



2025:DHC:2677



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment pronounced on: 17.04.2025*+ **W.P.(C) 16366/2024 and CM APPLs.7879/2025, 7882/2025****HINDALCO INDUSTRIES LIMITED**

..... Petitioner

Through: Mr. P. Chidambaram, Sr. Advocate,
Mr. Ashish Prasad, Ms. Mukta Dutta
and Mr. Atri Roy Chowdhury, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rakesh Kumar, CGSC and
Mr. Sunil, Advocate for UOI.
Mr. Chetan Sharma, ASG, Mr. Ishaan
George, Mr. Amit Gupta, Dr. Rukma
George, Mr. Archit Jain, Mr. Ashnab
Khan and Mr. Vikramaditya Singh,
Advs. for R-2 to 5.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner, being aggrieved by the actions of the respondent nos. 2 to 5, in respect of the petitioner's Captive Power Plant at Mahan Aluminium, Bargawan, Madhya Pradesh ("Mahan CPP"), that provides continuous power supply to its aluminium smelter. Specifically, the petitioner is aggrieved by the purported reduction in the Annual Contracted Quantity ('ACQ') of coal agreed to be supplied by respondent nos. 2 to 4 under duly executed and implemented Fuel Supply Agreements (FSA) dated 08.02.2022 and 23.03.2022 between the petitioner and the respondent nos.3 and 4.

2. The controversy arises out of the fact that the respondent no.2 has



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determined that only 750 MW *i.e.*, 5 X 150 MW out of the total production capacity of 900 MW *i.e.*, 6 X 150 MW of the Mahan CPP is to be considered for arriving at the Normative Coal Requirement of the Mahan CPP. This is on the premise that 150 MW out of the total installed capacity remains on standby.

3. It is the contention of the petitioner that the determination of the Normative Coal Requirement of the petitioner's Mahan CPP is against the Scheme Document for Auction of Coal Linkages issued by the respondent no.2.

4. The petitioner while relying on Clause 3.3.1 of the Scheme Document submits that the said clause lays down the precise methodology for calculation of the Normative Coal Requirement for each Specified End Use Plant. The said formula is reproduced are under –

“3.3.1 The Normative Coal Requirement for each Specified End Use Plant shall be calculated as follows:

Normative Coal Requirement (MTPA) = Normative Energy Requirement (kcal per annum)] divided by [(109) multiplied by (the average gross calorific value of a particular grade of coal as specified in Annexure VII)]

Where

Normative Energy

Requirement (kcal per annum) =

[Annual energy requirement of the Specified End Use Plant (calculated in kcal on the basis the norms set out in Annexure VII)] minus [(annual energy requirement of the Specified End Use Plant met through any other existing coal linkage(s)(in kcal)) plus (annual energy*



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requirement of the Specified End Use Plant met through any captive coal mine(s) (in kcal) as per Clause 3.3.2) plus (annual energy requirement of the Specified End Use Plant met through any allocation of coal linkage(s) pursuant to auction process of any lot conducted by CIL and/ or by SCCL (in kcal))]

**Coal requirement of the Specified End Use Plant (in kcal) met through any other existing coal linkage(s) under New Coal Distribution Policy, shall be calculated on the basis of the annual contracted quantity under the existing linkage(s) wherein such annual contracted quantity shall be deemed to be of G10 grade of coal, irrespective of actual contracted grade.”*

5. It is further submitted that Annexure VII of the Scheme Document explicitly provides that Normative Coal Requirement is to be calculated considering 85% utilization of production capacity (thereby taking account of the fact that 15% capacity would remain out of operation for the purpose of maintenance and overhauling). The contention of the petitioner is that normative requirement cannot be reckoned by assuming capacity utilisation to be 85% of 750 MW, as done by the respondents. It is submitted that the same is wholly contrary to the Scheme and results in a double deduction, once by excluding a unit altogether, and then again by applying 85% utilisation to the reduced capacity, thereby reducing the Normative Coal



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Requirement to 3.4 MTPA.

6. It is further submitted that the documents submitted by the petitioner as per the Scheme Document prior to execution of FSA, including Consent to Operate Certificate, establish that the production capacity of the Mahan CPP is 900 MW. The FSAs with the respondent nos. 3 to 5 have also been implemented by the parties on that basis till September, 2024.

7. However, pursuant to the impugned actions, the respondents have reduced the coal entitlement of the petitioner by calculating the Normative Coal Requirement on the basis of a presumed 750 MW capacity (instead of 900 MW) and then applying 85% utilization on such reduced figure.

8. *Vide* order dated 18.12.2024, while considering the petitioner's application seeking interim relief, this Court directed as under :-

CM APPL. 69033/2024 (on behalf of the Petitioner seeking interim reliefs)

1. Hindalco Industries Limited, the Petitioner is engaged, inter alia, in the business of production and sale of aluminium in India and abroad, for which it operates large scale aluminium smelters. Since aluminium production is a continuous process and requires a continuous supply of power, the Petitioner has established Captive Thermal Power Plants for supplying power to its aluminium smelters. The instant writ petition concerns one such CPP of the Petitioner having installed capacity of 900 MW, located at Mahan Aluminium at Bargawan, Madhya Pradesh.

2. It is the Petitioner's case that they require around 4.05 MT of G10 grade of coal per annum to operate the Mahan CPP at 85% capacity utilization, aggregating to 750 MW continuously throughout the year. For this purpose, the Petitioner is required to made adequate arrangements for securing the necessary coal for which it participates in auctions for coal linkages, which are conducted by the Respondent No. 2 – Coal India Limited, from time to time. Thereafter, as per their requirements, the Petitioner enters into long-term Fuel Supply Agreements³ with Respondent No. 2 or its subsidiaries, i.e. Respondents 3, 4 or 5.

3. In this regard, the Petitioner asserts that they have participated in Tranche I, Tranche II, Tranche V, Tranche VI and Tranche VII auctions



for coal linkage conducted by the Respondent No. 2, on the basis of the fact that the production capacity of Mahan CPP is 900 MW.

4. In the instant writ petition, the grievance of the Petitioner is with respect to communications issued by Respondents No. 3 to 5, appended to the writ petition as Annexures P-1 to P-11, whereby they have reduced the Petitioner's entitlement to receive coal, based on its Normative Coal Requirement – from 4.05 MT per annum to 3.4 MT per annum. This action was allegedly taken because the Respondents contend that the production capacity of the Mahan CPP was purportedly reduced from 900 MW to 750 MW.

5. Amongst several grounds urged by the Petitioner in the writ petition, the Petitioner also contends that there is a violation of the Principles of Natural Justice inasmuch as there has been no prior show cause notice issued to the Petitioner and the impugned decisions have been taken without affording any opportunity to the Petitioner to present their case.

6. In the above background, while the Respondents have filed their reply to the application of the Petitioner for seeking interim reliefs, however, during the course of submissions advanced by Senior Counsel from both the sides, Mr. Chetan Sharma, ASG for Respondents No. 2 to 5, has suggested that, without prejudice to their rights and contentions, the present matter could be attempted to be resolved amicably between the parties. To such suggestion, Mr. P. Chidambaram, Senior Counsel for the Petitioner, is also agreeable. In fact, Mr. Chidambaram submits that the contentions raised by the Respondents in their reply to the application, are required to be responded to. Accordingly, he states that the Petitioner shall furnish an appropriate representation to the Respondents, explaining their stance on the grounds and contentions raised by the Respondents in their reply to the interim application.

7. Considering the above, without prejudice to the rights and contentions of both the parties, the following directions are issued, till the next date of hearing:

(i) The Petitioner shall submit the aforementioned representation within a period of two weeks from today. The said representation shall be considered by the Respondents after affording an opportunity of personal hearing to the Petitioner and a decision thereon shall be taken within a period of two weeks from the receipt of the representation.

(ii) The impugned communications appended as Annexures P-1 to P-11, shall be kept in abeyance.

(iii) It is clarified that during this interregnum period, the Petitioner



shall be supplied with coal as per the relevant FSAs.

8. Needless to state that the objections raised by the Respondents regarding the maintainability of the present writ petition as well as other grounds urged by them, have not been examined by the Court.

9. Re-notify on 23rd January, 2025.

10. The next date of hearing, i.e., 15th January, 2025 stands cancelled.”

9. Pursuant thereto, a representation was submitted by the petitioner in terms of the aforesaid directions. The same came to be considered by a Committee comprising of representatives of the respondents (Coal Companies), which was constituted for examination of the said representation of the petitioner.

10. A perusal of the order dated 21.01.2025 that came to be passed by the Committee reveals that one of the central points that was framed for consideration by the Committee, and as set out in the said order itself, is as under:-

“Point 2: *Whether as per the Scheme Document for Auction of Coal linkages for CPP sub sector: the Normative Coal Requirement of Hindalco s Mahan CPP is to be considered as:*

85% of its total installed capacity of 900 MW (6 units X 150 MW)

or

85% of 750 MW i.e. the remaining capacity after excluding the stand capacity of 1 X 150 MW”

11. In the context of the aforesaid “Point 2” as framed by the Committee, it was observed as under :-

“Observations: *It is noticed that the query is regarding calculation of Normative Coal Requirement for Mahan CPP as per the provisions of the governing Scheme Document of CPP subsector, NRS Linkage Auction of CIL. In order to examine petitioner’s contention and for the purpose of clarity, the relevant clause of the Scheme Document, specifically Clause 3.3, is reproduced below:*



Quote

3.3 Normative Coal Requirement

3.3.1 The Normative Coal Requirement for each Specified End Use Plant shall be calculated as follows:

Normative Coal Requirement (MTPA) = Normative Energy Requirement (kcal per annum) ÷ [10⁹ x (average gross calorific value of a particular grade of coal as specified in Annexure VII)]

Where:

Normative Energy Requirement (kcal per annum) = [Annual energy requirement of the Specified End Use Plant (calculated in kcal on the basis of the norms set out in Annexure VII)] minus [annual energy requirement of the Specified End Use Plant met through any other existing coal linkage(s) (in kcal)] plus [annual energy requirement of the Specified End Use Plant met through any captive coal mine(s) (in kcal) as per Clause 3.3.2] plus [annual energy requirement of the Specified End Use Plant met through any allocation of coal linkage(s) pursuant to auction process of any lot conducted by CIL and/or SCCL (in kcal)].

Unquote

It is noticeable from Clause 3.3 of the Scheme document for CPP subsector that Normative Coal Requirement is to be determined based on the Normative Energy Requirement, which is derived from the annual energy requirement of the Specified End Use Plant. The assessment must take into account all coal linkages, captive coal sources, and coal allocations as may be applicable under the auction process.

In view of the above, it is pertinent to clarify the distinction between installed capacity and Annual Energy Requirement. The installed capacity of Mahan CPP is stated as 900 MW. However, the Annual Energy Requirement, which is the basis for the calculation of the Normative Coal Requirement, is 750 MW, as one unit of 150 MW is to be considered as stand by at all times at Mahan CPP(as mentioned in CTO dated 23.02.2017 submitted by the bidder). The Annual Energy Requirement refers to the actual energy demand of the specified EUP, and it is this figure of 750 MW that must be used for the calculation of the Normative Coal Requirement. Therefore, the Annual Energy Requirement of Mahan CPP is 750 MW and not 900 MW, as the latter represents the installed capacity including a standby unit, rather than the actual operational demand of the plant.



In the representation, 750 MW has been interpreted as 85% of the 900 MW installed capacity. However, even this interpretation is neither rational nor mathematically correct as 85% of 900 MW equals to 765 MW and not 750 MW. It is clear that 750 MW figure does not derive from any percentage of the 900 MW installed capacity and there is no connection between 85% of 900 MW figure and the correct Annual Energy Requirement of EUP, which is 750 MW.

There is no dispute that End Use Plant has 6 units of 150 MW capacity out of which 1 unit is at stand by always. This means that at any point of time only 5 units are to be kept operational and 1 unit is kept as stand by. Accordingly, as per the scheme document, coal requirement is to be derived for the operational 5 units only & not for stand by unit be it 1 or more.

As a result, for the purpose of calculating Normative Coal Requirement of Mahan CPP, the Annual Energy Requirement was to be taken as 750 MW, in accordance with provisions of the Scheme Document of CPP subsector, NRS Linkage Auction of CIL.”

12. It is noticed that the Committee has come to the conclusion that the annual energy requirement of the petitioner is 750 MW and not 900 MW, as the latter represents the installed capacity including a standby unit, rather than the actual operational demand of the plant.

13. As noticed by the Committee itself, the normative energy requirement is to be worked out as per Clause 3.3 of the Scheme Document. The same itself refers to Annexure VII thereof. The said Annexure VII refers to a formula in terms of which the normative coal requirement (and consequently the normative energy requirement) is worked out by considering normative capacity to be 85% of the total installed capacity. The relevant portion of the said Annexure VII reads as under :-

“.....
Annual Coal Consumption at 85% PLF (Tonnes Per MW Per Annum)= $\frac{\text{Unit Heat Rate} * 24 * 365 * 85\%}{GCV}$

It is clarified that where a Bidder has specified one or more captive



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power plant units (in a single location within the same boundary) as the Specified End Use Plant, the Normative Coal Requirement shall be assessed on the basis of configuration of each such individual captive power plant based on the abovementioned consumption norms. The Normative Coal Requirement shall be calculated based on an assumption of 85% (eighty five per cent.) capacity utilization on an annual basis. Any existing linkage quantity (deemed to be G10 grade of coal) shall be reduced from the Normative Coal Requirement arrived based on the above. Further, the peak rated capacity of any coal mine allocated under Coal Mines (Special Provisions) Act, 2015 and/or Mines and Minerals (Development and Regulation) Act, 1957 as amended (pro-rated for the Specified End Use Plant in the event of a combination of end use plants to which the mine was allocated), adjusted for grade, shall be reduced from the Normative Coal Requirement arrived based on the above.”

14. The above extracted portion of the order dated 21.01.2025 appears to suggest that the annual energy requirement of Mahan CPP has been worked out as 750 MW after accounting for / factoring in 85% capacity utilization as contemplated in Clause 3.3 of the Scheme Document read with Annexure VII thereof.

15. It is contended by the learned senior counsel for the petitioner that the impugned order dated 21.01.2025 fails to address / take note of the requirements of paragraph 3.3 of the Scheme Document, read with Annexure VII thereof, for the purpose of calculating the normative energy requirement of the petitioner's specified End Use Plant.

16. There is, *prima facie*, merit in the contention of the petitioner that the scope and import of Clause 3.3 of the Scheme Document read with Annexure VII thereof has not been fully taken note of by the concerned Committee while passing the order dated 21.01.2025.

17. The Committee was first required to consider as to what is the installed capacity of Mahan CPP (whether it should be reckoned as 900 MW or 750 MW) and then work out the Normative Energy Requirement by



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taking into account normative capacity utilization @85%, as contemplated in Annexure VII. Only on this basis, can “normative energy requirement” be worked out.

18. Necessarily, the Committee was required to address the question whether normative capacity utilization is to be reckoned as 85% of total installed capacity of 900 MW or whether the same is to be reckoned on the basis of 85% of 750 MW (the capacity after excluding the standby plant of 150MW). This issue has not been specifically addressed in the order dated 21.01.2025. Instead, as noticed, the same reaches the conclusion that the ‘annual energy requirement’ for the Mahan CPP is 750 MW. The manner of application of Clause 3.3, read with Annexure VII of the Scheme Document, has not been explicitly set out. The conclusion that the ‘annual energy requirement’ is 750 MW, is also contrary to the stand of the respondents in these proceedings.

19. During the course of hearing, learned senior counsel for the petitioner draws attention to Clause 5.1.2.1 of the Fuel Supply Agreement which provides as under :-

“5.1.2 Deleted

*5.1.2.1. The Seller / CIL (acting on behalf of the Seller as its duly authorized representative) reserves the right to get the Coal Requirement of the Purchaser verified by the Central Institute of Mining & Fuel Research or any other agency that may be nominated by CIL (“**Final Verification Agency**”), within 180 (one hundred eighty) days of execution of the Agreement.*

In case the Purchaser, along with this Agreement, has also entered into other fuel supply agreement(s) with other subsidiary(ies) of CIL (apart from the Seller) for the supply of Coal pursuant to the Scheme Document, then the period of 180 (one hundred eighty) days mentioned above shall commence from the date of execution of this Agreement or such other fuel supply agreement(s), whichever is earlier.



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20. In the circumstances, after some hearing, respective counsel for the parties are in agreement that in terms of the aforesaid stipulation, the matter be referred to the Central Institute of Mining and Fuel Research ('CIMFR') for the purpose of assessing the coal requirement of the petitioner, taking into account the Scheme Document. It is directed accordingly.

21. Let the matter be placed before the CIMFR expeditiously. The CIMFR will take a view in the matter, and pass a reasoned order, taking into account the circumstances set out in the present petition, as also the stand of the respondents with regard thereto.

22. The aforesaid exercise shall be conducted by the CIMFR without being influenced by the aforesaid order dated 21.01.2025.

23. In view of the aforesaid directions, this Court does not consider it apposite to keep the present petition pending; the same is, accordingly, disposed of. The subsisting interim order/s in the present petition shall continue to operate pending consideration of the matter by the CIMFR.

24. Needless to say, however, in case the petitioner is aggrieved by the outcome of the aforesaid exercise, it shall be at liberty to avail appropriate remedies under law.

SACHIN DATTA, J

APRIL 17, 2025/r, sv