would only accrue over a period of over half a century. A period as large as the aforesaid brings with it plethora of uncertainties and it is submitted with the era of decarbonisation being ushered in, along with inevitable fundamental and cataclysmic changes which could occur over the said span of half a



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century, the said figure is too uncertain to be paid heed to as of today. It is submitted that just on the basis of possibilities and probabilities, the Petitioner cannot disturb a bid for the said mine and take an Order from this Court for re-tendering as of today.

43. He submits that over a period of half a century, contingencies such as voluntary abandonment of the mine, possible liquidation or insolvency, change in law or policy and decarbonisation goals of the Country being more aggressively promoted by the government, can occur. The aforesaid possibilities could lead to a situation wherein the entire coal block is in fact even not rendered economically viable, thus the amount of monies due to the exchequer which as is being claimed would be lost, may not in fact ever be realised, even if the Petitioner is allocated the mine at the said 20 % of revenue share as has been submitted it is willing to go ahead and foot.

44. Dr. Singhvi states that with respect to the possibility of abandonment of the mine, at this juncture it would be pertinent to note that the Petitioner has abandoned a mine in the past, namely the Guali Iron Ore Mines in Orissa, won by it at a 144 % in 2020. Due to such an abandonment, the State Government was forced to allocate the said mine to a Public Sector Undertaking, without any premium which led to a consequential humongous loss for the State Exchequer.

45. It is further submitted that the concerned mine herein, i.e., Chhendipada is also partially explored, needs prospecting over many years, preparation of geological report, land acquisition and securing several statutory clearances, including environmental and forest clearances, which are extremely cumbersome to obtain. The first 5.5 years are given to complete the aforesaid operations by the successful bidder and that the



amount of monies which will actually accrue to the exchequer would amount to Rs. 879 Crores only over the said period of 5.5 years.

46. It is submitted by Dr.Singhvi that if the Petitioner No. 1 was actually interested in bidding for the mine at 20 % of revenue share, they could have easily done so at the first instance, i.e., when the auction was live. There was no bar when the e-auction was live, against the Petitioner submitting a bid, whereby it would raise the stakes and make sure that the next bid goes over 20 %. Instead of making repeated bids only with the baseline minimum increment of 0.5% up to 10 % of the revenue share and thereafter 0.25 % subsequent to crossing the 10 % threshold, the Petitioner No. 1 could have shot up the bid all the way up to 20 % if it actually did desire to do so. It is submitted that nowhere did the Tender Document or the system preclude the bidder from submitting a bid higher than the minimum prescribed increments as aforesaid.

47. It is submitted that other partially explored mines which were up for auction have too, gone anywhere between 5.5 % - 15 % on the same day and the Petitioner No. 1 herein has itself, secured two fully explored blocks, these being Gare Palma Sector-I (East) at 9 % which closed on 03.03.2023 and Utkal B1&B2, which closed at 15.5 % in 2022. If one was to take a theoretical perspective to this process, the aforesaid coal blocks could have too, fetched a higher revenue share if the bidding was re-started in the manner sought by the Petitioners herein. Especially in light of the fact that now the stakeholders would know the identity of the highest bidder and the prevailing highest bid.

48. Dr. Singhvi highlights that it is pertinent to note that the aforesaid coal blocks have all completed the prospecting stage and are in fact ready to



turn key. If the aforesaid mines are going for such a rate, in no manner could it be construed that the auction of the concerned mine herein, i.e., Chhendipada at 13 % of the revenue share is unreasonable.

49. Opening up the next limb of his arguments, Dr.Singhvi states that retrospective upsetting of auctions on alleged revenue loss on the basis of allegations of technical glitch has been categorically frowned by the Courts of Law in our Country in a plethora of cases. He states that the aforesaid pleading has been frowned upon in cases specifically relating to mines and natural resources. To buttress his stand, he places reliance on the Judgement of the Orissa High Court dated 10.12.2021 in the case of ***Mythri Infrastructure and Mining India Pvt. Ltd. v. State of Odisha & Ors.***, in W.P. (C) 26548/ 2021; Order of the Hon'ble Supreme Court in the case of ***Mythri Infrastructure and Mining India Pvt. Ltd. v. State of Odisha & Ors.***, SLP (C) 20851/ 2021dated 19.01.2023; Order of this High Court in the case of ***Kundan International Pvt. Ltd. v. Govt. of NCT of Delhi*** dated 22.07.2021and the case of ***BVG India Ltd. v. NDMC, 2021 SCC OnLine Del 4360.***

50. It is submitted by him that the very concept and nature of competitive bidding would evaporate if *ex post facto* a litigant is allowed to participate in the auction again through a direction of re-opening the e-auction, just on the basis of large baseless figures being thrown. No auction would be safe and the number of bidders would decline in lieu of uncertainty in the entire process.

51. Dr. Singhvi states that the Petitioner's through their case, have failed to assist this Court in drawing a line which would put the case of the Petitioners on the pedestal of a rare circumstance, exception or within any of



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the contours which warrants interference by this Court in the tendering process according to jurisprudence which has been developed in this Country. He states that if on the basis of this alleged technical glitch, the bidding process is re-opened, by what line or threshold would this Court differentiate the instant case with other similarly situated bidders who may approach this Court by piggybacking on this Order, praying for re-opening of the tender process by throwing large figures and higher bids, stating that they could not place their higher bid in lieu of some technical glitch which was encountered whilst the e-auction was live. It is submitted that an Order in favour of the Petitioner would open floodgates, chaos and impossibility of managing any organised or disciplined method of disposal of resources/products.

52. With respect to reliance placed by the Petitioners on the auction of the Tara Coal Block in 2015 wherein Jindal Power Ltd., i.e., the Highest Bidder, was not declared as the Successful Bidder, i.e., the case of ***Jindal Power Ltd.*** (*supra*), it is submitted by Dr.Singhvi that the same is irrelevant to the instant dispute. He submits that in the case of Tara Coal Block, the Union of India had justified the rejection of the highest bid on the ground that fair value was not reflected because on comparing the bids received for the mine with the bids received for all other Schedule III mines that had been put up for auction and had found that Tara Coal Block had the 2nd highest extractable reserves, the 2nd highest peak rated capacity, G9 Grade Coal which was the highest in comparison to all the other Schedule III Coal Blocks which were being auctioned and despite all the aforesaid, Tara Coal Block received the lowest increment against the Initial Price Offer in comparison. It is submitted that it was due to the aforesaid reasons that this



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Court upheld the decision of the Union in rejecting the Highest Bidder as the Successful Bidder.

53. It is submitted that in light of the aforesaid facts highlighted in the case of *Jindal Power Ltd. (supra)*, the instant case is distinguishable and that there is no such imputation by the government that the Respondent No. 5's bid does not reflect fair value. Rather, on the very same day as the auction of the Chhendipada mine, a total of 4 partially explored mines were auctioned and the range of winning bids was 5.5%-15% which clearly shows that the winning bid of 13 % of the revenue share in Chhendipada is completely reasonable and reflects fair value.

54. Whilst concluding, Dr.Singhvi vehemently submits that in light of the foregoing submissions made by him, there is not an iota worth of a cogent reason which has been made out by the Petitioner as to why this Court should interfere in the auction process which has been concluded and order for a re-tender/ opening of the bid at 20 % of the revenue share from the time period wherein the Petitioners have allegedly encountered a technical glitch, especially in terms of the power bestowed upon this Court under Article 226 of the Constitution.

Submissions on behalf of Respondent Nos. 1-4

55. Mr. Chetan Sharma, Ld. ASG appearing on behalf of Respondent Nos. 1-4, has submitted before this Court that the instant Writ Petition is not maintainable before this Court. He submits that the instant Writ Petition raises several disputed questions of fact and as a matter of settled law, a Writ Court shall not entertain a Writ wherein the veracity of the facts placed before it are disputed and more so, when an efficacious alternative remedy exists.



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56. Mr. Chetan Sharma also challenges the maintainability of the instant Writ Petition on the grounds of territorial jurisdiction, pleading that the subject coal mine is located in the State of Odisha and Respondent No. 3 i.e., the operator of the concerned e-auction portal is also based out of Kolkata, West Bengal. Thus, the cause of action for the present Petition has also not arisen within the territorial jurisdiction of this Court.

57. Ld. ASG submits that the Petitioners herein have not challenged the process of auction conducted by the Respondents but has claimed that it was unable to submit its bid on account of a technical glitch. In this respect, during day 1 of the 6th round of auction, the Respondent No. 2 received a representation from the Petitioner No. 1 stating that it was unable to submit its bid due to a purported technical glitch which occurred while they were participating in the e-auction. Accordingly, Respondent No. 2 forwarded the said representation of the Petitioner No.1 regarding the purported technical glitch so encountered by it to Respondent No. 3 for examination and asked it to furnish a detailed report with an event log.

58. It is submitted that accordingly, Respondent No.3 furnished a report on the aforesaid alleged technical glitch vide an email dated 28.02.2023 which states that over 1868 bids were recorded from 243 bidders in 68 events against 367 lots including all types of forward auctions. The relevant portion of the Report dated 28.02.2023 is being reproduced hereunder for reference: –

"17. That thereafter, Respondent No. 3 furnished a Report on the same vide e-mail dated 28.02.2023 and stated that:

"Login IP of the bidder is 122.185.23.10. As per record, 11 bids in 3 coal block forward events from



6 bidders were recorded in the said period, it may also be mentioned that continuous bidding was going on for the event 22-23/ 40729. Parbatpur Central which was ultimately closed at 2023-02-27-20. 05. 56.037401. It may also be noted that during the said period 1868 bids were recorded from 243 bidders in 68 events against 367 lots including all type of forward auctions."

[Emphasis Supplied]"

59. Mr. Sharma submits that keeping in view the report received by Respondent No. 3 in light of the Petitioner's representation regarding the purported technical glitch on the e-auction portal, the Competent Authority considered and legitimately rejected the Petitioner's representation vide letter dated 02.03.2023.

60. Ld. ASG submits that continuous bidding through the same e-auction portal was going on in two or more auctions of the coal block mines during the period in which the Petitioners have claimed that they encountered a technical glitch in light of which they could not submit their next higher bid. Mr. Sharma has relied upon details with respect to the Parbatpur Central Coal Mine and Datima Coal Mine auctions to buttress his contentions that smooth bidding has occurred with respect to other coal mines being auctioned off under the tranche. The relevant details of these mines have already been reproduced above in the portion of this Judgement recording Dr. Singhvi's arguments. To this extent, Respondent Nos. 1-5 have a concurrent stand, with respect to smooth bidding occurring in other coal mines which were being auctioned off.

61. Ld. ASG has further submitted that the Respondent Nos.2 has not



found any proof of any collusive bidding in the e-auction and has also not received any complaint on the functioning of the e-auction portal, save for the complaint of Petitioner No. 1. In light of the aforesaid details and stand emanating from the documents of the Respondent Nos. 1-4, Mr. Sharma submits that he must controvert the Petitioners' claim that a supposed technical glitch occurred whilst the e-auction was live, preventing the Petitioner No. 1 from submitting its bid.

62. With respect to the ground of procedural irregularity in conducting the auction process, as alleged by the Petitioner, Mr. Sharma vehemently denies that there was any such irregularity during the auction process or that the Respondent Competent Authority and other authorities conducting the auction did not provide a fair and equal playing field to the bidders.

63. Ld. ASG submits that in terms of Clause 3.3.2(c) of the Tender Document, the Qualified Bidder which submits the highest Final Offer in the second stage of the e-auction, shall be declared the Preferred Bidder. In the instant case, Respondent No. 5 was identified as the Preferred Bidder and thus, Respondent No. 2 in accordance with its obligation under Clause 3.3.2 (d) of the Tender Document, recommended to the Central Govt. to declare Respondent No.5 as the Successful Bidder for the concerned coal mine vide recommendation dated 03.03.2023.

64. With respect to the affidavit dated 02.03.2023 of Mr. Wasim Raja filed by the Petitioner No. 1 before this Court, Mr. Sharma vehemently denies that there was a freezing of the window, that too on account of any purported technical glitch in Respondent No. 3's e-auction portal. Mr. Sharma submits that it is no one but the Petitioner who should blame itself for any lapses which have occurred during the period when the e-auction



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was live and that Clause 3 of Annexure III of the Tender Document makes it clear that the Bidders in their own interest are advised to complete the entire process well in advance to avoid any last minute hiccup/ technical problem and that no complaints would be entertained by the Nominated Authority in this regard at any stage.

65. As far as the Affidavit of Mr. Vipin Sharma, i.e., Petitioner No. 2 herein is concerned, Mr. Sharma submits that the instances of auction/ technical glitches which have occurred in different coal mines referred to therein, the said instances are clearly distinguishable from the facts of this case. Dealing with the case of Parbatpur Central Coal mine, it is submitted that its auction had only attracted one bidder and therefore, the mine underwent a second attempt of auction, wherein too, only a single bidder was attracted. Thereafter the case was referred for decision to the Empower Committee of Secretaries (“ECOS”) and it was decided that the auction should be annulled and mine should be auctioned afresh. Thus, accordingly the mine was rolled over to the next tranche of auctions and the mine was successfully auctioned off in the 16th Tranche of Auction under the 2015 Act.

66. Mr. Sharma has drawn our attention to the fact that even in the case of Parbatpur Central Coal Mine there was a complaint of technical glitch and Respondent No. 3 had enquired into the complaint raised by one of the potential bidders and thereafter, the same was rejected. Thus, the stand and the information of the Petitioner with respect to the Parbatpur Central Coal Mine is erroneous to the extent that it states that a second attempt was provided to a bidder in light of a purported technical glitch.

67. As far as the case of Gare Palma IV/2 and IV/3 are concerned, Mr.



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Sharma clarifies that the said was not a case of a technical glitch but a case of an operational error. Mr. Sharma submits that therein 15 bids were received for the aforesaid coal mines and all the bidders were declared as Technically Qualified Bidders. As per the provisions of the Tender Document for the said coal mines, based on the Initial Offers received, the Qualified Bidders were ranked in a descending order and erroneously 5 lowest bidders were eliminated. The said error was pointed out by Respondent No. 3 herein and corrected, since as per the provisions of the Tender Document, only the lowest 3 bids were required to be eliminated.

68. With respect to the number of login attempts claimed by the Petitioners which it tried to make in order to submit its bid, Mr. Sharma denies the same. Placing reliance on the Affidavit filed by Respondent Nos. 3-4, he submits that the stance of the Petitioners don't reflect a holistic picture and is misleading. He has directed our attention towards a log sheet of Respondent Nos.3-4 which has been annexed with the Counter Affidavit filed by it, to buttress his stance.

69. With respect to the screenshot annexed by the Petitioner No. 1, through which it claims that there was a technical glitch on the portal of the Respondent, Mr. Sharma submits that the same in no manner depicts a technical glitch or issue with the system. It merely states that the bidder was at the stage of signing the bid with its DSC at 14:55:58 hrs. He also denies that the officer of MSTC received any call at 14:58 hrs.

70. It is submitted that the clear and categorical picture of the entire bid herein is that Respondent No. 5 gave a higher bid than that of the Petitioner No.1 herein and accordingly, it emerged as the Preferred Bidder. Just because the Petitioner participated till 14:42:34 hrs. doesn't mean that it



attempted to submit a bid higher than the one placed by Respondent No. 5.

Rejoinder on behalf of the Petitioners

71. With respect to the contentions on maintainability of the instant Writ Petition on account of efficacious alternative remedy and lack of jurisdiction, Mrs. Rasgotra submits that the instant Writ Petition is most certainly maintainable because it pertains to the violation of Fundamental Rights of the Petitioners and Respondent Nos. 1-4 herein also fall within the ambit of the definition of state. She submits that in no situation can Writ Jurisdiction of a Court ever be ousted and that the Tribunal under the 2015 Act can in no manner be construed to provide an equal and efficacious alternative remedy. She also submits that the Tender Document provides Respondent Nos. 3-4's address as being in Kolkata as well as New Delhi.

72. Mrs. Gauri Rasgotra Ld. Counsel, rejoining on behalf of the Petitioners has submitted that Respondent No. 5's contention that the stance of the Petitioners in resorting to the facet of public interest in the instant case is an afterthought, has submitted that such a submission is erroneous. She submits that the Petitioners have pleaded public interest right from the very first instance the Petitioners approached this Court. Further from the representation of the Petitioner dated 27.03.2023 annexed with the Writ Petition, it can clearly be seen that it had at an instance, even prior to approaching this Court pleaded for the Respondents to restart the bidding process from the point wherein the technical glitch arose in order to ensure that more monies are filled into the coffers of the public exchequer.

73. Mrs. Rasgotra submits that as far as the pleading of the Respondent No.5 that the loss theory being placed before this Court by the Petitioners is illusory, has submitted that the offer of the Petitioners placed by it before



the Court and even to Respondent No. 2, has been one which gives a revenue share of 7 % greater than the one on the basis of which the Respondent No. 5 has emerged the Highest Bidder. She submits that the Petitioners are willing to give a 20% revenue share in comparison to Respondent No. 5's 13 % of the revenue share which amounts to a total of Rs. 20,000 Crores worth of revenue more to the public exchequer thus, in no manner can it be construed that the loss theory is illusory.

74. As far as the contention of the Respondent No. 5 goes that the additional Rs. 20,000 Crores worth of extra revenue accruing to the public exchequer is illusory and subject to multiple possibilities and probabilities goes, Mrs. Rasgotra submits that the aforesaid contention would hold true to the bid submitted by Respondent No. 5 too. The total amount of monies accruing to the public exchequer at 13 % of revenue share as submitted by Respondent No. 5 is also throughout the entire period/ life of the mine. All calculations are based on the life of the mine and on the presumption that the Preferred Bidder shall be operating the mine through its life. Any calculation/ monies being given by Respondent No. 5 on the basis of revenue share agreed upon is too, subject to fundamental and cataclysmic changes throughout the life of the mine.

75. Mrs. Rasgotra rebutting the contentions of the Respondents, again reiterates the case of ***Jindal Power Ltd.***(*supra*) to contend that the government in the said case had taken the stand that it would fail in its duty if it blindly accepted the price declared through an auction even though the price did not reflect the fair value of the mine. Today, the Petitioners are arguing and making a ground of public interest, stating that if the bid of Respondent No. 5 herein is accepted and it is allocated the concerned mine,



the public exchequer would be at a huge loss, however, the Respondent Union of India is strangely arguing that there is no public interest in this case.

76. On the contention of the Respondents that there was simultaneous bidding ongoing with respect to Parbatpur and Datima mines on the MSTC Portal, thus the argument of the Petitioner that there was a technical glitch on the portal cannot be sustained, Mrs. Rasgotra submits that this contention of the Respondents in counter cannot be sustained because evidently, the e-auction in the case of Chhendipada coal mine was pre-maturely closed.

77. It is submitted by Mrs. Rasgotra that to show the bonafides of the Petitioners, pursuant to the hearing on 03.03.2023 the Petitioners had requisitioned Truth Labs, an independent forensic science laboratory for conducting a forensic analysis on the hard disk of the laptop which was used by the Petitioners for bidding of the coal mine. She submits that the expert report submitted by Truth Labs shows how desperately the Petitioners were attempting to submit its bid of 13.25% of the revenue share and that there were at least seven attempts to submit the said bid till the auction closed pre-maturely. She submits that the report records that there were no connectivity issues on the Petitioners' end.

78. Whilst concluding, Mrs. Rasgotra has pressed the fact that the Petitioner No. 1 herein was a bonafide bidder, taking us through the Annexures of the Writ Petition, attempting to establish that desperate attempts were made to contact relevant authorities at the time when the alleged technical glitch occurred. She submits that the Petitioner No. 1 was a bonafide bidder, that it is not some fly-by-night operator, took all relevant precautions, was diligent and that it is not as if this is the first time it is



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bidding for a coal mine. She submits that a bonafide bidder cannot be left remedy-less in the peculiar facts and circumstances of the instant case.

Analysis and Conclusion

79. The Apex Court in Manohar Lal Sharma v. Principal Secy., (2014) 9 SCC 516, held that the entire allocation of coal block as per the recommendations made by the then 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. Consequently by a judgment in Manohar Lal Sharma v. Principal Secy., (2014) 9 SCC 614, the Apex Court cancelled all the allocations. Subsequent to the cancellation of the allotments, Coal Mines (Special Provisions) Ordinance, 2014 was promulgated providing for allocation of the coal mines, allotment of which was cancelled by the Apex Court. The Ordinance was replaced by the Coal Mines (Special Provisions) Act, 2015 (*hereinafter referred to as 'the 2015 Act'*). Section 6 of the 2015 Act provides that the Central Government shall appoint an officer not below the rank of Joint Secretary to the Government of India as the Nominated Authority who shall engage any expert having such qualifications and experience for the conduct of auction in respect of coal mines mentioned in Schedule II of the Act. The said Section also provides that the Government shall act through the nominated authority for the purpose of conducting the auction process and allotment thereof with the assistance of experts.

80. Material on record indicates that Respondent No.2 herein was appointed as a Nominated Authority to conduct auction of the coal mines and it was given the task of executing agreements with the successful



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bidders in accordance with the rules framed under the 2015 Act.

81. The tender document stipulated that the auction of the coal mines including the Chhendipada (Revised) Coal Mine was to be conducted on an electronic platform developed by MSTC (Respondent No.3 herein). A total number of three bidders were found to be technically qualified and they were permitted to participate in the final offer stage of the e-auction which was to be conducted on 27.02.2023. The final offer stage of the e-auction for the Chhendipada (Revised) Coal Mine commenced on 27.02.2023 at 11:00 hrs. Even though three bidders had qualified for final offer stage, only the Petitioner herein and the Respondent No.5 participated in the bidding. It is the case of the Petitioner that Respondent No.5 placed the twenty-second bid for 13% of the revenue share at 14:48:09 hrs and even though the Petitioner was prepared to place the twenty-third bid at 13.25% of the revenue share, it could not place the same till 14:56:09 hrs. It is the case of the Petitioner that while placing the twenty-third bid for 13.25% of the revenue share at 14:53:00 hrs, it encountered a technical glitch and thereby it was prevented from proceeding further from participating in the e-auction process. It is the case of the Petitioner that but for the technical glitch, the Petitioner would have proceeded further and would have bid up to 20% of the revenue share and that this Court must direct the Respondents to proceed further with the auction process which will only end in maximizing the revenue for the Government.

82. A perusal of the material on record shows that at the time when the auction for Chhendipada (Revised) Coal Mine was going on, two more auctions – one for Parbatpur Central Mine (40729) and the other for Datima Mine (40733), were being conducted on the very same e-auction portal.



Material on record indicates that between 14:48:09 hrs to 14:56:09 hrs, i.e. the time period in which the Petitioner faced technical glitches on the e-auction portal, bidders were able to place their bids for the other two mines. Bids were received at 14:51:57 for Parbatpur Central Mine and for Datima Mine bids were received at 14:48:13, 14:49:14, 14:54:10 & 14:56:10. Since the bidders for two other auctions for coal mines were about to place the bids, which were being conducted at the very same time on the very same portal, it cannot be said that there was a technical glitch in the portal of Respondent No.3. The Petitioner has not been able to make out a case that there was a technical glitch across the board on the portal on which e-auctions were being conducted.

83. This Court is of the opinion that in view of the fact that there was no glitch on the portal of the MSTC, on which the e-auctions were being conducted, it would be improper to set aside the result of the present e-auction only on the ground that the Petitioner was prepared to give a higher bid.

84. A similar issue arose before the High Court of Orissa in **Writ Petition (Civil) No.26548 of 2021**, titled as M/s. Mythri Infrastructure and Mining India Pvt. Ltd. and another v. State of Odisha and others, and the Division Bench of the High Court of Orissa by its judgment dated 10.12.2021 repealed a contention which was similar to the one raised by the Petitioner herein by observing as under:

“24. While the Petitioners might contend that their inability to upload the IPO was for reasons entirely outside their control, the fact remains that there was no technical glitch on the side of Opposite Party No.3. The log enclosed with its counter affidavit makes it abundantly clear that none of the other bidders



encountered any difficulty in uploading the technical bid as well as the IPOs. While the log does show that the Petitioners" three attempts at uploading the IPO prior to 3 PM on 24th August, 2021 were unsuccessful, this is not conclusive proof of the technical glitches at the end of the Petitioners being for reasons entirely outside their control. Even assuming in this regard in favour of the Petitioners, the fact remains that they need not have waited till the last minute to upload the IPO. The tender documents made it clear that Opposite Party No.3 would not be responsible for any problem at the bidder"s end. In fact, this is the reason why MSTC Limited had offered help to bidders.....

25. In similar circumstances, in Shapoorji Pallonji (supra), the Supreme Court disapproved of the High Court having interfered and allowed the Respondent therein to participate in the tender process. In that case, the deadline for submission of online bids was 13:00 hours. Respondent No.1 had submitted its proposal at 12:16 hours. It was claimed that it pressed the „freeze button“ but could not get any acknowledgement. Its bid was therefore rejected. The system had generated an acknowledgement for other bidders and therefore it was held that there was no glitch in the system as far as the host of web portal i.e. the National Informatics Centre (NIC) was concerned. The Supreme Court came to the following conclusions:

“9. If NIC, which had developed the e-portal in which bids were to be submitted and maintenance and upkeep of which was its responsibility, had stated in its affidavit what has been indicated above, we do not see how the repeated statements made on behalf of the first respondent that the bid documents can still be retrieved, if required by travelling beyond the Government of India



Guidelines, should commend to us for acceptance. The opinion rendered in this regard by the consultant of the first respondent Mr. Arun Omkarlal Gupta on which much stress and reliance has been placed by the first respondent could hardly be determinative of the question in a situation where NIC which had developed the portal had stated before the Court on affidavit that retrieval of the documents even jointly with Maharashtra Housing Development Authority is not feasible or possible. That apart, lack of any timely response of the first respondent when the system had failed to generate an acknowledgement of the bid documents in a situation where the first respondent claims to have pressed the “freeze button”; the generation of acknowledgements in respect of other bidders and the absence of any glitch in the technology would strongly indicate that the bid submitted by the first respondent was not a valid bid and the directions issued by the High Court in favour of the first respondent virtually confer on the said respondent a second opportunity, which cannot be countenanced.

10. In the above view of the matter, we are inclined to take the view that the High Court was not correct in issuing the directions extracted above as contained in paragraph 29 of the impugned judgment/order dated 28-9-2017. The same are, therefore, interfered with. The appeal is allowed accordingly.”

26. The present case is more or less similar on facts. The Court is therefore inclined not to accept the plea of Petitioner No.1 that it should be allowed to participate in the second round of bidding by requiring the Opposite Parties to accept its IPO, which would be submitted physically.”



(emphasis supplied)

85. A Petition for Special Leave to Appeal, being Appeal (C) No(s). 20851/2021, was filed against the Order of the Division Bench of the Orissa High Court. The said Appeal was rejected by the Apex Court *vide* Order dated 19.01.2023 by observing as under:

“It is pointed out to us that about 122 bids were received and uploaded in the server in question on 24.07.2021 upto 3:00 p.m. On the basis of preponderance of probability, the High Court has rightly arrived at the conclusion that the technical glitch was at the end of the petitioners.

During the course of hearing, the learned Senior Advocate appearing on behalf of the petitioners has stated that the tender qua the 11th block has been cancelled/annulled. This is disputed by the learned Senior Advocate appearing on behalf of the State of Odisha. We make no comments in this regard.

Recording the aforesaid, we do not find any good ground and reason to interfere with the impugned judgment and hence the special leave petition is dismissed.

Application for impleadment stand disposed of. Pending application(s), if any, shall stand disposed of.”

(emphasis supplied)

86. In the absence of any material to show that there was a glitch on the portal, the mere inability of the Petitioner to upload its bid on the portal cannot be a reason to set aside the auction process. There is no allegation that there was any kind of collusion between Respondent No.1, 2 & 3 and Respondent No.5. The Petitioner has admitted to have placed its bid just



three minutes before the closure of the bid and it was unable to complete the process. Therefore, the Petitioner now cannot turn around and seek setting aside of the whole auction process because of its inability to upload its bid within the prescribed time limit. This Court is not going into the correctness of otherwise of the affidavit of Mr. Wasim Raja or the Report of the Truth Labs Forensic Services.

87. As stated by the learned ASG that the question as to whether there was a technical glitch at the end of the Petitioner or not are matters of fact which can be proved only by leading evidence and it is well settled that the writ courts must refrain from going into the excruciating details of the facts. It is not the case of the Petitioner that the auctioning authority is a novice in the field. As pointed out earlier, two more auctions were being conducted at the very same time and bids in respect of those auctions were being received during the relevant period of time. Interference by a writ court in setting aside a concluded auction will seriously affect a process which is neutral.

88. The sheet anchor of the argument of Mr. Dave is that there is apparent loss to the public exchequer to the tune of Rs.20,000 crores. Mr. Dave has relied on the judgment of the Apex Court in Ram & Shyam Co. v. State of Haryana, (1985) 3 SCC 267 & Ajar Enterprises (P) Ltd. v. Satyanarayan Somani, (2018) 12 SCC 756, to canvass his contention that disposing off a State property partakes the character of a trust and it must be done at the best price so that larger revenue can come into the coffers of the State administration to serve the public interest that is the Welfare State may be able to expand its beneficent activities by the availability of larger funds. It is contended by Mr. Dave that Respondent No.5 has placed its bid for 13% of the revenue share whereas the Petitioner was prepared to take it up to



20% of the revenue share. He states that the total loss to the Government over the life of the mine at 7% of the revenue share loss comes to a whopping Rs.19,243.84/- crores. The argument of Mr. Dave is extremely attractive and made this Court to sit back and analyse his submissions to consider as to whether even if the auction had been properly conducted should the Court permit re-auction or not.

89. It is well settled that State is the legal owner of the natural resources as a trustee of the people. A State is empowered to distribute the natural resources but the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good and to achieve this, the State should ensure that a non-discriminatory method is adopted for distribution and alienation of the natural resources. A five Judges Bench of the Apex Court in Natural Resources Allocation, In re, Special Reference No. 1 of 2012, **(2012) 10 SCC 1**, has observed as under:

"107. From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowell case [(1996) 3 SCC 709] has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India."



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90. The Petitioner has not chosen to challenge the method of auction for the lease of the coal mines. The argument of Mr. Dave and Ms. Rasgotra is that the process of auction must be re-started in the present case because the Petitioner was not able to proceed with the auction due to a technical glitch, which the Court presumes was only at the end of the Petitioner (if at all it existed) as the material on record establishes that in other auctions, which were being simultaneously conducted on the portal at the same time, bids were being received from other participants in the portal.

91. This Court inquired from Ms. Gauri Rasgotra, learned Counsel for the Petitioner, as to whether the Petitioner would be in a position to deposit Rs.20,000/- crores to prove its *bona fide*. This offer was refused by Ms. Rasgotra stating that the amount of Rs.20,000/- crores would be recovered only after exploiting the mine for its full period.

92. The projection of Rs.20,000/- crores given to this Court would be earned in over 55.5 years *qua* the mine in question. This Court has to presume that the Petitioner could be able to get all the statutory clearances for which first five years are granted and in the balance fifty years, this Court has to assume that the mining operation will be carried out smoothly and to its full capacity. However, at the same time this Court cannot shut its eyes to the various possibilities which might crop up like the Petitioner going into liquidation, the change in law and policy in the country, etc. This Court cannot also shut its eyes on the fact that there have been instances where entities who have taken the mine at a higher rate have abandoned them. In its note the Petitioner has itself admitted that the mine in question is a partially explored coal block and the extractable reserves are not known.



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The Petitioner has also admitted in the note that peak rated capacity has not been declared by the Ministry of Coal in the tender documents and that it is only an assumption that 20 MTPA of coal can be achieved considering the geometry of the deposit and other geo-mining parameters. It is further stated in the note that the figures indicated in the note would be applicable only once the production starts at full capacity. Therefore, the figure of Rs.20,000 crores is based on several assumptions and the Courts cannot interfere with the auction process only on the basis of assumptions. The cases relied upon by the Petitioner are not based on speculations. The whole argument of the Petitioner herein is based on probabilities and speculations and, therefore, the cases relied upon by the Petitioner are not applicable to the facts of this case.

93. Material on record also reveals that many partially explored mines, which were put to auction under the advertisement dated 02.11.2022, were auctioned and the range of winning bids was from 5.5% of the revenue share to 15% of the revenue share. This shows that the bid of 13% of the revenue share placed by Respondent No.5 herein is not so low which would require interference by this Court. In fact, as stated by Dr. Singhvi, the Petitioner himself has bid for two fully explored mines, i.e. Gare Palma Sector-I (East) at 9% of the revenue share and the other being Utkal B1 & B2 at 15.5% of the revenue share, which shows that the bid of Respondent No.5 at 13% of the revenue share in the present case is not too low and the Government has not erred in accepting the bid of Respondent No.5 and, therefore, interference by this Court under Article 226 of the Constitution of India is not required. This Court, in any way, is not impressed by the Petitioner that it was ready to bid for 20% of the revenue share and that the Government



will incur loss of about Rs.20,000/- crores as the said figure is based on probabilities.

94. The Petitioner does not have any right to claim that the auction must be continued or conducted again because there was a glitch at his end. The Union of India has come to a conclusion that the auction has been conducted correctly and the bid of Respondent No.5, which was the highest, ought to be accepted. The question before this Court is whether this Court, in the facts and circumstances of the case must exercise its jurisdiction under Article 226 of the Constitution of India and set aside the auction which has otherwise been conducted in a fair and transparent manner. The scope of interference by a High Court under Article 226 of the Constitution of India in administrative decisions taken by the authorities in contractual matters is well established. In Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd., (2005) 6 SCC 138, the Apex Court has observed as under:

"11. The principles which have to be applied in judicial review of administrative decisions, especially those relating to acceptance of tender and award of contract, have been considered in great detail by a three-Judge Bench in Tata Cellular v. Union of India [(1994) 6 SCC 651 : AIR 1996 SC 11] . It was observed that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14



of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down. (See para 85 of the Report, SCC para 70.)

12. After an exhaustive consideration of a large number of decisions and standard books on administrative law, the Court enunciated the principle that the modern trend points to judicial restraint in administrative action. The court does not sit as a court of appeal but merely reviews the manner in which the decision was made. 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. The Government must have freedom of contract. In other words, 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 principles of reasonableness but also must be free from arbitrariness not affected by bias or actuated by mala fides. It was also pointed out that quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. (See para 113 of the Report, SCC para 94.)

13. In Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445 : AIR 1996 SC 51] it was held as under: (SCC p. 458, paras 18-19)



“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the ‘decision-making process’. ... By way of judicial review the court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time ... the courts can certainly examine whether ‘decision-making process’ was reasonable, rational, not arbitrary and violative of Article 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available taking into account the interest of the State and the public, then court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.”

14. In Raunaq International Ltd. v. I.V.R. Construction Ltd. [(1999) 1 SCC 492] it was observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations, which would include, inter alia, the price at which the party is willing to work, whether the goods or services offered are of the requisite specifications and whether the person tendering is of the ability to deliver the goods or services as per specifications.

15. The law relating to award of contract by the State and public sector corporations was reviewed in Air



India Ltd. v. Cochin International Airport Ltd. [(2000) 2 SCC 617] and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere."

95. The Apex Court in a number of judgments has crystallized the test to be taken into account by the Courts before interfering in tender matters and the same reads as under:-

"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”;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

[Refer: Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517; Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216; Ranaq International Ltd. v. I.V.R. Construction Ltd. & Ors., (1999) 1 SCC 492 etc.]

96. In view of the above, it is well settled that the scope of interference by the High Court while exercising its jurisdiction under Article 226 of the Constitution of India is extremely narrow. This Court ought not to interfere unless it is established that the process adopted by the decision-making authority is *mala fide*, intended to favor someone, arbitrary or irrational. In case the decision-making process is just, fair and reasonable, the writ courts must loathe to interfere with the award of contracts by the State/Instrumentalities of the State. The decision taken by the Respondents cannot be said to be vitiated by any of the aforesaid criteria.

97. The projection of the Petitioner is based on several factors which are not certain and even if it is assumed that the Petitioner will mine at full capacity for fifty years then also this Court cannot shut its eyes on the other possibilities which might crop up like the Petitioner going into liquidation,



the change in law and policy in the country, etc. and, therefore, the figures projected by the Petitioner seems illusive.

98. In view of the above, since the Petitioner has not been able to point out any lapse on the part of the auctioning authority and in view of the fact that the figures given by the Petitioner are based on assumptions, this Court is not inclined to interfere with the decision of Respondent No.2 in declaring Respondent No.5 as the highest bidder. Interference by this Court on the ground that there was a technical glitch at the end of the bidder or that the bidder was not able to place its bid for reasons beyond its control even when the auction has been conducted in a fair and transparent manner will result in eroding the credibility of Government auctions which will be against public interest.

99. Accordingly, the Writ Petition is dismissed. Pending applications, if any also stands dismissed.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 25, 2023

D/R