HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P. No.846/2015

B L A Power Pvt. Ltd. .....Petitioner

Versus

Union of India and others ....Respondents

W.P.No.850/2015

B L A Power Pvt. Ltd. .....Petitioner

Versus

Union of India and others ....Respondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice K.K.Trivedi

Whether approved for reporting : Yes.

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Shri Sanjay Sen, Senior Advocate and Shri Brian D'silva, Senior Advocate with Shri Jaideep Sirpurkar, Advocate for the petitioners.

Shri Sanjay Jain, Assistant Solicitor General with Shri Akshay Makhija, Shri Vikram Singh, Advocate for the respondents-Union of India.

Shri A.A.Barnad, Government Advocate for the respondent No.3/State.

Shri T.S.Ruprah, Senior Advocate with Shri Saurabh Sunder, Advocate for the respondent No.8/Prism Cement Ltd.

Shri Naman Nagrath, Senior Advocate with Shri Greeshm Jain, Advocate for the intervener.

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Reserved On : 22.07.2015

Date of Decision : 06.10.2015

<u>J U D G M E N T</u>

{ 06th October, 2015}

<u>Per: A.M. Khanwilkar, Chief Justice</u>:

This common judgment will dispose of the two writ petitions filed by the same petitioner in respect of overlapping cause of action and reliefs. Both these petitions were filed on 16.01.2015, essentially, to question the provisions of the Coal Mines (Special Provisions) Ordinance, 2014 (5 of 2014), the Coal Mines (Special Provisions) Second Ordinance, 2014 (7 of 2014), the Coal Mines (Special Provisions) Rules, 2014 and the action taken thereunder by the appropriate Authority.

2. In the first writ petition (W.P.No.846/2015) declaration is sought that the orders dated 18.12.2014 and 24.12.2014 issued by the respondents are *ultra vires* Section 7 of the Ordinance (now the Coal Mines (Special Provisions) Act, 2015) and the Constitution of India. Alternative relief has been prayed that the respondents be directed to modify the orders

dated 18.12.2014 and 24.12.2014 so as to make the power generating stations such as the petitioner, eligible to participate in the auction process. Further direction is sought against the respondents to make available the subject Coal Mines for generating stations engaged in generation of power, for the auction process in question. In addition, it is prayed that the respondents be directed to modify Clause 2.3.1 of the tender document for Gitotoria (East) and Gitotoria (West) Coal Mines (hereinafter referred to as the "subject Coal Mines") and make the said Coal Mines available for the Power Sector or at least, the petitioner during the subject auction process. Alternative relief to this relief has been claimed to strike down Section 7 of the Coal Mines (Special Provisions) second Ordinance 2014 now the Coal Mines (Special Provisions) Act, 2015 (hereinafter referred as "Act"), as unconstitutional. As the Ordinance has now become the Act during the pendency of the writ petitions; and in the light of the pleadings exchanged, the petitioner has amended the petitions and has urged additional grounds and sought further reliefs. By way of amendment, the petitioner has sought direction against the respondents to produce the relevant

records pertaining to constitution and business of Technical Committee and to set aside the classification of the subject Coal Mines exclusive for non-regulated sector. Further relief has been claimed to declare that the reverse bidding protocol specified for auction of Coal Mines classified for regulated sector and to reserve only the Mines with reference to more than 100 MT for Power Sector as illegal, as it suffers from the vice of non-application of mind.

3. Although, the petitioner could have asked for the reliefs, as claimed in the second writ petition (W.P.No.850/2015), in the first writ petition itself, but was advised to file a separate writ petition on the same day praying for striking down clause 4.1.2(a)(i) of the tender document dated 27.12.2014 issued by the respondent No.2 and to further direct the respondents to permit the petitioner to participate in the auction process. In the alternative, it has been prayed that Section 4(4) of the Ordinance (now the said Act), be declared as unconstitutional and void.

4. Briefly stated, the petitioner is incorporated as a Private Company under the provisions of the Companies Act, 1956 having its registered office in Madhya Pradesh. It has set up a Thermal Power Plant at village Nigar, Gadarwara, District Narsinghpur in the State of Madhya Pradesh. It is engaged in the business of power generation and claims to be the first independent power producer in the State of Madhya Pradesh. It is stated that the said project was set up by the petitioner under the Private Partnership module, where at least 35% of the power generated, was required to be sold in the State of Madhya Pradesh, as per the policy of the Government of Madhya Pradesh - to facilitate private investments in the power generation projects and development projects in the State of Madhya Pradesh. It is the case of the petitioner that it has set up a Thermal Power Plant with a generating capacity of 135 MW i.e. 45 x 3 MW. The first Unit of the Power Plant was commissioned in the month of April, 2012 and the second unit was scheduled to be made operational by March, 2015. The petitioner claims to have obtained clearance for setting up of the third Unit and the construction work in that behalf was about to

be started. The petitioner has entered into a Memorandum of Understanding dated 10.8.2007, with the State of Madhya Pradesh, whereby the State has agreed to provide all possible assistance to the petitioner for successful implementation of the petitioner's power project. Subsequently, an implementation agreement dated 01.02.2000 was entered into between the petitioner and the State of Madhya Pradesh.

5. According to the petitioner, for production of electricity in the petitioner's Power Plant continuous supply of Coal is essential. The petitioner was sourcing Coal extracted from the Coal Mine operated by BLA Industries Pvt. Ltd., which is a sister concern of the petitioner. The petitioner and the said BLA Industries Pvt. Ltd. have entered into a long term Fuel Supply Agreement (FSA), for continuous supply of coal from the subject Coal Mines to the petitioner. That agreement was duly approved by the Central Government on 2nd February, 2012. The Coal Mine operated by the said BLA Industries Pvt. Ltd. is located, at a distance, approximately 30 Kms. away from the petitioner's Power Plant. According to the petitioner, the Power Plant was set up at the said location only because of the

proximity with the Coal Mines and for continuous and uninterrupted supply of Coal.

6. The other facts mentioned in the writ petition, are not so relevant except to note that the petitioner states that the allocation of Coal Mines to BLA Industries Pvt. Ltd. was annulled pursuant to the decision of the Supreme Court dated 25.08.2014 and 24.09.2014 in Writ Petition (Criminal) No.120/2012 in the case of **Manohar Lal Sharma vs. Principal Secretary and others**[1]. Consequent to the said decision of the Supreme Court; and after annulment of allocation of Coal Mines in terms of that order including against BLA Industries Pvt. Ltd., the Government of India promulgated the Coal Mines (Special Provisions) Ordinance, 2014 (5 of 2014) on 21.10.2014, which Ordinance upon lapsing was replaced by Coal Mines (Special Provisions) Second Ordinance, 2014 (7 of 2014) on 26.12.2014. Subsequently, the Parliament passed the Coal Mines (Special Provisions) Act, 2015 (11 of 2015). By the said Act, while repealing the second Ordinance vide Section 33 of the Act, has saved all the actions taken under

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[1] (2014) 9 SCC 614

the said repeal law. As a result of that provision, the Rules and certain executive orders made under the repeal law, were deemed to have been saved, done or taken under the corresponding provisions of the Act of 2015, and without prejudice to the judgment of the Supreme Court dated 25.08.2014 and its order dated 24.09.2014 passed in Writ Petition (Criminal) No.120/2012.

7. It is stated that the order issued by the Central Government dated 18.12.2014 and Corrigendum dated 24.12.2014 purporting to classify the Coal Mines on the basis of regulated and non-regulated sector with reference to the end use specified in Section 3(1)(v)(ii) of the Act also remained operative. According to the petitioner, however, neither the provisions in the Act of 2015 nor the Rules of 2014 provide for classification on the basis of regulated and non-regulated sector. In other words, the appropriate Authority acted contrary to the spirit of the provisions of the Act and Rules made thereunder. On such erroneous basis, the nominated Authority has issued tender document dated 27.12.2014 inviting bid for the subject Coal Mines. As per the tender document, though the subject

Coal Mines are being auctioned as per the provisions of the Act of 2015, the petitioner was likely to be considered as ineligible to participate in the said auction process, even though the petitioner has its Power Plant in close proximity to the said Coal Mines and more so fully dependent on the coal extracted from those Mines. In that, as per the tender document, the subject Coal Mines have been made available for auction to the non-regulated sector (iron and steel, cement and captive power plants only) as per the order dated 18.12.2014 read with corrigendum dated 24.12.2014. According to the petitioner, since the petitioner would be consuming the coal for generation of power and supply to consumers/grid (regulated sector), would not be entitled to participate in the auction process.

8. Accordingly, the petitioner has approached this Court by way of two writ petitions for the reliefs as mentioned hitherto.

9. The counsel for the petitioner besides oral arguments, has submitted final written submissions on 29th July, 2015, contending as under:-

"**Legal Propositions**

The legal propositions that support the case of the Petitioner are as follows :

A. In view of Section 3 (1) (v) (ii) of the Act, 2015, the Central Government and the nominated authority do not have the power/jurisdiction to classify (by an order or otherwise) the specified end use of a coal mine only for ""generation of power for captive use" and exclude the main classification i.e. generation of power. This violates the right of the petitioner under Section 4 (3) read with Section 3 (1) (v) (ii) of the Coal 2015, Act.

B. The order of the Central Government dated 18.12.2014, Corrigendum dated 24.12.2014 and the terms of the tender dated 27.12.2014 issued by the Nominated Authority to the extent it creates a classification of "regulated" and "non regulated sector" and, then proceeds to classify the subject coal mines as being available for auction only ""generation of power for captive use"(being a "non regulated" sector) is illegal and ultra vires the Coal Act, 2015 and the Rules made thereunder.

C. When Section 7 (1) of the Coal Act, 2015 expressly provides that the Central Government prior to an auction may classify mines identified from Schedule I coal mine as earmarked for the same class of specified uses, the Central Government cannot then ignore the fact that Coal from the subject coal mine was being used for generation of power. The process adopted by the Central Government for the purposes of classification is arbitrary.

D. The Expert Technical Committee set up by the Central Government admittedly while classifying the coal mines for auction has not considered the interest of the stakeholders (particularly those who were using the coal from the coal mines). This is admitted in the Affidavit to the Central Government dated 10.07.15 at p. 3 to 8. The process adopted by the Central Government and the Expert Technical Committee goes against the core principle and object of Coal Act, 2015 as contained in the preamble and the second recital.

E. Apart from the aforesaid, the ground/reason of classifying mines for purposes of auction on the basis of grade of coal as submitted by the Central Government/Expert Technical

Committee is also arbitrary and unreasonable. There is no explanation as to how a particular grade of coal suitable for generation of power for captive use is unsuitable for generation of power other than for captive use. The end use of power generated has no nexus with the quality of coal. The specific grounds of challenge relating to the arbitrary manner in which the Expert Technical Committee has conducted itself is set out in paragraph 5.11-A of the amended writ petition.

F. The Central Government has submitted that mines with a reserve of 100 million tons and above have been earmarked and classified for power sector. It is submitted that for a power company in order to bid for a mine of aforesaid capacity has to have a power plant of 600 MW and above. This aspect is evident from reading the terms of the tender for power. While fixing this bench mark, Technical Committee did not consider the viability/survival of smaller or mid-sized power plants. Such small and mid sized power plants also have no access to "linkage" coal. The Technical Committee had no rational and comprehensive policy for classifying the mines. The purported classification is thus arbitrary.

G. Alternatively, keeping in view the actions of Central Government, if Section 7 (1) of the Coal Act, 2015 can be interpreted to allow creation of a further category of "non regulated sector"(and a category of captive power excluding generation of power) amongst the specified end users as defined in the statute, then the Section will suffer from the vice of excessive delegation.

H. Neither the Coal Act, 2015 nor the Rules envisage the concept of reverse auction. For purposes of reverse auction, by an executive order/memo the Central Government has provided a methodology for determination of "ceiling price", under which reverse auction will take place. Since the Coal Act, 2015 and Rules only provides for "floor price"(for auction under Section 4) and "reserve price" (for allocation under Section 5), there is no power or ability with the Central Government to introduce a ceiling price. This constitutes adding a provision in the statute and rules by the executive, which is not permissible. When the method of auction with a floor price is provided in the statute, where is the jurisdiction to do a reserve auction on the basis of ceiling price? Therefore, the process of reverse auction for coal

mines for power (i.e. regulated sector) against a ceiling price determined by the Nominated Authority is illegal for want of legislative mandate. This actually offends the law itself. The Central Government is doing a “reverse” of what the law requires it to do.

4. In furtherance of the aforesaid propositions, reference may be made to the following parts/provisions of the Act, 2015 :

- The Preamble of the Coal Act, 2015 expressly provides that the Coal Act, 2015 aims to ensure continuity in mining operation and production of coal and for optimum utilization of coal resources consistent with the requirement of the country.

- In the 2nd Recital of the Coal Act,2015, it is recorded that it is expedient in public interest for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees keeping in view energy security of the country and to minimize any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation.

Section 4 (3) of the Coal Act, 2015 deals with eligibility to participate in the auction. The petitioner a person engaged in generation of power is eligible to participate in the auction.

- Section 3 (1) (v) of the Coal Act, 2015 defines “specified end uses”. Generation of power is a specified end use under Section 3 (1) (v) (ii). Since the petitioner is a specified end user, the Petitioner is eligible to participate in the auction for coal mine classified for power. The special law regulates the end use of coal. The legislative mandate for distribution of coal does not extend to the manner in which product of the end user industry is sold. Whether the product of the end user is regulated or unregulated is of no concern to the special coal law.

- In Section 3 (1) (v) (ii) the word “….. including generation of power for captive use” cannot exclude “generation of power”, which is the main/primary category. The word including” expands the definition. The Central Government cannot seek to sub-classify generation of power into two categories – such purported sub-classification is *ultra vires* the Coal Act, 2015 and

violates the right of the petitioner *inter alia* under Section 4 (3) of the Coal Act, 2015.

- Section 6 empowers the Central Government to appoint and act through a nominated authority.

- In Section 7 (1) of the Coal Act, 2015 the Central Government has been vested with the power to classify mines. The legislative mandate requires that the mines identified from Schedule I coal mines be as earmarked for the same class of specified end uses. Classification of the subject mine as "non regulated sector", which is available for bid by company generating power for captive use (and not a company which is engaged in generation of power) is arbitrary. More so when the power generation company (i.e. 'the Petitioner') has been using coal from the mine from its very inception.

- The Coal Act, 2015 does not envisage creation of a "non regulated sector" amongst the specified end users.

- Section 8 (1) enables the nominated authority to determine, in consultation with the Central Government the "floor price" and the "reserve price", as the case may be. The Coal Act, 2015 does not envisage a "ceiling price", which is the basis for reverse auction of coal mine earmarked for power.

- Section 18 (1) provides that if the auction or allotment of Schedule I coal mines is not complete, the Central Government shall appoint any person as a designated custodian to manage and operate such mines, as may be notified by the Central Government. Coal India is therefore only a custodian of the mine pending completion of the auction process.

5. The Central Government had framed Rules, which are called the Coal Mines (Special Provision) Rules, 2014. Although these Rules were framed under the First Ordinance promulgated on 21.10.2014, the Rules have been saved under section 33 (2) (the Repeal and Savings Provisions) of the Coal Act of 2015.

- Rule 2(f) and 2 (k) defines "floor price" and "reserve price". There is no mention of "ceiling price". Floor price is the price fixed by the Central Government for

allocation by the auction route, while reserve price is the price fixed by the Central Government for allocation by allotment route.

- Rule 8 provides for allocation process. Rule 8 (2) empowers the Central Government to issue an order to the Nominated Authority. The orders impugned in the present Petition have been purportedly issued under Rule 8 (2). There is no provision in the Rule that allows (a) creation of a "non regulated sector" amongst the specified end users and (b) creation of generation of power for captive use as a separate category, distinct from generation of power. The category of generation of power for captive use cannot exclude the main/primary category, i.e. generation of power.

Rule 8 (3) requires the Central Government to recommend methodology for "reserve" and "floor price". There is no mention of ceiling price.

Also, in the alternative, the order dated 26.12.14 providing the methodology for floor price etc. issued by the Respondents is also illegal as Section 8 sub-section 5 empowers the Nominated Authority, in consultation with the Central Govt in determining the floor or reserve price (not the ceiling price). Further, such determination is to be in accordance with the Rules "as may be prescribed". Further, Section 31 (2) (k) provides that the rule making power of the Central Govt. extends inter alia to the determination of floor price. The Central Govt. has on 11 Dec 2014 notified the Coal Mines (Special Provisions) Rules, 2014 ("Rules"). It is submitted that Rule 8(3) does not provide for any methodology for determination of the floor price or reserve price. The Rule only provides that it will be open to the Central Govt. to recommend such methodology. The Rules are thus not consistent with the Coal Act, 2015. The executive order of 26.12.2015 goes beyond both the Coal Act, 2015 and the rules.

- Rule 10 provides for the manner of conducting auction.

6. Once section 3 (1) (v) of the Coal Act, 2015 provides that "generation of power" is a specified end-use, there is no power available either with the Central Government or with the nominated authority to exclude "generation of power for

non-captive use" and create a separate and distinct category of power generation for captive use. Generation of power is the primary category of specified end-use that has been created by the legislatures. This category has been further expanded to include" generation of power for captive use. The use of the word 'including' in section 3 (1 (v) (ii) only expands and clarifies that even if a power plant is not selling power to the distribution company or the public at large, but is self consuming the power to support its industrial activity, such person will be eligible to participate in the auction process. This is a clear reading of section 4 (3) read with section 3 (1)(v) (ii).

7. An expansive definition of "generation of power" would mean that, if for example, BALCO, which is engaged in the production of aluminium has set up a power plant to support the aluminium manufacturing process then BALCO will also be eligible for participating in the auction for coal (to the extent it requires coal for generation of power), even if aluminium production is not a specified end-use. In the aforesaid context, to segregate generation of power for captive use and put it in the non-regulated sector category runs counter to the legislative mandate/policy.

8. When the Coal Act, 2015 specifies the end users of coal who are eligible to participate in the auction, the Central Government by an order cannot then classify the specified end-users further on the basis of the specified end-user being engaged in a business that is regulated or non-regulated. The Coal Act, 2015 is a law that deals with allocation of coal mines and not the regulation of the industry that uses coal. Whether the specified end-users sector is regulated or not is certainly within the object and scope of the Coal Act, 2015.

The purpose of the Coal Act, 2015 is to secure maximum participation in the transparent auction process, so that Government revenues will be augmented. The provisions of the Coal Act, 2015 have to be interpreted in a manner that promotes the object of the Act, 2015.

9. Section 7 (1) only empowers the Central Government to formally classify mines identified from Schedule 1 coal mines as earmarked for the same class of the specified end-users. The power to classify under 7 (1) cannot be read to do violence to the definition of specified end-uses. The power to

classify mines vested with the Central Government in section 7(1) cannot include the power to add, alter or amend any provision of the statute.

Also, Section 7 (1) requires the Central Government to classify mines identified from Schedule 1 as earmarked for the 'same class of specified end-uses'. The process of classification is arbitrary, because the Central Government while recognizing the fact that coal from the subject mine was used for power generation by the Petitioner and not generation of power for captive use.

10. If it is read that section 7 (1) gives unbridled power to the Central Government to classify mines for auction in a manner different to what is provided in section 4(3) read with section 3 (1) (v) then section 7 (1) will itself be liable to be declared arbitrary, has suffering from the vice of excessive and unbridle delegation of power.

11. It is necessary to appreciate that "generation of power for captive use" is not defined in the Coal Act, 2015. A review of the laws relating to coal mines (as provided in Section 3 (2)) will also confirm that there is no such definition in those statutes. However, Section 2 (8) of the Electricity Act, 2003 defines captive generating plant. In 2005 the Central Government issued the Electricity Rules, 2005, in which the requirement of captive generating plant is provided.

A reading of the Electricity Rules, 2015 will show that generation of power for captive use is only in relation to 51% of the power that is generated and not the entire power. Hence 49% of the power is capable for being sold to the distribution licensee or the public at large, much like generation and sale by any other power utility. Further, Rule 3 (2) of the Electricity Rule, 2005 provides that whether the power plant is captive or not has be checked on an annual basis, depending upon whether self consumption has been beyond 51% or more. Clearly, the definition of captive use its dynamic and may change on a year to year basis and cannot be easily determined.

12. Clearly, there is non-application of mind in issuing the order dated 18.12.2014 and the Corrigendum dated 24.12.2014. the tender terms as result are also contrary to the provisions of the Coal Act, 2015.

13. A Division Bench of the Hon'ble High Court of Delhi at New Delhi has, vide judgment dated 11 February 2015 in the case of Jindal Steel & Power Ltd. v. Union of India, held as follows :

- The Hon'ble Delhi High Court has held that the Hon'ble Supreme Court in passing the judgment dated 25 August 2014 and order dated 24 September 2014 was only concerned with the legality of the allocations/allotments of coal blocks made between 1993 and 2010 through the Screening Committee process. The Supreme Court was not concerned with the future manner of allocations/allotments/utilization of the coal blocks. The cancellation of the coal block allocations cannot be regarded as a circumstance which would make the consideration of end-use for the purposes of future allocation irrelevant (Para 20 @ pg. 27 of the judgment).

- After discussing the various meetings of the Technical Committee (Para 29 @ pg. 47 onwards of the judgment), the Hon'ble Delhi High Court has severely criticized the same and found the methodology and criteria adopted to be flawed. (Paras 45 to 50 @ pgs. 61 to 66 of the judgment).

- The Hon'ble Delhi High Court further held that "generation of power" is one category and includes generation of power for captive use. (Paras 56, 57 @ pgs. 70-72 of the judgment).

It is pertinent to add that though the judgment of the Hon'ble Delhi High Court has been challenged before the Hon'ble Supreme Court and notice has been issued, no stay has been granted over the operation of the judgment."

10. These petitions have been resisted by the respondents by filing reply-affidavit. The respondents have raised preliminary objection about the locus of the petitioner. Firstly, because the petitioner is a sister concern of BLA Industries Pvt.

Ltd, who is a prior allottee and the allocation of the Coal Mine to the said Company has been annulled in terms of the judgment of the Supreme Court. The said prior allottee has failed to pay the additional levy as directed by the Supreme Court and is already facing contempt action in that behalf. The Petitioner, being a sister concern or associate/affiliate company of the prior allottee, is ineligible to participate in the auction process in terms of Section 4(4) of the said Act. Secondly, the subject Mines have been classified for the end use of non-regulated sector only – such as iron and steel, cement. Since the petitioner is engaged in generation of power (regulated sector) *per se,* was not eligible to participate in the auction process and at the instance of such ineligible person, no other question should be examined. Even on merits, the respondents have demonstrated that the grounds urged by the petitioner are devoid of merits.

11. After arguments were concluded, the counsel for the petitioner prayed for time to file written submissions. That request was acceded to. Accordingly, the written submission of the petitioner was filed on 29th July, 2015 and the respondents on 6th August, 2015.

12. In the context of the first preliminary issue regarding the locus of the petitioner, at the outset, we may have to examine two aspects. Firstly, the purport of Section 4(4) of the Act, and if, the interpretation of the said provision, is against the petitioner, then the question about the validity of the said provision, being unconstitutional will have to be tested. Incidental to that, we may also have to consider the validity of clause 4.1.2(a)(i) of the tender documents dated 27.12.2014.

13. We shall first advert to the sweep of Section 4(4) of the Act. Section 4 of the Act reads thus:-

> "4.(*1*) Subject to the provisions of section 5, Schedule I coal mines shall be allocated by way of public auction in accordance with such rules, and on the payment of such fees which shall not exceed five crore rupees, as may be prescribed.
>
> (*2*) Subject to the provisions in sub-section (*3*) of this section and section 5, the Central Government may, for the purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal, select any of the following companies through auction by competitive bidding, on such terms and conditions as may be prescribed—
>
> > *(a)* a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India; or

(b) a company or a joint venture company formed by two or more companies, that carry on coal mining operations in India, in any form either for own consumption, sale or for any other purpose in accordance with the permit, prospecting licence or mining lease, as the case may be, and the State Government shall grant such reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal to such company as selected through auction by competitive bidding under this section.

(*3*) Subject to the provisions of section 5, the following persons who fulfil such norms as may be prescribed, shall be eligible to bid in an auction of Schedule II coal mines and Schedule III coal mines and to engage in coal mining operations in the event they are successful bidders, namely:—

(a) a company engaged in specified end-use including a company having a coal linkage which has made such investment as may be prescribed.

Explanation.—A "company with a coal linkage" includes any such company whose application is pending with the Central Government on the date of commencement of this Act;

(b) a joint venture company formed by two or more companies having a common specified end-use and are independently eligible to bid in accordance with this Act;

(*c*) a Government company or corporation or a joint venture company formed by such company or corporation or with any other company having common specified end-use:

Provided that nothing contained in sub-section (*2*) shall apply to this sub-section.

(4) A prior allottee shall be eligible to participate in the auction process subject to payment of the additional levy within such period as may be prescribed and if the prior allottee has not paid such

levy, then, the prior allottee, its promoter or <u>any of its company of such prior allottee</u> shall not be eligible to bid either by itself or by way of a joint venture.

(5) Any prior allottee who is convicted for an offence relating to coal block allocation and sentenced with imprisonment for more than three years, shall not be eligible to participate in the auction."

(emphasis supplied)

14. Section 4 *inter alia* provides for the eligibility to participate in the auction process. Sub-section (1) makes it amply clear that Coal Mines referred to in Schedule-I shall be allocated only by way of public auction in accordance with the Rules and on payment of such fees, which, however, shall not exceed five crore rupees, as may be prescribed. All Coal Mines covered by the decision of the Supreme Court have been placed under Schedule-I. Section 3(1)(p) of the said Act defines Schedule-I Coal Mines, which reads thus:-

"3(1) …………

(p) "**Schedule I coal mines**" means,–

(i) all the coal mines and coal blocks the allocation of which was cancelled by the judgment dated 25th August, 2014 and its order dated 24th September, 2014 passed in Writ Petition (Criminal) No.120 of 2012, including those allotments which may have been de-allocated prior to and during the pendency of the said Writ Petition;

(ii) all the coal bearing land acquired by the prior allottee and lands, in or adjacent to the

coal mines used for coal mining operations acquired by the prior allottee;

(iii) any existing mine infrastructure as defined in clause (j)."

15. Now, we may advert to the definition of Schedule-II Coal Mines as well as Schedule-III Coal Mines given in Section 3(1)(q) and 3(1)(r), respectively. The same read thus:-

"3(1)(a) ……….
(b) ………..
(q) "**Schedule II coal mines**" means the forty-two Schedule I coal mines listed in Schedule II which are the coal mines in relation to which the order of the Supreme Court dated 24th day of September, 2014 was made;
(r) "**Schedule III coal mines**" means the thirty-two Schedule I coal mines listed in Schedule III or any other Schedule I coal mine as may be notified under sub-section (2) of section 7.
(s) ………."

16. Sub-section (2) of Section 4 authorizes the Central Government to select specified Companies for grant of reconnaissance permit, prospecting licence or mining lease through auction by competitive bidding on such terms and conditions, as may be prescribed, amongst the companies who carry on coal mining operations in any form either for own consumption, sale or for any other purpose in accordance with

the permit, prospecting licence or mining lease, as the case may be.

17. Sub-section (3) of Section 4 provides for the qualification or eligibility of persons who can bid in the auction for Schedule-II and Schedule-III Coal Mines; and to engage in coal mining operations in the event they are the successful bidders.

18. For the time being, we need not stress on the efficacy of other provisions, as the preliminary issue requires us mainly to construe the sweep of Section 4(4) of the Act, which, we find, is in two parts. The first part is in the nature of removing disqualification of the prior allottee. The expression "prior allottee" has been defined in Section 3(1)(n) as under:-

> "(3)(1)(a) ……….
> (n) "**prior allottee**" means prior allottee of Schedule I coal mines as listed therein who had been allotted coal mines between 1993 and 31st day of March, 2011, whose allotments have been cancelled pursuant to the judgment of the Supreme Court dated the 25th August, 2014 and its order dated 24th September, 2014 including those allotments which may have been de-allocated prior to and during the pendency of the Writ Petition (Criminal) No.120 of 2012.
>
> *Explanation.* —In case a mining lease has been executed in favour of a third party, subsequent to such allocation of Scheduled I coal mines, then, the third party shall be deemed to be the prior allottee."

19. The first part of sub-section (4) of Section 4 envisages that the prior allottee, who has fully paid the additional levy within time, as may be prescribed, is eligible to participate in the auction process. The second part of sub-section (4) is in the nature of disqualification clause. It envisages that a prior allottee who has "failed to pay" the additional levy within the prescribed time, is ineligible to participate in the auction process. Besides the prior allottee, even the promoter or any of its Company – of such prior allottee – is rendered ineligible to bid in the auction process either itself or by way of a joint venture. This provision is enacted to make the defaulter prior allottee ineligible to participate in the auction process, either directly or indirectly.

20. The petitioner, before us, is certainly not a prior allottee. The question is: whether the petitioner fits into the expression "its promotor" or "any of its company" – of such prior allottee ? If the answer is yes, it would necessarily follow that the petitioner is ineligible to participate in the subject auction process by virtue of Section 4(4) of the Act. What is significant to note, is, the expression used in Section 4(4). It is

wide enough to also encompass "any company" in which the "prior allottee" may have substantial fiduciary or business interests or control thereof. We have no manner of doubt that the expression used has been intentionally made expansive to completely rule out or bar the participation of the defaulter prior allottee in the auction process, directly or indirectly. For, it is not limited to the expressions found in the Companies Act, such as, "subsidiary company", "holding company" or "associate company".

21. Notably, the expression "any of its company of such prior allottee" has not been defined in the Act of 2015 nor so referred to in Section 3(n) defining the expression "prior allottee". Therefore, we may have to understand the meaning of that expression, as understood in common parlance. Firstly, the meaning of word "its" given in the Major Law Lexicon by P. Ramanatha Aiyar 4th Edition 2010 at page 3588 reads thus:-

> "**Its**. The use of the term 'its' in the exception 2 to clause 2(a) of the order would mean that the storage depot or installation should belong to the oil company and not any storage depot or installation. [Holani Auto Links (P.) v. State of M.P., (2008) 13 SCC 185, 194, para 23] [M.P. Essential Commodities (Exhibition of Price and Price Control) Order, 1977, Cl.2(a) Exception-2]"
>
> (emphasis supplied)

The Webster's Dictionary and Thesaurus & Medical Dictionary at page 208, mentions the meaning of expression **"its"** as follows:-

> **"its** (its) the *possessive case of pron. it.* **itself** *pron.* the neuter reciprocal pronoun applied to things; the reflexive form of it."

The Oxford English-English-Hindi Dictionary first published in 2008, at page 653, mentions the meaning of expression "its", "it's" and "itself" as follows:-

> "**its**/its इट्स/ det. of or belonging to a thing किसी वस्तु का या उससे संबंधित *The club held its Annual General Meeting last night.* → **It's** पर नोट देखिए ।"श
>
> "It's/its इट्स / → it is; it has का संक्षिप्त रूप
>
> **NOTE** ध्यान रखिए **it's** 'it is' या 'it has' का संक्षिप्त रूप है। Its का अर्थ है 'it' से संबंधित (इसका) – *The bird has broken its wings."*
>
> **"Itself/**it self इट् सेल्फ़**/**pronoun **1** used when the animal or thing that does an action is also affected by it किसी पषु या वस्तु का निर्देष करने के लिए प्रयुक्त जब अपनी क्रिया से वह स्वयं प्रभावित हो, (आप) को, स्वयं को The company has got itself. The company has got itself into financial difficulties. **2** used to emphasize sth किसी बात पर बल देने के लिए प्रयुक्त The building itself is beautiful, but it's in a very ugly part of town".

22. Indubitably, the expression "its", in the setting in which it is placed in Section 4(4) of the said Act, would primarily mean a Company belonging to or of the prior allottee. It would, however, also include any company in which the prior allottee (BLA Industries Pvt. Ltd.) may have a substantial or significant fiduciary or business interests or control thereof.

23. Let us now consider the definition of company, existing company, private company and public company in Section 3 of the Companies Act, 1956 and holding company and subsidiary company defined in Section 4 of the same Act of 1956. The corresponding relevant provisions of the Companies Act, 2013 (which have come into force w.e.f. 12th September 2013, vide Notification No.S.O. 2754(E) dated September 12, 2013, published in the Gazette of India, Extra, Part II, on the same date), may throw some light on the interpretation of expression "its" found in Section 4(4) of the Act, which are reproduced as follows:-

> "2(6) **"associate company"**, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation.—For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement."

"2(10) "**Board of Directors**" or "**Board**", in relation to a company, means the collective body of the directors of the company."

"2(20) **"company"** means a company incorporated under this Act or under any previous company law."

"2(*26*) "**contributory**" means a person liable to contribute towards the assets of the company in the event of its being wound up.

Explanation.—For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory."

"2(*27*) "**control**" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner."

"2(34) **"director"** means a director appointed to the Board of a company."

"2(37) "**employees**' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

"2(46) **"holding company",** in relation to one or more other companies, means a company of which such companies are subsidiary companies."

"2(54) **"managing director"** means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

Explanation .—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management."

"2(*55*) "**member**", in relation to a company, means—

(*i*) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
(*ii*) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
(*iii*) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

"2(*59*) "**officer**" includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act."

"2(68) **"private company"** means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,

shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company."

"2(69) **"promoter"** means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) <u>who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or</u>

(c) <u>in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act</u>:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity."

"2(71) **"public company**" means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher

paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles."

"2(76) **"related party",** with reference to a company, means—

(i) a director or his relative;
(ii) a key managerial personnel or his relative;
(iii) a firm, in which a director, manager or his relative is a partner;
(iv) a private company in which a director or manager is a member or director;
(v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

(viii) any company which is—
(A) a holding, subsidiary or an associate company of such company; or

(B) a subsidiary of a holding company to which it is also a subsidiary;]

(ix) such other person as may be prescribed."

"2(*77*) "**relative**'', with reference to any person, means any one who is related to another, if—

(*i*) they are members of a Hindu Undivided Family;

(*ii*) they are husband and wife; or

(*iii*) one person is related to the other in such manner as may be prescribed."

"2(87) **"subsidiary company"** or **"subsidiary"**, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Explanation.—For the purposes of this clause,—

(a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
(b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
(c) the expression "company" includes any body corporate."

> "2(*93*) "**voting right**" means the right of a member of a company to vote in any meeting of the company or by means of postal ballot."

The following definitions have been brought into force w.e.f. 1.4.2014, of the Companies Act, 2013:-

> "2(62) **"One Person Company"** means a company which has only one person as a member."
>
> "2(85) "**small company**'' means a company, other than a public company,—
>
> (*i*) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
>
> (*ii*) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:
>
> Provided that nothing in this clause shall apply to—
>
> (A) a holding company or a subsidiary company;
> (B) a company registered under section 8; or
> (C) a company or body corporate governed by any special Act."

24. The expression "promoter" as defined in the Companies Act, 2013 in Section 2(69) would necessarily mean promoter of the prior allottee. For the purpose of Section 4(4) of the Act of 2015, that promoter by himself or by way of a joint

venture has been made ineligible to participate in the auction process if the prior allottee is a defaulter.

25. The question is: when the promoter of a defaulter prior allottee, who incidentally is also the promoter of the Company, intending to participate in the auction process, is common, would such company become ineligible? This question arises as we find there is a comma (,) which separates the word “prior allottee” from the expression “its promoter or any of its company of such prior allottee”. The law as enacted, unmistakably, not only debars the prior allottee, who has failed to make the payment of additional levy, within the prescribed time, but also its promoter or any of its company of such prior allottee. If the promoter is common to both the Companies; but has no significant role or stakes in the Company, intending to participate in the auction process, may be an argument available to such a Company to persuade the Authorities to treat the Company as eligible to participate in the auction process. We need not deal with that aspect in detail in the light of the facts on hand. For, in the present case, the promoter of the prior allottee,

is not only common in both the Companies, but also wields significant influence and control in both the companies.

26. Notably, the petitioner has conceded in the petition, by describing the petitioner company to be a sister company of the prior allottee (BLA Industries Pvt. Ltd.). There is no concept of a "sister company", known to the Companies Act – be it Act of 1956 or Act of 2013. The expression "associate company", however, finds place in the Act of 2013 to mean a Company in which that other company has a significant influence, but which is not a subsidiary company of a company having such influence and include a joint venture company. Further, the definition of expressions – "control", "director", "managing director", "promoter", "related party", and "relative" in the Companies Act, 2013, may have to be conjointly read to understand the structure of the two companies, for discerning as to whether the company is an associate company of the other company.

27. Indubitably, the associate company must be held to be covered by the expansive expression used in Section 4 (4) of the Act of 2015 – "its promoter or any of its company of such

prior allottee". The petitioner has, therefore, advisedly described itself as a sister company of the defaulter prior allottee. In the context of the Companies Act, however, it would mean an associate company of the prior allottee. Not only there is an admission of the petitioner being a sister company of the defaulter prior allottee, but also there is no denial of the fact stated in the reply disclosing the significant influence and control of the common promotor and his financial stakes and including the fact that the petitioner-company was dependent on the supply of coal from the prior allottee only. As a concomitant, the petitioner company would certainly fit into the expansive expression "its promoter or any of its company of such prior allottee". Thus understood, the petitioner company is ineligible to participate in the subject auction process – because of the default in payment of the additional levy by the prior allottee.

28. It was justly argued by the respondents that lifting of corporate veil is a well-known and well established principle. By invoking that principle also, the petitioner-Company would qualify the expression "its promoter or any of its company of

such prior allottee". In that, the writ petitioner has not only admitted that it is a sister concern of the prior allottee. It has also admitted that the prior allottee has not paid/deposited the additional levy as directed by the Supreme Court. The share holding pattern of both the companies would plainly reinforce the position that the petitioner-Company is an alter-ego of the defaulter prior allottee. In the reply-affidavit dated 09.02.2015, in para 15, 16, 19 and para 5.18, to oppose Writ Petition No.850/2015, the respondents No.1 and 2 have stated as under:-

> "**15.** Petitioner Company, the Prior Allottee and M/s BLA Power Holdings ltd. are part of same Group. A table consisting of the list of directors and the shareholding pattern of the three companies is as follows:

COMPANY	LIST OF DIRECTORS		
BLA Industries Private Limited	**Anup Aggarwalla (Director)**	Kishore Vishwanath Mittal (Director)	Mishra Ram Mishra (Whole Time Director)

<table>
<tr><td>BLA Power Industries Private Limited

(Petitioner)</td><td>Anup Aggarwalla

(Managing Director)</td><td>Ramchandra Mukunda

(Director)</td><td>Nagendra Subedar Singh

(Whole Time Director)</td></tr>
<tr><td>BLA Power Holding Private Limited</td><td colspan="2">Anup Aggarwalla

(Director)</td><td>Rajesh Bhojilal Punjani

(Director)</td></tr>
</table>

SHAREHOLDING PATTERN OF BLA POWER PRIVATE LIMITED (Petitioner)

Total issued Equity Share Capital of Rs.85,00,00,000 with 8,50,00,000 shares with nominal value of Rs.10 each.

S.No.	**SHAREHOLDER NAME**	**NO. OF EQUITY SHARES**	**% OF TOTAL EQUITY SHARES**
1.	**Anup Aggarwalla**	**1,900**	**0.0022**
2.	BLA Power Holding Private Limited	84,991,479	99.9900
3.	Central Indian Energy Private Limited	6,521	0.0077
4.	Banyantree Bank Limited	100	0.0001
	Total	85,000,000	100

SHAREHOLDING PATTERN OF BLA POWER HOLDING PRIVATE LIMITED

S.No.	**SHAREHOLDER NAME**	**NO. OF EQUITY SHARES**	**% OF TOTAL EQUITY SHARES**
1.	**Anup Aggarwalla**	100	1

2.	**Anup Aggarwalla, Namrata Aggarwalla (on behalf of Anup Aggarwalla Trust)**	9,900	99
	Total	10,000	100

SHAREHOLDING PATTERN OF BLA INDUSTRIES PRIVATE LIMITED (Prior Allottee)

Total Issued Equity Share Capital of Rs.5,78,95,250 with 57,89,525 shares with nominal value of Rs.10 each.

S.No.	**SHAREHOLDER NAME**	**NO. OF EQUITY SHARES**	**% OF TOTAL EQUITY SHARES**
1.	**Anup Aggarwalla** (S/o Late Parmeshwar Kumar Aggarwalla)	644,300	11.13
2.	**Anup Aggarwalla, HUF**	700,625	**12.10**
3.	**Namrata Aggarwalla**	20,000	0.35
4.	**Shreya Aggarwalla**	400,000	6.91
5.	**Urmi Aggarwall**	400,000	6.91
5.	Abha Dayanand Aggarwal	17,000	0.29
6.	Advaita Holding Private Limited (**Anup Agarwalla is a Director in this Company**)	3,600,100	62.18
7.	Vibha Mittal	7,500	0.13
	TOTAL	5,789,525	**100**

The Petitioner Company is barred under Section 4 (4) of the Ordinance to bid in the auction as the promoter of M/s BLA Industries Limited and that of the Petitioner Company is common i.e. Mr. Anup Agarwalla. As admitted by the Petitioner, 99.99% of its shareholding is with M/s BLA Power Holding Private Limited and 0.01% of the shares are held by Mr. Anup Agarwalla. The Petitioner intentionally has not disclosed the shareholding of its sister concerns

i.e. M/s BLA Industries and M/s BLA Power Holding Pvt. Limited in which common promoter/shareholder is Mr. Anup Agarwalla and the said person, directly or indirectly, holds majority of the shareholding of all three companies including the Petitioner Company.

Thus it clearly emerges that the Petitioner has not approached the Hon'ble Court with clean hands as the Petitioner has filed the present petition on 15.01.2015 and has not deliberately disclosed the fact of dismissal of the Interim Application filed by their sister concern vide order dated 18.12.2014 of Hon'ble Supreme Court in order to misguide and obtain sympathy of this Hon'ble Court. This act on the part of the petitioner ought to be dealt severely by this Hon'ble Court.

16. The information stated in above tables is evocative of the fact that the Petitioner Company is an extended arm of BLA Industries Ltd., which as stated above is a Prior Allottee and a defaulter of the direction of Hon'ble Supreme Court. It has further become evidence that Mr. Anup Agarwalla is a common thread between Petitioner Company and Prior Allottee. Thus it is a fit case for lifting of corporate veil in the facts and circumstances disclosed above, it is absolutely essential that this Hon'ble Court takes cognizance of link between following companies:

(i) BLA Industries Pvt. Ltd.
(ii) BLA Power Pvt. Ltd.
(iii) BLA Power Holdings Pvt. Ltd.

The shareholding pattern and particulars of Directors leads to an unmistakable conclusion that it has close connection and commonality with Prior Allottee namely BLA Industries Ltd. It need not be over emphasized that Petitioner Company has participated in the auction process with the sole purpose of avoiding compliance of the directions of the Hon'ble Supreme Court.

Courts have always loathed such practices and have come down heavily whenever there is any attempt to defy or frustrate the court order and any

such attempt deals irretrievably on the Majesty of the court.

19. If the interpretation as sought for by the Petitioner is to be given to Section 4(4) it would render the Section redundant and defeat the very purpose of having it as it would easily allow the prior allottees to either create shell companies or bid through existing 'associated companies' in order to circumvent the payment.

1) **5.18**. The contentions of this para are incorrect and are denied. The comments to para 5.13 above may be referred. The Petitioner has chosen to give his own erroneous interpretation to Section 4 (4) of the Ordinance which is completely misconceived and misplaced. The said section nowhere mentions or confers the meaning that the expression "*any of its company of such prior allottee*" only includes subsidiary of the allottee. Clause 4.1.2 (a)(i) of the Standard Tender Document only elaborates the meaning of the phrase "*any of its company of such prior allottee*". The Petitioner is trying to give a restricted meaning to the said phrase by saying that it only means a subsidiary company. It is in this backdrop that the said Clause needs to be interpreted by the Ld. High Court.

2) By contending that that the Ordinance does not debar an "Affiliate" of a prior allottee from bidding, the Petitioner is himself admitting that the petitioner company is in fact an "Affiliate" of the M/s BLA Industries which was a prior allottee. It is submitted that the shareholding pattern mentioned in the comments to Para 5.2 and 5.3 also makes it clear that Petitioner company is an "affiliate" of M/s BLA Industries, which was a prior allottee.

3) The definition of "Affiliate" as given in Clause 1.1.2 of the Standard Tender document also includes an "associate company". In such context "associate company" in relation to another company means a company in which that other company has a significant influence, but which is not a subsidiary company. Thus, the intention has

> never been to restrict the meaning to include only a subsidiary company.
>
> **4)** For the afore-mentioned reasons, it cannot be said that the Clause 4.1.2 (a)(i) of the Tender document is ultra vires Section 4(4) of the Ordinance."
>
> (emphasis supplied)

29. In view of these indisputable facts and the expansive expression used in Section 4(4) – "its promoter or any of its company of such prior allottee", there is no room to extricate or exclude the petitioner-Company from the application of the second part of Section 4(4) of the Act. We are conscious that, while interpreting provision specifying disqualification or ineligibility, it should be construed with circumspection. However, the setting in which the expression "its promoter or any of its company of such prior allottee" has been placed, no other interpretation is possible. More particularly, keeping in mind the background in which; and the purpose for which the Act of 2015 has come into being, because of the pronouncement of the Supreme Court dated 25.08.2014 read with its order dated 24.09.2014 annulling the allocations of all the Coal Blocks and directions to auction those Coal Blocks including to recover additional amount from those operators in national interests (the

additional levy has been specified by the Supreme Court as Rs.295/- per metric tonne of Coal extracted).

30. On the question of lifting of corporate veil, in response, counsel for the petitioner placed reliance on the decision of the Supreme Court in the case of **Technip SA Vs. SMS Holding (P) Ltd and others[2].** The question considered in the said decision was that the two companies must have commonality of objectives and a community of interest and their act of acquiring the shares or voting rights in a company must serve this common objective. In paragraph 54 and 55 the Supreme Court noted that in Indian law the standard of proof required to establish such concert is one of the probability and may be established if having regard to their relation etc., their conduct, and their common interest, it may be inferred that they must be acting together. The Court observed that evidence of actual concerted acting is normally difficult to obtain and is not insisted upon. The test is not whether the parties have actually acted in concert but whether the circumstances are such that human experience tells us that it can safely be taken that they

[2] (2005) 5 SCC 465

must be acting together. That will depend on the facts of each case. In the context of the facts in this case, the sole question to be considered is whether the prior allottee (B.L.A. Industries Private Limited) can be said to have any significant influence on the business or fiduciary interests in and control over the petitioner company. The factual circumstances pointed out in the reply affidavit and the admission of the petitioner that it is a sister concern of the prior allottee leaves no manner of doubt that the petitioner qualifies the expression "its promoter or any of its company of the prior allottee" predicated in Section 4 (4) of the said Act.

31. The petitioner has also invited our attention to the judgment of the Supreme Court in the case of **Ashwin S. Mehta and another Vs. Custodian and others**[3] to buttress the argument, that the Custodian in that case had clubbed all the notified entities in one block so as to term as Harshad Mehta Group and/or to club their assets and liabilities jointly to proceed against them. That argument was considered by the Supreme Court. It held that even if it is permissible to invoke

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[3] (2006) 2 SCC 385

the principles of lifting of corporate veil in relation to a body corporate incorporated and registered under the Companies Act, that cannot be applied in case of individuals. Thus, the liability of individual cannot be clubbed for the purpose of directing attachment and consequent sale of the properties which exclusively belong to them. In the present, we are called upon to consider the express stipulation contained in Section 4 (4) of the Act, which not only disentitles the defaulter prior allottee but also its promoter or any of its company of such prior allottee to participate in the auction process. This provision is to ensure that the defaulter prior allottee does not participate in the auction process directly or indirectly, in respect of coal mines required to be auctioned pursuant to the direction of the Supreme Court, after annulling the allotment in favour of the defaulter prior allottee. In our opinion, this judgment will also be of no assistance to the petitioner.

32. Relying on the decision of the Supreme Court in the case of **Electronics Corporation of India Ltd. and others Vs. Secretary, Revenue Department, Govt. of Andhra Pradesh**

and others[4]**,** in particular para 15 and 21 thereof, it was argued that there is clear distinction between the company and its shareholders, even though that shareholder may be anybody. In the eye of law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. In the present case, however, the question is not of disregarding the legal entity of the two companies, but will have to be answered on the basis of the purport of Section 4 (4) of the said Act which has been enacted to keep the defaulter allottee away from the auction process in respect of the same coal mine, directly or indirectly. For that, the dispensation predicated is not only the defaulter prior allottee, but also its promoter or any of its company of such prior allottee, ineligible. This is to prevent the defaulter prior allottee from participating in the auction process directly or indirectly. In the facts of the present case, it is noticed that the defaulter prior allottee not only has significant influence on the business interests of the petitioner but also is controlled by the same set of Director spear heading both the companies. In such a case, the expansive provision would come into play to ensure that the defaulter prior

[4] (1999) 4 SCC 458

allottee does not indirectly participate in the auction process, until the defaulter prior allottee fulfills the obligation in terms of the direction given by the Supreme Court whilst annulling allotment of the same coal mine in its favour.

33. Reliance has also been placed on another decision of the Supreme Court in the case of **Patel Engineering Limited Vs. Union of India and another**[5]. This decision has dealt with the question of blacklisting of successful bidder for not entering into contract after succeeding in tender. The Supreme Court has held that everybody has a right to be treated equally when the State seeks to establish contractual relationships. The effect of excluding a person from entering into contractual relationship with the State would be to deprive such person to be treated equally with those who are also engaged in similar activity. In that case, the Court found that there was no express stipulation in the bid document about the consequence of failure of the successful bidder, to execute the necessary document to conclude the contract. In the context of the provisions of National Highways Authority of India Act, 1988, the issue was

[5] (2012) 11 SCC 257

considered by the Supreme Court. In the present case, it is not action of blacklisting of the petitioner but it is a statutory provision regarding eligibility of persons who may qualify to participate in the auction process. It is nobody's case that one set of defaulter prior allottee are allowed to participate in the auction process directly or indirectly leaving out the other set of defaulter prior allottees, so as to complain about discriminatory approach. On the other hand, it is a provision to ensure that no defaulter prior allottee participates in the auction process directly or indirectly either itself or through any of its company. We have elaborately examined as to how the petitioner can be said to be associate or affiliate company of the defaulter prior allottee, thus has incurred disqualification to participate in the subject auction process, until the disqualification of the prior allottee is removed.

34. Ordinarily, the persons who have benefited from the transactions which have been held to be nullity and against national interests by the Supreme Court, must be considered as disqualified to participate in the auction process for the same activity. But, for adjusting equities, the prior allottees have been

permitted to participate in the auction process on condition that they must first pay the prescribed additional levy within the specified time. For that, the first part of Section 4(4) is in the nature of removing the disqualification of such persons (prior allottee) and making them eligible to participate in the auction process, subject to fulfillment of the condition of payment of additional levy - which has been made *sine qua non*. Keeping the spirit of the decision of the Supreme Court, in mind, and to ensure that the loose ends are fully tied; and to completely snap the possibility of the prior allottee, directly or indirectly participating in the auction process, without fulfillment of the precondition, the expansive provision in the second part of Section 4(4), has been enacted. The purposive construction of this provision, therefore, must include any company, in which the defaulter prior allottee has significant influence either by itself or through its promoter. Even such companies have been kept away from participating in the auction process and made ineligible for that purpose. On this finding, it may not be necessary for us to dwell upon any other ground(s) urged by the petitioner.

35. Counsel for the petitioner placed reliance on the decision of the Supreme Court in the case **Ranjeet Singh Vs. Harmohinder Singh Pradhan**[6]. This decision has considered the necessity of purposive interpretation in respect of provision imposing disqualification. The Supreme Court dealt with disqualification provision, Section 9-A of the Representation of the People Act, 1951. In the context of the that provision, the Supreme Court observed that it would, therefore, be unreasonable to take a general or broad view, ignoring the essentials of the section and the intention of the legislature. The Supreme Court has adverted to its earlier decision in the case of **Dewan Joynal Abedin Vs. Abdul Wazed**[7] which had dealt with Section 9-A of the Act. In the present case, even though the second part of Section 4 (4) of the Act of 2015 is in the nature of providing disqualification, the purpose or background in which such provision has been enacted cannot be completely ignored. Further, in the present case, it has been established that the defaulter prior allottee has significant influence on the business and fiduciary interests and also has control over the affairs of

[6] (1999) 4 SCC 517
[7] 1988 Supp SCC 580

the petitioner company through the same set of Director and even the petitioner company has admitted that it is a sister company of the prior allottee and was fully dependent on the supply of coal from the defaulter prior allottee for doing its business of generation of power. In that sense, it fits into the term of "its promoter or any of its company of such prior allottee". As a result, just as the defaulter prior allottee, even the petitioner cannot be permitted to participate in the subject auction process until the disqualification of the prior allottee is completely removed.

36. The provision regarding eligibility conditions in the tender document, has been incorporated, which, we find is in consonance with the statutory provision. The same reads thus:-

"**4 Bid Criteria**

4.1 Eligibility Conditions

4.1.1 Section 4(3) of the Ordinance and Rule 10(4)(d) of the Rules prescribes eligibility to bid in an auction of Schedule II coal mine, which includes the Coal Mine. Bidders are required to ensure that they meet the conditions mentioned in Section 4(3) of the Ordinance and Rule 10(4)(d) of the Rules which are quoted below for reference:

Section 4(3) of the Ordinance:

"*(3) Subject to the provisions of section 5, the following persons who fulfil such norms as may be prescribed, shall be eligible to bid in an auction of Schedule II coal mines and Schedule III coal mines and to engage in coal mining operations in the event they are successful bidders, namely:—"*

(a) <u>a company engaged in specified end use including a company having a coal linkage which has made such investment as may be prescribed</u>;

Explanation.—A "company with a coal linkage" includes any such company whose application is pending with the Central Government on the date of commencement of this Ordinance.

(b) a joint venture company formed by two or more companies having a common specified end use and are independently eligible to bid in accordance with this Ordinance;

(c) a Government company or corporation or a joint venture company formed by such company or corporation or with any other company having common specified end use."

<u>Rule 10(4)(d) of the Rules</u>:

"*A person who is eligible under sub-section (3) of section 4 of the Ordinance shall also meet the following eligibility criteria, namely:–*

(i) a company eligible to bid for any Schedule II coal mine under sub-section (3) of Section 4 of the Ordinance shall have incurred an expenditure of not less than eighty per cent of the total project cost of the unit or phase of the specified end use plant for which the company is bidding,

Explanation.– For the purposes of this sub-clause in case the end use project is being commissioned in units or phases and one or more units or

phases are eligible under the provisions of this sub-clause, the other unit or phase shall also be eligible provided that not less than forty per cent expenditure of the cost has been incurred for such other unit or phase;

(ii) *a company eligible to bid for any Schedule III coal mine under sub-section (3) of Section 4 of the Ordinance shall have incurred an expenditure of not less Standard Tender Document (For Power Sector) than sixty per cent of the total project cost of the unit or phase of the specified end use plant for which the company is bidding,*

Explanation.– For the purposes of this sub-clause in case the end use project is being commissioned in units or phases and one or more units or phases are eligible under the provisions of this sub-clause, the other unit or phase shall also be eligible provided that not less than thirty per cent expenditure of the cost has been incurred for such other unit or phase;

(iii) *capacity of the specified end use project shall be in proportion to the capacity of the Schedule II coalmine or Schedule III coal mine, as the case may be, for which a company is bidding;*

(iv) *in case a company is the successful bidder, then the entitlement to receive coal pursuant to such coal linkage shall stand proportionately reduced on the basis of the requirement of coal being met from the mine allocated to such company;*

(v) *for the purposes of sub-clauses (i) and (ii), the total project cost and expenditure incurred shall be determined on the basis of a certificate issued by the relevant company, duly certified by the statutory auditors and/ or secured creditors, if any, of the relevant company.*"

4.1.2 In addition to the aforementioned conditions, a Bidder would also be required to comply with the following eligibility conditions:

(a) **<u>Additional conditions for Prior Allottee</u>**:

In the event the Bidder is a Prior Allottee, then such Bidder must also meet the following conditions for being eligible to participate in the tender process:

(i) The Bidder who is a Prior Allottee must have paid the additional levy within the time period prescribed under Rule 18 of the Rules. It is clarified that if a Prior Allottee has not made payment of the applicable additional levy within the time prescribed under Rule 18 of the Rules, then such Prior Allottee shall not be eligible to participate in the auction process either directly or indirectly, including without limitation as a JV Partner of a joint venture, or through any Affiliate.

(ii) The Bidder who is a Prior Allottee, who is convicted of an offence relating to coal block allocation and sentenced with imprisonment for more than three years, shall not be eligible to participate in the auction.

(b) **Eligibility on the basis of coal requirements**:

A Bidder shall be considered eligible for bidding for the Coal Mine only if its requirement of coal for Specified End Use matches the reserves of the Coal Mine, in accordance with the parameters specified below:

Extractable reserves of the Coal Mine should not exceed 150% of the annual coal requirement of the Specified End Use Plant(s), taken over a period of 30 (thirty) years, *less* the requirement of coal of such Specified End Use Plant met from any other coal mine allocated to the Successful Bidder pursuant to any other auction process conducted by the Nominated Authority under the Ordinance and the Rules.

For the purposes of this Clause, the annual coal requirements of the Specified End Use Plant would be determined on the basis of a certificate from the Bidder regarding its entire coal requirements at 85% of plant load factor or capacity utilization as the case may be. Such self certification shall be required to be in conformity with the benchmark coal requirement provided by Central Electricity Authority/ MECON Limited / relevant Ministry or agency of the Central Government, as applicable.

It is clarified that a Bidder shall not be eligible to participate in any other auction conducted by the Nominated Authority for the same End Use Plant if such participation may result in the Bidder holding coal mines capable of generating coal in excess of 150% of its annual coal requirement as specified above.

(c) **Additional Eligibility conditions for Bidders which is a joint-venture**:

In the event that, a Bidder is a joint venture company formed by two or more companies ("**JV Partners**"), then each such JV Partner should: (i)independently meets all the Eligibility Conditions as mentioned in this Clause 4.1; and (ii) hold at least twenty per cent of voting rights and economic interest in the joint venture company.

It is clarified that in such cases, the JV Partners would be required to independently meet the requirements regarding specified expenditure of the total project cost. However, for the purposes of Clause 4.1.2(b), the coal requirements for Specified End Use Plant of each of the JV Partners shall be considered collectively.

(d) **Limitations on total number of Bids**

With respect to one Specified End Use Plant only one Bid may be submitted for the Coal Mine, either individually or as a part of joint-venture, either directly or indirectly.

(e) **Certification of total project cost and expenditure**

In the event a Bidder is eligible for participating in the auction, pursuant to Rule 10(4)(d) of the Rules i.e. on the basis of having made an expenditure of the total project cost, then each such Bidder would be required to submit:

(i) a certificate confirming the total project cost issued by the Bidder and duly certified by the lead secured creditor (in case of consortium lending) or the secured creditor with the highest exposure (in case of multiple banking), where the Specified End Use Plant is

financed by creditors. In case the Specified End Use Plant has not been financed by creditors then such certificate should be duly certified by the statutory auditors of the Bidder. In case of a joint venture company, the aforementioned certificate should be issued by the Bidders and duly supported by confirmations issued by the secured creditors and/or statutory auditors of the JV Partners, as the case may be; and

(ii) a certificate confirming the actual expenditure incurred towards the Specified End Use Plant, issued by the Bidder and duly certified by the statutory auditor of the Bidder. In case of a joint venture company such certificate should be issued by the Bidder and supported by confirmation issued by the statutory auditor of the JV Partner, as the case may be.

The actual expenditure incurred with respect to the Specified End Use Plant until December 31, 2014 or the date of submission of the Technical Bid, shall be considered relevant for the purposes of this Clause.

The Nominated Authority may direct the Bidder to submit such additional documents as may be required to verify the total project cost.

In case of Specified End Use Plant which has been developed or is being developed in units or phases, and one or more units or phases are eligible on the basis of having made an expenditure of eighty per cent of the total project cost, then the other units or phases of such project shall also be eligible, if with respect to each such other units or phases an expenditure of at least forty per cent of total project cost has independently been incurred and a certificate is provided to substantiate such expenditure for each such other units or phases, in the manner provided above."

(emphasis supplied)

37. Realising the hurdle in the way of the petitioner, the petitioner has been advised to challenge the eligibility condition

in the tender document, in particular, clause 4.1.2(a)(i). This condition, as aforesaid, is in consonance with the purport of Section 4(4) of the Act. It is only if we find merits in the challenge to the validity of section 4(4) pressed into service by the petitioner, the question of striking down clause 4.1.2(a)(i), can be considered and not otherwise.

38. As regards challenge to Section 4(4) of the Act, it is urged that the petitioner is neither a prior allottee, a promoter of any prior allottee, nor a company of any prior allottee. The petitioner is neither a subsidiary of any prior allottee. The petitioner is a separate juristic person, distinct from the prior allottee (BLA Industries Pvt. Ltd.). The Board of Directors of the two companies comprises of different individuals. The petitioner is carrying on its independent business of power generation. Whereas, the prior allottee, BLA Industries Pvt. Ltd., is carrying on the business of washing coal and mining coal. Further, the said Act does not debar the affiliate of a prior allottee from bidding, if prior allottee fails to pay the additional levy within the prescribed time. According to the petitioner,

therefore, clause 4.1.2(a)(i) of the tender document is *ultra vires* Section 4(4) of the Act and liable to be quashed.

39. The petitioner relied on the decision of the Supreme Court in the case of **State of Karnatak and another Vs. H. Ganesh Kamath and others**[8]. That decision deals with the right of an applicant for a licence to drive heavy motor vehicle under Section 7(8) of the relevant Act, consequent to satisfying the conditions provided thereunder. The Supreme Court also dealt with the question whether the Rules must be intra vires and consistent with the statute under which they are framed. However, in the present case, we find that the Rules are in furtherance of the provisions of the Act of 2015 and are in no way in conflict thereto, in so far as the question dealt with at the instance of the petitioner about the eligibility and entitlement to participate in the auction process. The petitioner relies on the principles to be borne in mind for interpretation of statute and the conferment of rule-making power. Further, Rule-making power bestowed by the Act cannot enable the Rule-making

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[8] (1983) 2 SCC 402

Authority to make Rules which travel beyond the scope of the enabling Act or which is inconsistent thereto.

40. It is then urged that Section 4(4), in so far as it curtails the right of participation of persons such as the petitioner, is unconstitutional, being arbitrary as also violative of Articles 14, 19(1)(g) and 21 of the Constitution.

41. We must first answer the argument of validity of Section (4) of the Act. The argument, is that, the stipulation in the said provision, making even the affiliate of the prior allottee ineligible, is unconstitutional and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. This ground is raised in ground No. 6.14 of the W.P. No.850/2015. The same reads thus:-

> "6.14 That the Act and in particular Section 4(4) thereof in so far as it purports to curtail the rights of participation of applicants/bidders in the auction process is unconstitutional as being entirely arbitrary as also violative of Article 14, 19(1)(g) and Article 21 of the Constitution of India."

42. Assuming that we have to read the writ petition as a whole, the case made out by the petitioner is that the petitioner has no causal connection with the prior allottee – except the fact that the coal supply for generation of power by the petitioner was received from the prior allottee. In the first place, this plea is not full disclosure of the relevant facts. We have already dealt with that aspect in the earlier part of this decision.

43. It is well settled that a company, not being a citizen, has no fundamental rights under Article 19 of the Constitution of India. (see **Shree Sidhbali Steels Ltd. and ors. Vs. State of U.P. and ors**[9]**.** As a result, challenge of this petitioner will have to be limited to infraction of right guaranteed under Article 14 or at best under Article 21 of the Constitution of India. After analyzing the impugned provision on the touchtone of justness and reasonableness and the view taken by us that there is direct nexus with the object sought to be achieved, to keep away the defaulter prior allottees from participating in the auction process directly or indirectly, even the challenge on the basis of Articles 14 and 21 pressed into service cannot be taken forward.

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[9] (2011) 3 SCC 193

44. Be that as it may, it is not the case of the petitioner that the Parliament is not competent to legislate on the subject. In other words, lack of legislative competence is not the ground pressed into service. The question is: whether the provision in Section 4 (4), can be said to be just and reasonable and more so having reasonable or direct nexus with the object sought to be achieved. We have already noticed the background in which the Act of 2015 has come into being. In that, the Supreme Court has held that the allocation of all the coal mines was nullity; and against national interests. As a result, the allotments of all the coal blocks came to be annulled as nonest in law. That necessitated enacting a law on the subject. The provision such as Section 4(4) in that Act provides for eligibility of persons who could participate in the auction process for fresh allocation. By virtue of the Supreme Court decision and the conclusion reached therein all the erstwhile Coal Mine operators (prior allottees), to whom, such allocation was done illegally, being party to that process, could have incurred disqualification to participate in the fresh auction process, directed to be held by the Supreme Court. Therefore, the first part of Section 4(4) has been enacted to

remove that disqualification of the prior allottees and permit them to participate in the auction process subject to fulfilling their obligation to pay the additional levy in the prescribed time and, in particular, before participating in the auction process. The second part of Section 4(4) provides for disqualification of the defaulter "prior allottees" and any of its promoter or company associated with such prior allottee by directly or indirectly participating in the auction process – such as its promoter or any of its company of such prior allottee. This provision has been incorporated in the Act of 2015 in larger public interest and more so is in consonance with and in compliance of the dictum of the Supreme Court on the subject, in its letter and spirit.

45. As regards to the process of statutory construction, the respondents have rightly relied on the Supreme Court decision in the case of **State of Gujarat and another Vs. Justice R.A. Mehta (Retired) and others**[10]. In Paragraph 96 to 98, the Court emphasized that the interpretation of the statute

[10] (2013) 3 SCC 1

must be purposive construction. We deem it apposite to reproduce the same as follows:-

> "**96**. In the process of statutory construction, the court must construe the Act before it bearing in mind the legal maxim *ut res magis valeat quam pereat* which means it is better for a thing to have effect than for it to be made void i.e. a statute must be construed in such a manner so as to make it workable. **Viscount Simon, L.C. in Nokes vs. Doncaster Amalgamated Collieries Ltd. – 1940 AC 1014 : (1940) 3 All ER 549 (HL)** stated as follows:
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> > "……if the choice is between two interpretations, the narrow of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."
>
> **97.** Similarly in **Whitney Vs. IRC – 1926 AC 37 (HL)** it was observed as under:
>
> > "…….A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."
>
> **98**. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very

> purpose. "The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative." The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppress the mischief and advances the remedy and "to suppress subtle inventions and evasions for continuance of the mischief, and *pro private commodo,* and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono public"*. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide **M. Pentiah Vs. Muddala Veeramallappa – AIR 1961 SC 1107; S. P. Jain Vs. Krishna Mohan Gupta – (1987) 1 SCC 191; RBI Vs. Peerless General Finance and Investment Co. Ltd. - (1987) 1 SCC 424; Tinsukhia Electric Supply Co. Ltd. Vs. State of Assam - (1989) 3 SCC 709; UCO Bank Vs. Rajinder Lal Capoor – (2008) 5 SCC 257 and Grid Corpn. Of Orissa Ltd. Vs. Eastern Metals and Ferro Alloys – (2011) 11 SCC 334**."

46. In the present case the said Act has been enacted in furtherance of the decision of the Supreme Court to suppress the continuance of the mischief, and *pro private commodo*. Further, to add force and life to the cure and remedy, the provision of Section 4 (4) of the Act must be interpreted in the light of the Legislative intent, *pro bono publico,* as expounded by the

Supreme Court. We may hasten to add that any other interpretation of Section 4(4) of the said Act would not only render the said provision futile but encourage the defaulter prior allottees to resort to different ways and means to continue to remain in the same business through their alter ego. For suppressing such subtle inventions and evasions, any other view of the said provision would be counter productive and result in doing violence to the legislative intent.

47. Thus understood, it is unfathomable, as to how, the provision can be said to be irrational, arbitrary and unreasonable. It certainly has reasonable or direct nexus with the object sought to be achieved, to keep away the defaulter prior allottees from participating in the auction process directly or indirectly, through the cobweb of Companies created or in existence to defeat the direction of the Supreme Court regarding payment or recovery of additional levy from them.

48. In our opinion, therefore, the challenge to Section 4(4) on the touchstone of Articles 14, 19(1)(g) and 21 of the Constitution, is devoid of merits. In that, the stipulation in

Section 4 (4) as construed on its plain language, is in the interests of the general public and is a reasonable restriction on the exercise of the right to engage in trade or business conferred by the Constitution. The fact that the petitioner company was not the prior allottee itself, would make no difference as the petitioner was the recipient of the benefit of allocation of coal mine to the prior allottee (BLA Industries Pvt. Ltd.).

49. Having said this, the challenge to clause 4.1.2(a)(i) of the tender document, must also fail for the same reasons. We find that the said clause is in conformity with the provisions of the Act of 2015 and the Rules framed thereunder and more so mirrors the legislative intent of enacting Section 4(4) of the Act of 2015 making the defaulter prior allottees and its promoter or any of its company ineligible. Since the challenge to Section 4(4) of the Act of 2015 has been negated, on the finding that the provision is in larger public interests and a reasonable restriction imposed for exercise of the right guaranteed under the Constitution, the challenge to the stipulation specified in the tender document which is in conformity with those provisions, also must fail.

50. A priori, it must be held that the petitioner company is disqualified from participating in the auction process, being sister concern or associate company of the defaulter prior allottee and that the promoter of both the companies is common having significant influence on the business interests of the said companies. As a result, the petitioner company has no locus to question the validity of the terms of the subject tender document on any other count.

51. There is another ground pressed into service by the respondents in support of the argument that the petitioner company has no locus to question the subject auction process and the conditions of the tender document concerning thereto. It is submitted that the petitioner company admittedly is engaged in generation of power which is supplied to the consumers/grid. It is thus operating in a regulated sector, regulated under the provisions of the Electricity Act. The tender process in question is in respect of coal mines earmarked for non-regulated sector. Thus, the petitioner company is not eligible to participate in the auction process meant for non-regulated sector, which is based on upward bidding pattern. In the context of this objection, the

argument of the petitioner is that it is not open to the Authorities to make such distinction in allocation of coal mine. The allocation of coal mine is only restricted to specified end use and generation of power is one such use. This argument is based on the definition of expression "specified end-use" in Section 3(v), which reads thus:-

> *"3(v)* "**specified end-use**" means any of the following end-uses and the expression **"specified end-user**" shall with its grammatical variations be construed accordingly,—
> *(i)* production of iron and steel;
> *(ii)* generation of power including the generation of power for captive use;
> *(iii)* washing of coal obtained from a mine;
> *(iv)* cement;
> (*v*) such other end-use as the Central Government may, by notification, specify."

52. Reliance is also placed on Section 7 of the Act which reads thus:-

> **7.**(*1*) The Central Government may, before notifying the particulars of auction, classify mines identified from Schedule I coal mines as earmarked for the same class of specified end-uses.
>
> (*2*) The Central Government may in public interest, by notification, modify Schedule III coal mines by adding any other Schedule I coal mine for the purposes of specified end-use."
>
> (emphasis supplied)

On conjoint reading of these provisions, it is seen that the Central Government is empowered to notify the auction of the given coal mine as earmarked for the "same class of"

specified end uses. This would include classification on the basis of different uses referred to in Section 3 (v) singularly or otherwise. Incidentally, except the category "generation of power" per se, rest of the categories are ascribable to non-regulated sectors. Reliance has been rightly placed on the decision of Supreme Court in the case of **Shree Sidhbali Steels Ltd.** (supra) by the respondents to buttress the argument that there was ample power in the Central Government and including the Expert's Committee for classification of the Coal Mines and specify the end use by virtue of the provisions General Clauses Act. So long as the action taken by the Authorities was not prohibited by law or for that matter inconsistent with the mandate of the Act of 2015, there was intrinsic power vesting in the Central Government regarding classification of the coal mines to earmark for the same class of specified end uses, by virtue of Section 7. Reliance is also placed on the decision of the Supreme Court in the case of **Chandigarh Administration through the Director Public Instructions (College), Chandigarh Vs. Usha Kheterpal WAIE and others**[11], wherein it is held that if the State was competent to prescribe

[11] (2011) 9 SCC 645

educational qualification in advertisement under the Rules for post falling vacant when Rules were still pending consideration, the advertisement so issued would be valid as the Administration had clear intention to enforce the Rules. It was submitted that on applying the said principle also, the action of the Authorities of classification of the Coal Mines and to earmark the same for specified end use, cannot be doubted.

53. Counsel for the petitioner relied on the unreported decision of Delhi High Court in the case of **Jindal Steel & Power Limited & Others Vs. Union of India & Another**[12] dated 11.02.2015. The validity of Section 7 read with Rule 8 (2) was *inter alia* questioned before the Delhi High Court. Even the Delhi High Court interpreted Section 7 to mean that the Central Government has right to classify the Schedule I mines for specified end-use, which may be different from the end-use prescribed prior to cancellation. The Delhi High Court went on to observe that the Central Government, however, cannot ignore or be oblivious to the earlier end-use. The petitioner in this case, however, is not a prior allottee. Hence, the said principle cannot be invoked by the petitioner. Suffice it to observe that the

[12] Writ Petition (C) 309/2015

judgment of the Delhi High Court was on the facts of that case. Therefore, it will be of no avail to the petitioner to pursue the argument under consideration.

54. The petitioner relies on the decision in the case of **Global Energy Limited and another Vs. Central Electricity Regulatory Commission**[13], in particular paragraphs 24, 25 and 27 thereof to contend that the tender document cannot prescribe condition providing for additional qualification beyond the statute/ordinance and to buttress the argument that the Act does not authorise the Central Government to classify the coal mines for specified end-use of regulated or unregulated sectors. This argument has already been considered and rejected on the basis of the express power flowing from Section 7 of the said Act of 2015, bestowed on the Central Government in that behalf read with Section 3 (v) defining the term specified 'end use'. The definition specified end use differentiates the end use for different activities which may be regulated or non-regulated. Indeed, amongst the different end uses, generation of power *per se* alone is a regulated sector. But, clause (ii) of that definition

[13] (2009) 15 SCC 570

also encompasses the category of generation of power for captive use which is a non-regulated sector. In that sense, there are two different categories of end uses in clause (ii), albeit dealing with the activity of generation of power. In our opinion, therefore, the principles stated in the decision relied upon will not take the matter any further for the petitioner.

55. The petitioner has then relied on the decisions of the Supreme Court in the case of **V.K.Ashokan Vs. Assistant Excise Commissioner and others**[14] in particular, para 54 of this judgment, where the Court has held that it is well settled principle of law that a statutory authority must exercise its jurisdiction within the four corners of the statute. Any action taken which is not within the domain of the said authority would be illegal and without jurisdiction. For the reasons already recorded, this judgment will be of no avail to the petitioner who is ineligible to participate in the subject auction process. On the same lines, the decision of the Supreme Court in the case of **State of Andhra Pradesh Vs. Viswanadula Chetti Babu**[15] was pressed into service to contend that the statutory authority is

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[14] (2009) 14 SCC 85
[15] (2010) 15 SCC 103

required to do a particular thing in a particular manner the same should be done in that manner only. In view of the findings recorded against the petitioner in the context of the question arising for our consideration, even this judgment will be of no avail to the petitioner.

56. The argument, therefore, proceeds that generation of power *per se* and generation of power for captive use has been placed under one head in sub-clause (ii) of clause (v) of Section 3 of the Act of 2015. The expression "captive use" has not been defined in the Act of 2015. Widely read, it would mean that the coal is used for generation of power. The fact whether the power is used within the company generating the same or supplied to the consumer/grid, would make no difference. In that, even the companies engaged in generation of power for captive use are free to supply 49% of the power generated by them to consumers of their choice.

57. The argument though attractive, at the first blush, needs to be considered in the context of the scope of activity of the company generating power for itself or for captive use and

on the other hand for supply to consumers/grid. The power used in-house or known as captive use, is not regulated by the provisions of the Electricity Act and the Regulations and Rules framed thereunder. However, the power supplied to consumers/grid is fully regulated and can be so supplied on the basis of terms and conditions specified by the Regulator under the Electricity Act. That power is used by the common man, for which, regulated tariff is indispensable. While prescribing tariff, the Regulator reckons all factors including the cost of raw material (coal) used by the company in generation of power. For that purpose, the policy of the respondents is to group the two categories separately for the purpose of auction of coal mines, though both forming part of clause (ii) of Section 3 (v). The provisions of the Act of 2015 do not preclude the Authorities from classifying the specified end uses of the concerned Coal Mine - which classification can be on the basis of coal used for generation of power *per se* (for consumers/grid) and the other as generation of power for captive use. The former requires low cost of production for generation of power. In the case of latter, the power is predominantly consumed by the company itself for

its main industrial or related activities and supply of surplus power to its consumers/grid is only its incidental activity. The relatively high cost of generation of power would make no difference to such a company. This is a just reason to make the distinction. It is, therefore, open to the Central Government to classify the Coal Mines for non regulated category of generation of power for captive use and for regulated category of generation of power per se. For doing so, the Committee factors in several aspects including the quantity, quality and grade of Coal available in the concerned Mine. The Technical Committee, in the present case, has broadly taken into account and reckoned the grade of Coal and quantum of reserves and size of Blocks as the key parameters. It is of the view that generally 'E', 'F' and 'G' grade quality Coal must be reserved for generation of Power and 'D' Grade and superior (i.e. A to D) grade Coal for DRI, steel and cement industries. In case of Coal Mines reserved for Power Industry, the blocks must have more than 100 million tonnes of coal depositories. At the same time, if the part of the reserve contains better grade of coal, such as

'E' or superior grade, it could also be considered for end use of captive power along with iron and steel and cement.

58. The subject Coal Mines, according to the Technical Committee, contains geological reserves at around 9.35 MT and grade of Coal is superior – 'A' to 'G' grade, therefore, the inter-ministerial expert Technical Committee took a decision to allocate the said Mine for non-regulated sector. According to the Committee, if the Mine was allocated for Power sector *per se*, the same would not ensure optimum utilization of the national coal reserves. This being an experts' opinion, is not amenable to challenge nor can be questioned in writ jurisdiction.

59. Counsel for the respondents has justly relied on the dictum of the Supreme Court in the case of **Union of India and others Vs. S. L. Dutta and another**[16] to contend that the Court should be loath in examining the technical aspects considered by the Technical Committee for classification of the Coal Mines for specified end use. In Paragraphs No.9 and 10 of this decision the Supreme Court has adverted to the exposition in the case of

[16] (1991) 1 SCC 505

Vincent Panikurlangara Vs. Union of India[17], in particular, paragraphs No.15 and 17 thereof. In paragraph No.11, the Supreme Court then adverted to the dictum in the case of **Liberty Oil Mills Vs. Union of India**[18], para 6 thereof, which reads thus:-

> "6. There must also be a considerable number of other factors which go into the making of an import policy. Expertise in public and political, national and international economy is necessary before one may engage in the making or in the criticism of an import policy. Obviously courts do not possess the expertise and are consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular import policy."
>
> (emphasis supplied)

60. In Paragraph No.12, the Supreme Court has referred to its earlier decision in the case of **Shri Sitaram Sugar Co. Ltd. Vs. Union of India**[19]. In Paragraph No.56 of that decision, the Court observed thus:-

> "The court has neither the means nor the knowledge to re-evaluate the factual basis of the impugned orders. The court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence."

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17 (1987) 2 SCC 165
18 (1984) 3 SCC 465
19 (1990) 3 SCC 223

61. Further reference is made to the decision of U. S. Supreme Court in **Rail-road Commission of Texas Vs. Rowan and Nichols Oil Company**[20], where the Court has observed thus:-

> "Nothing in the Constitution warrants a rejection of these expert conclusions. Nor, on the basis of intrinsic skills and equipment, are the federal courts qualified to set their independent judgment on such matters against that of the chosen State authorities…..When we consider the limiting conditions of litigation the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers it is clear that the Due Process Clause does not require the feel of the expert to be supplanted by an independent view of judges on the conflicting testimony and prophecies and impressions of expert witnesses."

62. In the case of **Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and others**[21] relied by the respondent, in Paragraph No.37 the Court after adverting to the series of Supreme Court decisions observed thus:-

> "37. The Constitution Bench of this Court in **University of Mysore Vs. C.D. Govinda Rao - AIR 1965 SC 491** held that (AIR p.496, para 13) "normally the courts should be slow to interfere with the opinions expressed by the experts". It would normally be wise and safe for the courts to leave the

20 311 US 570-77
21 (2010) 3 SCC 732

> decision to experts who are more familiar with the problems they face than the Courts generally can be. This view has consistently been reiterated by this Court as is evident from the judgments in **State of Bihar Vs. Asis Kumar Mukherjee – (1975) 3 SCC 602; Dalpat Abasaheb Solunke Vs. Dr. B.S. Mahajan - (1990) 1 SCC 305; Central Areca Nut & Cocoa Marketing & Processing Co-operative Ltd. Vs. State of Karnataka & Ors. - (1997) 8 SCC 31; and Dental Council of India Vs. Subharti K.K.B. Charitable Trust - (2001) 5 SCC 486**.

63. Reliance has also been placed on the decision of the Supreme Court in the case of **Tata Cellular Vs. Union of India**[22] in support of the argument that the Court may examine only the decision making process and not the merits of the decision itself. The merits of the decision taken by the Technical Committee is not reviewable as the Court does not sit as an Appellate Court while exercising power of review. Further, it is argued by the respondents that in the present case the petitioner has failed to demonstrate that the decision taken by the Expert Committee and, in particular, by the Central Government to classify the subject Coal Mines for specified end use for non-regulated sectors is vitiated by arbitrariness, unfairness, illegality, irrationality or 'Wednesbury unreasonableness'. The

[22] (1994) 6 SCC 651

broad principles delineated by the Supreme Court in Paragraph No. 94, regarding the scope of judicial review, read thus:-

> "94. The principles deducible from the above are :
>
> (1) The modem trend points to judicial restraint in administrative action.
>
> (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
>
> (3) 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.
>
> (4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.
>
> Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
>
> (5) The Government must have freedom of contract. In other words, a 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 principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
>
> (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.
>
> Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

64. None of the above grounds are available to the petitioner to question the decision of the Technical Expert's Committee or that of the appropriate Authority on matters in issues.

65. Reliance is also placed on the decision of **Directorate of Education and others Vs. Educomp Datamatics Ltd. and others**[23], which has restated the legal principle expounded in the case of **Tata Cellular** (supra), regarding the scope of judicial review.

66. The argument then proceeds that the Supreme Court decision does not completely undo the allocation. Instead, it postulates conducting the auction of the respective Coal Mine without changing the end use of Coal, if was for generation of power for captive use. It must be continued for that purpose only. It is not possible to countenance this submission and in particular at the instance of this petitioner. Firstly, the decision of the Supreme Court proceeds on the finding that the allocations were done arbitrarily and without following due process and against national interests. Further, the Act of 2015 gives ample

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[23] (2004) 4 SCC 19

power to the Central Government to notify the auction by classifying the Mines in Schedule I and earmark the same for specified end uses which are more beneficial to the public at large including to minimize any impact on core Sectors such as iron and steel, cement and power utilities, which are vital for development of the nation. It is for the Expert Committee to decide the purpose of end use of the national resources which would be more beneficial and subserve the national interests. That decision, having been taken by the expert Technical Committee, it is not open for this Court to sit over the same as a Court of appeal. In the case of **Jyoti Pershad and others Vs. Administrator for the Union Territory of Delhi and others**[24], the Court was called upon to consider whether Section 19 of the Slum Areas (Improvement and Clearance) Act violates equal protection of laws guaranteed under Article 14 of the Constitution. The Supreme Court noted that in the construction of such laws and in particular in judging of their validity the Courts have necessarily to approach it from the point of view of furthering the social interest which it is the purpose of the legislation to promote, for the Courts are not, in these matters,

[24] AIR 1961 SC 1602

functioning as it were in vacuo, but as parts of the society which is trying, by enacted law, to solve its problems and achieve social concord and peaceful adjustment and thus furthering the moral and material progress of the community as a whole. In para 17, the Supreme Court observed that in the context of modern conditions and variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature, therefore, is forced to leave the Authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. Further, so long as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of the legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. Further, if the power or discretion has been

conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law. Applying these principles, the argument of the petitioner that the Act does not make distinction between the regulated and non-regulated sectors for the purposes of specified end use and, therefore, the Central Government could not have made such distinction, will have to be stated to be rejected, as we find that the Act vests authority in the Central Government to make classification of the coal mines in Schedule I and to earmark the same for the same class of specified end uses.

67. Reliance was also placed by the petitioner on the decision of the Supreme Court in case of **Delhi Development Authority and another Vs. Joint Action Committee Allottee of SFS Flats and others**[25] in particular paragraph 64 to 68 and 77 dealing with the framework of policy decision and judicial review in that regard. In paragraph 65, the Court observed thus:-

> "65. Broadly, a policy decision is subject to judicial review on the following grounds:
> (a) if it is unconstitutional;

[25] (2008) 2 SCC 672

> (b) if it is dehors the provisions of the Act and the regulations;
> (c) if the delegatee has acted beyond its power of delegation;
> (d) if the executive policy is contrary to the statutory or a larger policy."

68. In the context of the issues that have been considered in this judgment at the instance of the petitioner, we may observe that the question is not about the policy decision but about the application of eligibility condition specified in Section 4(4) of the Act of 2015 and the Rules framed thereunder. Having held that the petitioner is not eligible to participate in the auction process, further inquiry into the approach of the Authorities in application of the relevant enactment, does not merit consideration. As a result, it is not necessary to elaborate further on the principles expounded in this decision as well.

69. As noted earlier, the argument pressed into service by the petitioner that the Coal Mine should be used for the same purpose for which it was earlier used, cannot be countenanced. No such direction can be deduced from the said decision of the Supreme Court nor such meaning can be ascribed even on harmonious reading of the provisions of the Act of 2015. As a

matter of fact, this argument cannot be pursued by the petitioner. It will be available at best to the prior allottee and not to someone who was dependent on the supply of Coal from the prior allottee. The petitioner company is free to receive Coal extracted from some other Coal Mine, which can be used for generation of power *per se* (regulated sector) and can also bid in the auction process of such a Coal Mine earmarked for that specified end use – provided, however, the disqualification incurred by the prior allottee (BLA Industries Pvt. Ltd.) is removed and not otherwise.

70. The petitioner, no doubt, has raised several other issues about the appropriateness of the decision of the expert Technical Committee. However, as noticed earlier, it is not as if the Central Government has no power to classify the Coal Mines for specified end uses. Once we hold that such power vests in the Central Government, so long as the classification done by the Authority remains and it must, being reasonable; and that as it is not shown to be unreasonable or arbitrary, it would necessarily follow that the petitioner who intends to use the Coal for generation of power *per se* (regulated sector), is not

qualified to participate in the auction process of the subject Coal Mines, which is earmarked for end use of non regulated sector, for optimum utilization of the national resources.

71. The petitioner, however, submits that no explanation is given as to how a particular grade of Coal is suitable for captive use and is unsuitable for generation of power other than the captive use. This submission completely overlooks the various factors reckoned by the Technical Committee. It is not only the grade of Coal, but also its location, quantities of the Coal depositories and the size of Blocks or size of coal depositories was less than 100 MT, have been taken into account by the Technical Committee so that the same can be better utilised for non-regulated sector (iron and steel, Cement). The end use of coal in that sense must also have nexus with the optimum utilization of the coal depositories or national resources. The fact that to utilize the reserve of 100 MT and above, the power company must have a Power Plant of 600 MW and above – to make it a viable Power Plant, that, by itself, cannot be the basis to question the classification of the subject Coal Mine for specified use of non regulated sector.

72. The argument of the petitioner that the petitioner can be permitted to participate in the auction process, even if it is a case of upward bidding, would be disregarding the purpose of classification of the subject Coal Mine for specified end use of non regulated sector. If the petitioner is allowed to participate in the subject auction process, it would not only impel us to overlook the several factors considered by the Technical Committee including of optimum utilization of the national resources but also the price that will be paid by the petitioner for sourcing the coal from these mines. That would inevitably result in high priced tariff of electricity to be supplied by the petitioner company to its consumers/grid. The petitioner has not given any assurance or undertaking that irrespective of high priced coal sourced from the subject Coal Mines, the petitioner would abide by the tariff as would be prescribed by the Regulator, in respect of other power generating companies in the immediate neighbourhood for supply of power to the consumers/grid.

73. We may usefully refer to the recent decision of the Supreme Court relied by the respondents in the case of

Michigan Rubber (India) Limited Vs. State of Karnataka and others[26]. In Paragraph No. 23 the Court has delineated the principles emerging from the various Supreme Court decisions regarding the scope of judicial review in respect of contract matters, which reads thus:-

> "23. From the above decisions, the following principles emerge:
>
> (a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;
>
> (b) Fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;
>
> (c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;
>
> (d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the

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[26] (2012) 8 SCC 216

> contractor has the capacity and the resources to successfully execute the work; and
>
> (e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government."

74. Considering the fact that the petitioner is engaged in generation of power *per se* for supply of power to the consumers/grid (regulated sector), is ineligible to participate in the subject auction process of the Coal Mines earmarked for specified end use of non-regulated sector. Hence, even for this reason, the petitioner has no locus to question the tender process in respect of the subject Coal Mines.

75. For the view taken by us, that the petitioner has no locus to maintain this petition, being ineligible, to participate in the subject auction process, it is not necessary for us to dilate on other contentions raised by the petitioner which in any case need not be answered at the instance of this petitioner.

76. While parting, we direct the Registry to forthwith return the sealed envelope containing the record and minutes of the Technical Committee meeting handed in to us by the

counsel for the respondents during the hearing. We may add that for the view taken by us, it was not necessary for us to examine the record and minutes of the said Committee/original record.

77. Accordingly, these writ petitions must fail and the same are **dismissed** with no order as to costs.

(**A.M. Khanwilkar**)
Chief Justice

(K.K.Trivedi)
Judge

psm