REPORTABLE

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 120 OF 2012

Manohar Lal Sharma …… Petitioner

Vs.

The Principal Secretary & Ors. …… Respondents

WITH

WRIT PETITION [C] NO. 463 OF 2012

WRIT PETITION [C] NO. 515 OF 2012

WRIT PETITION [C] NO. 283 OF 2013

JUDGMENT

R.M. LODHA, CJI.

Coal is king and paramount Lord of industry is an old saying in the industrial world. Industrial greatness has been built up on coal by many countries. In India, coal is the most important indigenous energy resource and remains the dominant fuel for power generation and many industrial applications. A number of major industrial sectors including iron and steel production depend

on coal as a source of energy. The cement industry is also a major coal user. Coal's potential as a feedstock for producing liquid transport fuels is huge in India. Coal can help significant economic growth. India's energy future and prosperity are integrally dependant upon mining and using its most abundant, affordable and dependant energy supply – which is coal. Coal is extremely important element in the industrial life of developing India. In power, iron and steel, coal is used as an input and in cement, coal is used both as fuel and an input. It is no exaggeration that coal is regarded by many as the black diamond.

2. Being such a significant, valuable and important natural resource, the allocation of coal blocks for the period 1993 to 2010 is the subject matter of this group of writ petitions filed in the nature of Public Interest Litigation, principally one by Manohar Lal Sharma and the other by the Common Cause. The allocation of coal blocks made during the above period by the Central Government, according to petitioners, is illegal and unconstitutional *inter alia* on the following grounds:

(a) Non-compliance of the mandatory legal procedure under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, '1957 Act').

(b) Breach of Section 3(3)(a)(iii) of the Coal Mines (Nationalisation) Act, 1973 (for short, 'CMN Act').

(c) Violation of the principle of Trusteeship of natural resources by gifting away precious resources as largesse.

(d) Arbitrariness, lack of transparency, lack of objectivity and non-application of mind; and

(e) Allotment tainted with *mala fides* and corruption and made in favour of ineligible companies tainted with *mala fides* and corruption.

3. The first of these writ petitions was filed by Manohar Lal Sharma. When that writ petition was listed for preliminary hearing on 14.09.2012, the Court issued notice to Union of India and directed it to file counter affidavit through Secretary, Ministry of Coal dealing with the following aspects:

(i) The details of guidelines framed by the Central Government for allocation of subject coal blocks.

(ii) The process adopted for allocation of subject coal blocks.

(iii) Whether the guidelines contain inbuilt mechanism to ensure that allocation does not lead to distribution of largesse unfairly in the hands of few private companies?

(iv) Whether the guidelines were strictly followed and whether by allocation of the subject coal blocks, the objectives of the policy have been realised?

(v) What were the reasons for not following the policy of competitive bidding adopted by the Government of India way back in 2004 for allocation of coal blocks?

(vi) What steps have been taken or are proposed to be taken against the allottees who have not adhered to the terms of allotment or breached the terms thereof?

4. Another PIL came to be filed by Common Cause after the above order was passed. PIL by Common Cause came up for preliminary hearing on 19.11.2012. Since, certain additional issues were raised and additional reliefs were also made in the PIL by Common Cause, this Court issued notice in that matter as well on 19.11.2012.

5. Principally, two prayers have been made in these matters, first, for quashing the entire allocation of coal blocks made to private companies by the Central Government between 1993 and 2012 and second, a court monitored investigation by the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) or by a Special Investigation Team (SIT) into the entire

allocation of coal blocks by the Central Government made between the above period covering all aspects.

6. The present consideration of the matter is confined to the first prayer, i.e., for quashing the allocation of coal blocks to private companies made by the Central Government between the above period. At the outset, therefore, it is clarified that consideration of the present matter shall not be construed, in any manner, as touching directly or indirectly upon the investigation being conducted by CBI and ED into the allocation of coal blocks.

7. The first counter affidavit was filed by the Central Government on 22.01.2013 running into eleven volumes and 2607 pages. Thereafter, further/additional counter affidavit was filed by the Central Government. However, when the matters were listed on 10.07.2013, learned Attorney General submitted that in the counter affidavits filed so far, the Union of India had focused on the six queries raised by the Court on 14.09.2012 in the writ petition filed by Manohar Lal Sharma. He sought some time to enable the Central Government to file appropriate counter affidavit justifying allocation of coal blocks. Thereafter, further/additional counter affidavits have also been filed by the Central Government.

8. On 10.09.2013, the arguments with regard to challenge to allocation of coal blocks commenced which continued on

11.09.2013, 12.09.2013, 17.09.2013, 18.09.2013, 24.09.2013, 25.09.2013 and 26.09.2013. On 26.09.2013, Attorney General in the course of his arguments submitted that allocation letter by the Central Government was only a first step towards obtaining mining lease and that, by itself, did not confer any right on the allottee to work mines. He submitted that at the best, letter of allocation was a letter of intent and issuance of such allocation letter in no way impinges the rights of the State Governments under the 1957 Act. In light of the submissions of the learned Attorney General on 26.09.2013, we wanted to know from the counsel for the petitioners whether concerned State Governments should be asked to explain their position in the matter to which Mr. Manohar Lal Sharma, petitioner-in-person and Mr. Prashant Bhushan agreed and, accordingly, the Court issued notice to the States of Jharkhand, Chhattisgarh, Odisha, Maharashtra, Andhra Pradesh, Madhya Pradesh and West Bengal as the subject coal blocks, for which the allocation is in issue, were located in these States. The Court sought the views of the above States on the following:

(i) How did the State Government understand the allocation of coal blocks by the Central Government?

(ii) What was the role of the State Government in the allocation of coal blocks ?

(iii) What was the role of the State Government in the subsequent steps having regard to the provisions of the 1957 Act?

(iv) The details of the agreements entered into by the State Public Sector Undertakings, which were allotted coal blocks, with private parties for the coal blocks located in the State.

9. In pursuance of the above, 7 States have filed their responses.

10. The arguments re-commenced on 05.12.2013. On that day, arguments of the States of Jharkhand, Chhattisgarh and Odisha were concluded and matters were fixed for 08.01.2014. On 08.01.2014, the arguments on behalf of the States of Maharashtra, Andhra Pradesh, Madhya Pradesh and West Bengal were concluded and the matters were fixed for 09.01.2014. On that day, arguments of learned Attorney General were concluded.

11. Three Associations, viz., Coal Producers Association, Sponge Iron Manufacturers Association and Independent Power Producers Association of India have made applications for their intervention stating that these associations represented large number of allottees who have been allocated subject coal blocks. Accordingly, Mr. K.K. Venugopal, learned senior counsel was heard for Coal Producers Association and Mr. Harish N. Salve, learned senior counsel was heard on behalf of the Sponge Iron

Manufacturers Association and Independent Power Producers Association of India. They commenced their arguments on 09.01.2014, which continued on 15.01.2014 and concluded on 16.01.2014. The arguments in rejoinder by Mr. Manohar Lal Sharma, petitioner-in-person and Mr. Prashant Bhushan, learned counsel for Common Cause were also concluded on that day. The arguments of Mr. Sanjay Parikh, who had made an application for intervention on behalf of Mr. Sudeep Shrivastav were also heard and concluded. The judgment was reserved on that day.

12. It is appropriate that we first notice the statutory framework relevant for the issues under consideration. The Mines and Minerals (Development and Regulation) Act, 1948 (for short, '1948 Act') was enacted to provide for the regulation of mines and oil fields and for the development of the minerals under entry 36 of the Government of India Act, 1935. It received the assent of the Governor General on 08.09.1948 and came into effect from that date.

13. 1948 Act was repealed by the 1957 Act. The introduction of the 1957 Act reads:

> "In the Seventh Schedule of the Constitution in Union List entry 54 provides for regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. On account of this provision it

> became imperative to have a separate legislation. In order to provide for the regulation of mines and the development of minerals, the Mines and Minerals (Regulation and Development) Bill was introduced in the Parliament."

14. 1957 Act has undergone amendments from time to time. Section 2 of the 1957 Act reads:

> "Declaration as to the expediency of Union Control - it is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

15. Sections 3(a), (c), (d), (e), (f), (g) and (h) define: "minerals", "mining lease", "mining operations", "minor minerals", "prescribed", "prospecting licence", and "prospecting operations"[1], respectively.

16. Section 4 mandates that prospecting or mining operations shall be under licence or lease. Sub-section (2) provides that no reconnaissance permit, prospecting licence or mining lease

[1] "3(a) "minerals" includes all minerals except mineral oils;
(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;
(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;
(f) "prescribed" means prescribed by rules made under this Act;
(g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;
(h)"prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposit;"

shall be granted otherwise than in accordance with the provisions of the Act and the rules made thereunder.

17. Section 5 is a restrictive provision. The provision mandates that in respect of any mineral specified in the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government. Coal and Lignite are at item no.1 in Part A under the title “Hydro Carbons/Energy Minerals” in the First Schedule appended to the 1957 Act.

18. Section 6 provides for maximum area for which a prospecting licence or mining lease may be granted. Section 7 makes provisions for the periods for which prospecting licence may be granted or renewed and Section 8 provides for periods for which mining leases may be granted or renewed. Section 10 provides that application for reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned, *inter alia,* it empowers the State Government concerned to grant or refuse to grant permit, licence or lease having regard to the provisions of the 1957 Act or the Mineral Concession Rules, 1960 (for short ‘1960 Rules’).

19. Section 11 provides for preferential right of certain persons. Sub-section (1) of Section 11 makes a provision that where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person. This is, however, subject to State Government's satisfaction and certain conditions as provided therein. Sub-section (2) of Section 11 says that where the State Government does not notify in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have a preferential right to be considered for such grant over the applicant whose application was received later. This is, however, subject to provisions of sub-section (1). The first proviso appended thereto enacts that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, the applications received during the period specified in such notification and the applications which had been received prior to the

publication of such notification in respect of the lands within such area or had not been disposed of, shall be deemed to have been received on the same day for the purpose of assigning priority under sub-section (2). The second proviso indicates that where such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease to one of the applicants as it may deem fit. Sub-section (3) elaborates the matter referred to in sub-section (2), namely, (a) any special knowledge of, experience in reconnaissance operations, prospecting operations or mining operations, possessed by the applicant; (b) the financial resources of the applicant; (c) the nature and quality of the technical staff employed or to be employed by the applicant; (d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals; and (e) such other matters as may be prescribed.

20. Section 13 empowers the Central Government to make rules in respect of minerals. By virtue of the power conferred upon the Central Government under Section 13(2), the 1960 Rules have been framed for regulating the grant of, *inter alia,* mining leases in respect of minerals and for purposes connected therewith.

21. By virtue of Section 17, the Central Government has been given special powers to undertake prospecting or mining operations in certain lands. Section 17-A authorises the Central Government to reserve any area not already held under any prospecting licence or mining lease with a view to conserve any mineral and after consultation with the State Government by notification in the Official Gazette.

22. Section 18 indicates that it shall be the duty of the Central Government to take all such steps as will be necessary for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks necessary.

23. Section 18A empowers the Central Government to authorise the Geological Survey of India to carry out necessary investigation for the purpose of information with regard to the availability of any mineral in or under any land in relation to which any prospecting licence or mining lease has been granted by a State Government or by any other person. The proviso that follows sub-section (1) of Section 18A provides that in cases of prospecting

licences or mining leases granted by a State Government, no such authorisation shall be made except after consultation with the State Government.

24. Section 19 provides that any prospecting licences and mining leases granted, renewed or acquired in contravention of the 1957 Act or any rules or orders made thereunder shall be void and of no effect.

25. The 1960 Rules were framed by the Central Government, as noted above, in exercise of the powers conferred by Section 13.

26. Chapter IV of 1960 Rules deals with grant of mining leases in respect of land in which the minerals vest in the Government. Sub-rule (1) of Rule 22 provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf. Sub-rule (3) provides for the documents to be annexed with the application and so also that such application must be accompanied by a non-refundable fee as prescribed therein. Sub-rule (4) of Rule 22 provides that on receipt of the application for the grant of mining lease, the State Government shall take decision to grant precise area and communicate such decision

to the applicant. The applicant, on receipt of communication from the State Government of the precise areas to be granted, is required to submit a mining plan within a period of six months or such other period as may be allowed by the State Government to the Central Government for its approval. The applicant is required to submit the mining plan duly approved by the Central Government or by an officer duly authorized by the Central Government to the State Government to grant mining lease over that area. Sub-rule (5) of Rule 22 provides the details to be incorporated in the mining plan.

27. Rule 26 empowers the State Government to refuse to grant or renew mining lease over the whole or part of the area applied for. But that has to be done after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant.

28. Rule 31 provides for time within which lease is to be executed where an order has been made for grant of such lease on an application. Rule 34 provides for manner of exercise of preferential rights for mining lease.

29. Rule 35 provides that where two or more persons have applied for a reconnaissance permit or a prospecting licence or a mining lease in respect of the same land, the State Government shall, for the purpose of sub-section (2) of Section 11, consider

besides the matters mentioned in clauses (a) to (d) of sub-section (3) of Section 11, the end use of the mineral by the applicant.

30. In short, the 1957 Act provides for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining prospecting licences or mining leases in respect of lands in which the minerals vest in the government, the rule-making power for regulating the grant of prospecting licences and mining leases, special powers of Central Government to undertake prospecting or mining operations in certain cases, and for development of minerals.

31. The Coal Mines (Taking Over of Management) Act, 15 of 1973, (for short, 'Coal Mines Management Act') was passed,

> "to provide for the taking over, in the public interest, of the management of coal mines, pending nationalisation of such mines, with a view to ensuring rational and coordinated development of coal production and for promoting optimum utilisation of the coal resources consistent with the growing requirements of the country, and for matters connected therewith or incidental thereto."

32. The Coal Mines Management Act received the assent of the President on 31.03.1973 but it was made effective from

30.01.1973 except Section 8(2) which came into force at once. Section 3(1) provides that on and from the appointed day (that is, 31.01.1973) the management of all coal mines shall vest in the Central Government. By Section 3(2), the coal mines specified in the Schedule shall be deemed to be the coal mines the management of which shall vest in the Central Government under sub-section (1). Under the proviso to Section 3(2), if, after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, it shall by a notified order make a declaration about the existence of such mine, upon which the management of such coal mine also vests in the Central Government and the provisions of the Act become applicable thereto.

33. Immediately after the Coal Mines Management Act, the Parliament enacted the CMN Act. CMN Act was passed,

> "to provide for the acquisition and transfer of the right, title and interest of the owners in respect of coal mines specified in the Schedule with a view to reorganising and reconstructing any such coal mines so as to ensure the rational, coordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country, in order that the ownership

and control of such resources are vested in the State and thereby so distributed as best to subserve the common good, and for matters connected therewith or incidental thereto."

34. Section 2(b) of the CMN Act defines a coal mine in the same manner as the corresponding provision of the Coal Mines Management Act, namely, a mine "in which there exists one or more seams of coal". Section 3(1) provides that on the appointed day (i.e., 01.05.1973) the right, title and interest of the owners in relation to the coal mines specified in the Schedule shall stand transferred to, and shall vest absolutely in the Central Government free from all encumbrances. Section 4(1) provides that where the rights of an owner under any mining lease granted, or deemed to have been granted, in relation to a coal mine, by a State Government or any other person, vest in the Central Government under Section 3, the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government or such other person, as the case may be, in relation to such coal mine as if a mining lease in relation to such coal mine had been granted to the Central Government. The period of such lease is to be the entire period for which the lease could have been granted by the Central Government or such other person

under the 1960 Rules and thereupon all the rights under the mining lease granted to the lessee are to be deemed to have been transferred to, and vested in, the Central Government. By Section 4(2) on the expiry of the term of any lease referred to in sub-section (1), the lease, at the option of the Central Government, is liable to be renewed on the same terms and conditions on which it was held by the lessor for the maximum period for which it could be renewed under the 1960 Rules. Section 5(1) empowers the Central Government under certain conditions to direct by an order in writing that the right, title and interest of an owner in relation to a coal mine shall, instead of continuing to vest in the Central Government, vest in the Government company. Such company, under Section 5(2), is to be deemed to have become the lessee of the coal mine as if the mining lease had been granted to it. By Section 6(1), the property which vests in the Central Government or in a government company is freed and discharged from all obligations and encumbrances affecting it. Section 8 requires that the owner of every coal mine or group of coal mines specified in the second column of the Schedule shall be given by the Central Government in cash and in the manner specified in Chapter VI, for the vesting in it under Section 3 of the right, title and interest of the owner, an amount equal to the amount specified against it in the corresponding entry in the fifth column of

the Schedule. By Section 11(1), the general superintendence, direction, control and management of the affairs and business of a coal mine, the right, title and interest of an owner in relation to which have vested in the Central Government under Section 3 shall vest in the Government company or in the Custodian, as the case may be.

35. The CMN Act came to be amended by the Coal Mines (Nationalisation) Amendment Ordinance which was promulgated on 29.04.1976. The Ordinance was replaced by the Coal Mines (Nationalisation) Amendment Act, 1976 (for short, '1976 Nationalisation Amendment Act'). A new section, Section 1-A was inserted by which it was declared that it was expedient in the public interest that the Union should take under its control the regulation and development of coal mines to the extent provided in sub-sections (3) and (4) of Section 3 and sub-section (2) of Section 30 of the CMN Act. By sub-section (2) of Section 1-A, the declaration contained in sub-section (1) was to be in addition to and not in derogation of the declaration contained in Section 2 of the 1957 Act. By Section 3 of the 1976 Nationalisation Amendment Act, a new sub-section (3) was introduced in Section 3 of the principal Act. Under clause (a) of the newly introduced sub-section (3) of Section 3, on and from the commencement of Section 3 of the 1976 Nationalisation Amendment Act, no person other than (i) Central

Government or a Government company or a corporation owned, managed or controlled by the Central Government or (ii) a person to whom a sub-lease, referred to in the proviso to clause (c) has been granted by any such Government, company or corporation or (iii) a company engaged in the production of iron and steel, shall carry on coal mining operation, in India in any form. Under clause (b) of sub-section (3), excepting the mining leases granted before the 1976 Nationalisation Amendment Act in favour of the Government company or corporation referred to in clause (a), and any sub-lease granted by any such Government, Government company or corporation, all other mining leases and sub-leases in force immediately before such commencement shall insofar as they relate to the winning or mining of coal, stand terminated. Clause (c) of the newly introduced sub-section (3) of Section 3 provides that no lease for winning or mining coal shall be granted in favour of any person other than the Government, Government company or corporation referred to in clause (a). Under the proviso to clause (c), the Government, Government company or the corporation to whom a lease for winning or mining coal has been granted may grant a sub-lease to any person in any area if, (i) the reserves of coal in the area are in isolated small pockets or are not sufficient for scientific and economical development in a coordinated and integrated manner,

and (ii) the coal produced by the sub-lessee will not be required to be transported by rail. By sub-section (4) of Section 3, where a mining lease stands terminated under sub-section (3), it shall be lawful for the Central Government or a Government company or corporation owned or controlled by the Central Government to obtain a prospecting licence or mining lease in respect of the whole or part of the land covered by the mining lease which stands terminated. Section 4 of the 1976 Nationalisation Amendment Act introduces an additional provision in Section 30 of the principal Act by providing that any person who engages, or causes any other person to be engaged, in winning or mining coal from the whole or part of any land in respect of which no valid prospecting licence or mining lease or sub-lease is in force, shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to Rs.10,000/-.

36. By the Coal Mines (Nationalisation) Amendment Act, 1993 (for short, '1993 Nationalisation Amendment Act'), the CMN Act was further amended. The Statement of Objects and Reasons of the 1993 Nationalisation Amendment Act reads thus:

> "Considering the need to augment power generation and to create additional capacity during the eighth plan, the Government have taken decision to allow private sector participation in the power sector. Consequently, it has become necessary to provide for coal linkages to

power generating units coming up in the private sector. Coal India Limited and Neyveli Lignite Corporation Limited, the major producers of coal and lignite in the public sector, are experiencing resource constraints. A number of projects cannot be taken up in a short span of time. As an alternative, it is proposed to offer new coal and lignite mines to the proposed power stations in the private sector for the purpose of captive end use. The same arrangement is also considered necessary for other industries who would be handed over coal mines for captive end use. Washeries have to be encouraged in the private sector also to augment the availability of washed coal for supply to steel plants, power houses, etc.

Under the Coal Mines (Nationalisation) Act, 1973, coal mining is exclusively reserved for the public sector, except in case of companies engaged in the production of iron and steel, and mining in isolated small pockets not amenable to economical development and not requiring rail transport. In order to allow private sector participation in coal mining for captive use for purpose of power generation as well as for other captive end uses to be notified from time to time and to allow the private sector to set up coal washeries, it is considered necessary to amend the Coal and Coal Mines (Nationalisation) Act, 1973.

The Coal Mines (Nationalization) Amendment Bill, 1992 seeks to achieve the aforesaid objectives."

37. Section 3 of the CMN Act was amended and thereby in clause (a) of sub-section (3) for item (iii), the following was substituted, namely,

(iii) a company engaged in –

(1) the production of iron and steel,

(2) generation of power,

(3) washing of coal obtained from a mine, or

(4) such other end use as the Central Government may, by notification, specify.

38. By further Notification dated 15.03.1996, the Central Government specified production of cement to be an end-use for the purposes of the CMN Act.

39. By another Notification dated 12.07.2007, the Central Government specified production of syn-gas obtained through coal gasification (underground and surface) and coal liquefaction as end uses for the purposes of the CMN Act.

40. The background in which Section 3(3) of the CMN Act was amended to permit private sector entry in coal mining operation for captive use has been sought to be explained by the Central Government. It is stated that nationalization of coal through the CMN Act was done with the objective of ensuring "rational, coordinated and scientific development and utilization of coal resources consistent with the growing requirements of the country" and as a first step in 1973, 711 coal mines specified in the Schedule appended to CMN Act were nationalized and vested in the Central Government. By 1976 Nationalisation Amendment Act, the Central Government alone was permitted to mine coal with the limited exception of private companies engaged in the production of iron and steel. In 1991, the country was facing huge crisis due to

(a) the situation regarding balance of payments; (b) the economy being in doldrums; (c) dismal power situation; (d) shortage in coal production; and (e) inability of Coal India Limited (CIL) to produce coal because of lack of necessary resources to maximize coal production amongst other reasons. There was a huge shortage of power in the country. The State Electricity Boards were unable to meet power requirements. Post liberalization, in the 8th Five Year Plan (1992-1997) a renewed focus was placed on developing energy and infrastructure in the country. CIL was not in a position to generate the resources required. It was in this background that in a meeting taken by the Deputy Chairman of the Planning Commission on 31.10.1991, it was decided that "*private enterprises may be permitted to develop coal and lignite mines as captive units of power projects*". The approval of Cabinet was consequently sought *vide* a Cabinet note dated 30.01.1992 for "*allowing private sector participation in coal mining operations for captive consumption towards generation of power and other end use, which may be notified by Government from time to time*". The Cabinet in the meeting held on 19.02.1992 considered the above Cabinet note and it was decided that the proposal may be brought up only when specific projects of private sector participation in coal mining come to the Government for consideration. Subsequently,

another Cabinet note dated 23.04.1992 was placed before the Cabinet containing references to certain private projects like the two 250 MW thermal power plants of RPG Enterprises, which had been recommended by the Government of West Bengal. The proposal contained in the Cabinet note dated 23.04.1992 was approved by the Cabinet on 05.05.1992. On 15.07.1992, the Bill for amendment of Section 3(3) of CMN Act was introduced in Rajya Sabha and the same was passed on 21.07.1992. The Bill was passed in Lok Sabha on 19.04.1993 and got assent of the President on 09.06.1993.

41. The Central Government has highlighted that once Section 3(3) of the CMN Act was amended to permit private sector entry in coal mining operations for captive use, it became necessary to select the coal blocks that could be offered to the private sector for captive use. The coal blocks to be offered for captive mining were duly identified and a booklet containing particulars of 40 blocks was prepared which was revised from time to time.

42. Mr. Goolam E. Vahanvati, learned Attorney General with all persuasive skill and eloquence at his command has sought to justify the allocation of coal blocks by the Central Government. He submits that the Central Government is not only empowered but

is duty bound to take the lead in allocation of coal blocks and that is what it did. He traces this power to Sections 1A and 3(3) of the CMN Act. It is argued by the learned Attorney General that in addition to the declaration contained in Section 2 of the 1957 Act, Parliament has made a further declaration in terms of Entry 54 of List I (Union List) of the Seventh Schedule in Section 1A of the CMN Act which makes specific reference to Section 3(3) of the CMN Act and both have to be read in conjunction with each other. By virtue of Parliament having placed the regulation and development of coal mines under the control of the Union, Section 1A of the CMN Act regulates coal mining operations under Sections 3(3) and 3(4). He argues that coal reserves are primarily concentrated in seven States, viz., Maharashtra, Madhya Pradesh, Chhattisgarh, Odisha, Jharkhand, Andhra Pradesh and West Bengal and all these seven States have accepted and acknowledged the source of power of Government of India with respect to allocation of coal blocks.

43. It is argued by the learned Attorney General that by virtue of the bar contained in Section 3(3) of the CMN Act between 1976 and 1993, no private company (other than the company engaged in the production of iron and steel) could have carried out coal mining operations in India. Therefore, if no other company

could have carried on coal mining operations, it follows that it could also not have applied to the State Government for grant of lease for mining of coal. Even if they did (post 1993) make an application for grant of prospective licence/mining lease directly to the State Government, the State Government could not process the same until it received the letter of allocation from the Central Government.

44. Learned Attorney General argues that the consideration of proposals by the Central Government for allocation of coal blocks does not contravene the provisions of the 1957 Act in any manner, firstly, because Section 1A of CMN Act is in addition to and not in derogation of the 1957 Act; secondly, an application for allocation of a coal block is not dealt with by the provisions of the 1957 Act; and thirdly, after allocation, the allocatee has to make an application for grant of mining lease or prospecting licence to the State Government in accordance with the 1957 Act and the 1960 Rules. It is for these reasons, he submits, that none of the States nor any private person ever challenged the grant of allocation by the Central Government on the ground that the Central Government was not empowered to allocate the coal blocks.

45. The above arguments of the learned Attorney General are vehemently contested by Mr. Prashant Bhushan, learned counsel for Common Cause. He submits that under the provisions

of CMN Act only two kinds of entities (a) Central Government and undertakings/corporations owned by the Central Government; and (b) companies having end-use plants in iron and steel, power, cement, etc., could work the coal mines. He submits that the CMN Act does not, in any way, give the power of calling applications, selection and allocation of coal blocks to the Central Government and Section 3 of the CMN Act only provides eligibility criteria for allocation of coal mines. The procedure for allocation continues to be governed by the 1957 Act and it is for this reason that ultimately Section 11A concerning allocation of coal mines was introduced in the 1957 Act only.

46. Mr. Harish N. Salve, learned senior counsel, who appeared for interveners, Sponge Iron Manufacturers Association and Independent Power Producers Association of India, argues that Section 1A(2) of the CMN Act makes the declaration in addition to the existing declaration in Section 2 of the 1957 Act. The additional declaration has done away with any vestige of power in the State in the matter of selection of beneficiaries of the mineral and if Section 1A had not been inserted *vide* 1976 Nationalisation Amendment Act, it may have been possible to argue that the State, as the owner of the mineral, would nonetheless be required to grant the lease under Section 10 of the 1957 Act by exercising its discretion

under Section 10(3) albeit subject to further "conditionalities" imposed by Section 3(2) of the CMN Act. The additional declaration, learned senior counsel for the interveners submits, is intended to denude the State of power under Entry 23 of List II of the Seventh Schedule and corresponding executive power under Article 162 of the Constitution of India. According to Mr. Harish N. Salve, the grant or refusal of the lease by State insofar as coal is concerned, is no longer governed by Section 11 of the 1957 Act and that it is governed by Sections 3(3) and 3(4) of the CMN Act and, thus, it is obvious that there has to be first a recommendation by the Central Government before the State can exercise its discretion under Section 10(3) of the 1957 Act and that the converse would lead to conferring upon the State, in Section 10(3) of the 1957 Act, an unguided and un-canalised power to grant or refuse a lease. He submits that if Section 3(3) of the CMN Act is read as prescribing qualifications in addition to those in Section 5(1) of the 1957 Act, such position would make the scheme of both the enactments – 1957 Act and CMN Act – unworkable.

47. Mr. Harish N. Salve argues that the allocation letter issued by the Central Government is the procedure which regulates the exercise under Rule 22 of the 1960 Rules (and Section 10(3) of the 1957 Act) by the State Government and that procedure is to

ensure that a lease is granted to a company engaged in stipulated permissible activities by making it a two step process, viz., the issue of letter of allotment conditional upon the end-use plant, followed by grant of a lease once end usage is achieved. He submits that Section 3(3) of the CMN Act is fully satisfied where a lease is granted to a company which engages in the permissible activity. Learned senior counsel for the interveners fully supports the arguments of the learned Attorney General that the Central Government has the power to identify the beneficiary of an allotment and once the Central Government has identified the beneficiary of allotment, the State will be obliged to grant a lease if other conditions are satisfied.

48. Mr. K.K. Venugopal, learned senior counsel appearing for Coal Producers Association argues that having regard to the declaration made under Section 2 of the 1957 Act and the declaration under Section 1A of the CMN Act and so also Section 3(3) thereof, it is perfectly legitimate for the Central Government to exercise its power and jurisdiction in the manner it has done for the purpose of selecting the allottees for coal blocks. He contends that under Article 73 of the Constitution, the executive power of the Union extends to matters in regard to which the Parliament has legislative competence and this power it undoubtedly possesses by

reason of the declarations contained in the 1957 Act and the CMN Act enacted specifically for the regulation and development of coal and coal mines.

49. It shall have been noticed that the thrust of the arguments of the learned Attorney General and so also Mr. Harish N. Salve and Mr. K. K. Venugopal hinges around the premise that Sections 1A and 3(3) of the CMN Act clothe the Central Government with power to allocate the coal blocks or, in other words, select the allottees for coal blocks. Is it so? The constitutional philosophy about law making in relation to mines and minerals and List I Entry 36 (Federal Legislative List) and List II Entry 23 (Provincial Legislative List) in Schedule VII of the Government of India Act, 1935 which correspond to List I Entry 54 (Union List) and List II Entry 23 (State List) in our Constitution has been noticed by this Court in *Monnet*[2]. Speaking through one of us (R.M. Lodha, J., as he then was) in *Monnet*[2], this Court has noted the statement of the learned Solicitor General in the House of Commons made in the course of debate in respect of the above entries in the Government of India Bill that the rationale of including only the "regulation of mines" and "development of minerals" and that, too, only to the extent it was considered expedient in the

[2] Monnet Ispat and Energy Ltd. v. Union of India and Ors.; [(2012) 11 SCC 1]

public interest by a federal law was to ensure that the provinces were not completely cut out from the law relating to mines and minerals and if there was inaction at the Centre, then the provinces could make their own laws. Thus, power in relation to the mines and minerals was accorded to both, the Centre and the States. The Court in *Monnet*[2] said:

> "130. …….. The management of the mineral resources has been left with both the Central Government and the State Governments in terms of List I Entry 54 and List II Entry 23. In the scheme of our Constitution, the State Legislatures enjoy the power to enact legislation on the topics of "mines and minerals development". The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says, "subject to the provisions of List I with respect to regulation and development under the control of the Union". In other words, the State Legislature loses its jurisdiction to the extent to which the Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of the Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from List II Entry 23 to that extent. It needs no elaboration that to the extent to which the Central Government had taken under "its control" "the regulation of mines and development of minerals" under the 1957 Act, the States had lost their legislative competence. By the presence of the expression "to the extent hereinafter provided" in Section 2, the Union has assumed control to the extent provided in the 1957 Act. The 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing

> the field occupied in the declaration cannot constitutionally stand. ……"

50. The declaration made by Parliament in Section 2 of the 1957 Act states that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. Legal regime relating to regulation of mines and development of minerals is, thus, guided by the 1957 Act and the 1960 Rules. In addition to the above declaration in 1957 Act, a further declaration has been inserted by Section 1A of the CMN Act, insofar as coal mines are concerned. By this provision, it is declared that it is expedient in the public interest that the Union should take under its control regulation and development of coal mines to the extent provided in sub-sections (3) and (4) of Section 3 and sub-section (2) of Section 30 of the CMN Act.

51. The two declarations – Section 2 of the 1957 Act and Section 1A of the CMN Act – have to be conjointly read insofar as the control and regulation of coal mines is concerned. As a consequence, the States have lost their jurisdiction to legislate to the extent to which the Union had taken over control, regulation and development of coal mines as manifested by the two enactments. When the Parliament by its law contained in 1957 Act has declared

that regulation of mines and development of minerals should, in the public interest, be under the control of the Union and by an additional declaration in the CMN Act declared that regulation and development of mines to the extent provided in sub-sections (3) and (4) of Section 3 and sub-section (2) of Section 30 of the CMN Act should, in the public interest, be under the control of the Union, the power of the State legislature to legislate on the subject covered by these two enactments is excluded. In other words, the field disclosed in the declarations under the 1957 Act and the CMN Act is abstracted from the legislative competence of the State Legislature. The requisite declarations have the effect of taking out regulation and development of coal mines from List II Entry 23. To that extent, the States have lost their legislative competence.

52. In *Baijnath Kadio*[3] the Constitution Bench referred to two earlier decisions of this Court in *Hingir-Rampur Coal Co. Ltd.*[4] and *M.A. Tulloch and Co.*[5]. While dealing with declaration contained in Section 2 of the 1957 Act, the Court stated in para 14, page 847 of the Report, as follows:

> "14. The declaration is contained in Section 2 of Act 67 of 1957 and speaks of the taking under the control of the Central Government the regulation of mines and development of minerals to the extent provided in the

[3] Baijnath Kadio v. State of Bihar; [(1969) 3 SCC 838]
[4] Hingir-Rampur Coal Co. Ltd. v. State of Orissa; [AIR 1961 SC 459: (1961) 2 SCR 537]
[5] State of Orissa v. M.A. Tulloch and Co.; [AIR 1964 SC 1284 : (1964) 4 SCR 461]

> Act itself. We have thus not to look outside Act 67 of 1957 to determine what is left within the competence of the State Legislature but have to work it out from the terms of that Act……."

53. In *Sandur Manganese and Iron Ores Ltd.*[6], this Court held that the declaration made in Section 2 of the 1957 Act had denuded the State of its legislative power to make any law with respect to the regulation of mines and mineral development to the extent provided in the 1957 Act. As a sequitur, it is also held that the State is also denuded of its executive power in regard to matters covered by the 1957 Act and the 1960 Rules and there is no question of the State having any power to frame a policy de-hors the 1957 Act and the 1960 Rules.

54. *Om Prakash Mehta*[7] highlights that the 1957 Act and the 1960 Rules are a complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to the Government as well as lands belonging to private persons.

55. In *Monnet*[2], the scope and extent of the word 'regulation' occurring in Section 2 has been examined and it is stated that 'regulation' must receive wide interpretation but the extent of control by the Union as specified in the 1957 Act has to be

[6] Sandur Manganese and Iron Ores Ltd. v. State of Karnataka; [(2010) 13 SCC 1]
[7] State of Assam v. Om Prakash Mehta; [(1973) 1 SCC 584]

construed strictly. The same meaning must apply to the word 'regulation' occurring in Section 1A of the CMN Act. In other words, the extent of control by the Union as specified in the CMN Act has to be construed strictly.

56. In *Orissa Cement Ltd.*[8] a three Judge Bench of this Court explained that in the case of a declaration under Entry 54, the legislative power of the State Legislature is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration.

57. 1957 Act provides for general restrictions on undertaking prospecting and mining operations, the procedure for obtaining reconnaissance permits, prospecting licences and mining leases and the rule making power of regulating the grant of reconnaissance permits, prospecting licences and mining leases. Clause (a) of sub-section (3) of Section 3 of the CMN Act enables persons specified therein only to carry on coal mining operation. In clause (c), it is provided that no lease for winning or mining coal should be granted in favour of any person other than the Government, Government company or corporation referred to in clause (a). Under clause (b) of sub-section (3), excepting the

[8] Orissa Cement Ltd. v. State of Orissa; [1991 Supp. (1) SCC 430]

mining leases granted before 1976 in favour of the Government, Government company or corporation referred to in clause (a) and any sub-lease(s) granted by any such Government, Government company or corporation, all other mining leases and sub-leases in force immediately before such commencement insofar as they relate to the winning or mining of coal stand terminated. When a sub-lease stands terminated under sub-section (3), sub-section (4) of Section 3 provides that it shall be lawful for the Central Government or the Government company or corporation owned or controlled by the Central Government to obtain a prospecting licence or a mining lease in respect of whole or part of the land covered by mining lease which stands so terminated. The above provisions in the CMN Act, as inserted in 1976, clearly show that the target of these provisions in the CMN Act is coal mines, pure and simple. CMN Act effectively places embargo on granting the leases for winning or mining of coal to persons other than those mentioned in Section 3(3)(a). Does CMN Act for the purposes of regulation and development of mines to the extent provided therein alter the legal regime incorporated in the 1957 Act? We do not think so. What CMN Act does is that in regard to the matters falling under the Act, the legal regime in the 1957 Act is made subject to the prescription under Section 3(3)(a) and (c) of the CMN Act.

1957 Act continues to apply in full rigour for effecting prescription of Section 3(3)(a) and (c) of the CMN Act. For grant of reconnaissance permit, prospecting licence or mining lease in respect of coal mines, the MMDR regime has to be mandatorily followed. 1957 Act and so also the 1960 Rules do not provide for allocation of coal blocks nor they provide any mechanism, mode or manner of such allocation.

58. Learned Attorney General submits that an application for allocation of a coal block is not dealt with by the 1957 Act and, therefore, consideration of proposals for allocation of coal blocks does not contravene the provisions of the 1957 Act. The submission of the learned Attorney General does not merit acceptance for more than one reason. First, although the Central Government has pre-eminent role under the 1957 Act inasmuch as no reconnaissance permit, prospecting licence or mining lease of coal mines can be granted by the State Government without prior approval of the Central Government but that pre-eminent role does not clothe the Central Government with the power to act in a manner in derogation to or inconsistent with the provisions contained in the 1957 Act. Second, the CMN Act, as amended from time to time, does not have any provision, direct or indirect, for allocation of coal blocks. Third, there are no rules framed by the

Central Government nor is there any notification issued by it under the CMN Act providing for allocation of coal blocks by it first and then consideration of an application of such allottee for grant of prospecting licence or mining lease by the State Government. Fourth, except providing for the persons who could carry out coal mining operations and total embargo on all other persons undertaking such activity, no procedure or mode or manner for winning or mining of coal mines is provided in the CMN Act or the 1960 Rules or by way of any notification. Fifth, even in regard to the matters falling under CMN Act, such as prescriptive direction that no person other than those provided in Sections 3(3) and 3(4) shall carry on mining operations in the coal mines, the legal regime under the 1957 Act, subject to the prescription under Sections 3(3) and 3(4), continues to apply in full rigour. Mr. Harish N. Salve, learned senior counsel for the interveners, is not right in his submission that allocation letter issued by the Central Government is the procedure which regulates the exercise under Rule 22 of the 1960 Rules. Had that been so, some provisions to that effect would have been made in the CMN Act or the 1960 Rules framed thereunder but there is none.

59. The submission of the learned Attorney General that the 7 States - Maharashtra, Madhya Pradesh, Chhattisgarh,

Odisha, Jharkhand, Andhra Pradesh and West Bengal – which have coal deposits, have accepted and acknowledged the source of power of the Central Government with regard to allocation of coal blocks is not fully correct. Odisha has strongly disputed that position. Odisha's stand is that the system of allocation of coal blocks by the Central Government is alien to the legal regime under the CMN Act and the 1957 Act. It is true that many of these States have taken the position that allocation letter confers a right on such allottee to get mining lease and the only role left with the State Government is to carry out the formality of processing the application and for execution of lease deed, but, in our view, the source of power of the Central Government in allocation of coal blocks is not dependant on the understanding of the State Governments but it is dependant upon whether such power exists in law or not. Indisputably, power to regulate assumes the continued existence of that which is to be regulated and it includes the authority to do all things which are necessary for the doing of that which is authorized including whatever is necessarily incidental to and consequential upon it but the question is, can this incidental power be read to empower the Central Government to allocate the coal blocks which is neither contemplated by the CMN Act nor by the 1957 Act? In our opinion, the answer has to be in the negative.

It is so because where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden[9]. This is uncontroverted legal principle.

60. It is argued by the learned Attorney General that the allocation letter does not by itself confer the right to work mines and the identification of the coal block does not impinge upon the rights of the State Government under the 1957 Act. Learned Attorney General argues that allocation of coal block is essentially an identification exercise where coal blocks selected by the CIL for captive mining were identified by the Screening Committee for development by an allocatee, after considering the suitability of the coal block (in terms of exercise and quality of reserve) vis-à-vis the requirements of the end-use plan of the applicant. It is submitted by the Attorney General that a letter of allocation is the first step. It entitles the allocatee to apply to the State Government for grant of prospecting licence/mining lease in accordance with the provisions of the 1957 Act. The right to apply for grant of prospecting licence/mining lease does not imply that with the issuance of allocation letter the allocatee automatically gets the clearances and approval required under the 1957 Act, the 1960 Rules, the Forest

[9] Nazir Ahmad v. King Emperor; [(1935-36) 63 IA 372]

(Conservation) Act, 1980 and the Environment (Protection) Act, 1986, etc. According to the learned Attorney General, after allocation, the following steps are required to be complied with:

a. The allocatee is required to apply to the State Government for grant of Prospecting Licence in case of an unexplored block, or a Mining Lease in case of an explored block.

b. On receipt of the application for grant of Prospecting License or Mining Lease, as the case may be, the State Government, in the case of Prospecting Licence can process the application for Prospecting Licence in accordance with Chapter III of the 1960 Rules.

c. In the case of application for Mining Lease (in Form I), the State Government has to take a decision to grant precise area for the purpose of the lease and communicate such decision to the applicant.

d. On receipt of the communication from the State Government of the precise area to be granted, the applicant is required to submit a mining plan to the Central Government for its approval. [Rule 22(4)]

e. After the mining plan has been duly approved by the Central Government, the applicant submits the same to the State Government for grant of mining lease over the area.

f. After receipt of the duly approved mining plan, the State Government makes a proposal for grant of prior consent by the Central Government in terms of the proviso to Section 5(1) of the 1957 Act.

g. In addition to the approved mining plan, the allocatee is required to obtain permission under Section 2 of the Forest (Conservation) Act, 1980 if the coal block is located in a scheduled forest. Further, the allocatee is required to submit to the State Government, prior environmental clearance from the Ministry of Environment and Forests, Government of India for the project. Forest Clearance and EIA clearance operate separately.

h. Mining Lease is thereafter granted by the State Government, after verifying that all statutory requirements have been duly complied with by the allocatee.

61. There seems to be no doubt to us that allocation letter is not merely an identification exercise as is sought to be made out by the learned Attorney General. From the position explained by the concerned State Governments, it is clear that the allocation

letter by the Central Government creates and confers a very valuable right upon the allottee. We are unable to accept the submission of the learned Attorney General that allocation letter is not bankable. As a matter of fact, the allocation letter by the Central Government leaves practically or apparently nothing for the State Government to decide save and except to carry out the formality of processing the application and for execution of the lease deed with the beneficiary selected by the Central Government. Though, the legal regime under the 1957 Act imposes responsibility and statutory obligation upon the State Government to recommend or not to recommend to the Central Government grant of prospecting licence or mining lease for the coal mines, but once the letter allocating a coal block is issued by the Central Government, the statutory role of the State Government is reduced to completion of processual formalities only. As noticed earlier, the declaration under Section 1A of the CMN Act does not take away the power of the State under Section 10(3) of the 1957 Act. It is so because the declaration under Section 1A of the CMN Act is in addition to the declaration made under Section 2 of the 1957 Act and not in its derogation. 1957 Act continues to apply with the same rigour in the matter of grant of prospecting licence or mining lease of coal mines but the eligibility of persons who can

carry out coal mining operations is restricted to the persons specified in Section 3(3)(a) of the CMN Act.

62. In *Tara Prasad Singh*[10], a seven Judge Constitution Bench while dealing with the purposiveness of the CMN Act, as amended in 1976, vis-à-vis the 1957 Act, stated that nothing in this Act (CMN) could be construed as a derogation of the principle enunciated in Section 18 of the 1957 Act. The Court said:

> "Therefore, even in regard to matters falling under the Nationalisation Amendment Act which terminates existing leases and makes it lawful for the Central Government to obtain fresh leases, the obligation of Section 18 of the Act of 1957 will continue to apply in its full rigour. As contended by the learned Solicitor General, Section 18 contains a statutory behest and projects a purposive legislative policy. The later Acts on the subject of regulation of mines and mineral development are linked up with the policy enunciated in Section 18."
>
> (emphasis supplied by us)

63. The observations made by this Court in *Tara Prasad Singh*[10] about interplay between the CMN Act and the 1957 Act with reference to the policy enunciated in Section 18, in our view, apply equally to the entire legal regime articulated in the 1957 Act. We are of the opinion that nothing should be read in the two Acts, namely, CMN Act and the 1957 Act, which results in destruction of the policy, purpose and scheme of the two Acts. It is not right to suggest that by virtue of declaration under Section 1A of the CMN

[10] Tara Prasad Singh and others v. Union of India and others; [(1980) 4 SCC 179]

Act, the power of the State under Section 10(3) of the 1957 Act has become unavailable. The submission of Mr. Harish N. Salve, learned senior counsel for the interveners that additional declaration under Section 1A of the CMN Act seeks to do away with any vestige of power in the State in the matter of selection of beneficiaries of the mineral is not meritorious. Had that been so, Rule 35 of the 1960 Rules would not have been amended to provide that where two or more persons have applied for reconnaissance permit or prospecting licence or a mining lease in respect of the same land, the State Government shall, *inter alia,* consider the end-use of the mineral by the applicant. The declaration under Section 1A has not denuded the States of any power in relation to grant of mining leases and determining of those permitted to carry on coal mining operation.

64. The allocation of coal block is not simply identification of the coal block or the allocatee as contended by the learned Attorney General but it is in fact selection of beneficiary. As a matter of fact, Mr. Harish N. Salve, learned senior counsel for the interveners, has taken a definite position that allocation letter may not by itself confer purported rights in the minerals but such allocation has legal consequences and confers private rights to the

allocatees for obtaining the coal mining leases for their end-use plants.

65. In view of the foregoing discussion, we hold, as it must be, that the exercise undertaken by the Central Government in allocating the coal blocks or, in other words, the selection of beneficiaries, is not traceable either to the 1957 Act or the CMN Act. No such legislative policy (allocation of coal blocks by the Central Government) is discernible from these two enactments. Insofar as Article 73 of the Constitution is concerned, there is no doubt that the executive power of the Union extends to the matters with respect to which the Parliament has power to make laws and the executive instructions can fill up the gaps not covered by statutory provisions but it is equally well settled that the executive instructions cannot be in derogation of the statutory provisions. The practice and procedure for allocation of coal blocks by the Central Government through administrative route is clearly inconsistent with the law already enacted or the rules framed.

66. The principle of *Contemporanea Expositio* was pressed into service by the learned Attorney General and the learned senior counsel for interveners. It is argued that the Ministries of Central Government, the State Governments and all concerned have understood the declaration under Section 1A read

with Section 3 of the CMN Act recognizing that the selection of beneficiaries through allocation letter is the task of the Union. The exposition of the legal position by them must be accepted as there is nothing to show that the exposition in respect of allocation of coal blocks received by the Central Government, State Governments and all concerned was clearly wrong. In this regard, reliance has been placed on the decision of this Court in *Desh Bandhu Gupta*[11].

67. In *Desh Bandhu Gupta*[11], this Court has dealt with the principle of *Contemporanea Expositio*. While doing so, this Court referred to Crawford on Statutory Construction (1940 ed.) and the two decisions of the Calcutta High Court in *Baleshwar Bagarti*[12] and *Mathura Mohan Saha*[13] and culled out the legal position in para 9 (page 572 of the Report) as under:

> "9. It may be stated that it was not disputed before us that these two documents which came into existence almost simultaneously with the issuance of the notification could be looked at for finding out the true intention of the Government in issuing the notification in question, particularly in regard to the manner in which outstanding transactions were to be closed or liquidated. The principle of *contemporanea expositio* (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction (Maxwell 12th ed.p. 268). In Crawford on Statutory Construction (1940 ed.) in para 219 (at pp. 393-395) it has been stated that administrative

[11] Desh Bandhu Gupta and Co. v.Delhi Stock Exchange Association Ltd.; [(1979) 4 SCC 565]
[12] Baleshwar Bagarti v. Bhagirathi Dass; [ILR 35 Calcutta 701]
[13] Mathura Mohan Saha v. Ram Kumar Saha; [ILR 43 Calcutta 790]

construction (i.e. contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although not controlling, is nevertheless entitled to considerable weight; it is highly persuasive. In *Baleshwar Bagarti* v. *Bhagirathi Dass* [ILR 35 Cal 701 at 713] the principle, which was reiterated in *Mathura Mohan Saha* v. *Ram Kumar Saha* [ILR 43 Cal 790 : AIR 1916 Cal 136] has been stated by Mookerjee, J., thus:

> 'It is a well settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it….. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the courts; such interpretation may, if occasion arises, have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a court would without hesitation refuse to follow such construction.

Of course, even without the aid of these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the notification the proviso permitted the closing out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, bye-laws and regulations of the respondent."

68. The above is consistent view. In our view, an interpretation to the statute received from contemporary authority is not binding upon the courts and may have to be disregarded if such interpretation by the contemporary authority is clearly wrong. The

process evolved by the Central Government for allocation of coal blocks for captive use has significantly and effectively reversed the scheme provided in the 1957 Act inasmuch as in most of the cases the applications have been made directly to the Central Government. West Bengal has stated that in some cases, they had knowledge of such applications and in some cases the State Government had no such knowledge. Then once allocation letter has been issued by the Central Government, virtually no power remains with the State Government in objectively considering the application for reconnaissance permit, prospecting licence or mining lease. Maharashtra says, "…*the role of the State Government is limited in the case of coal mines as the discretion to reject once the Central Government has issued an allocation letter is virtually non-existent*……". Odisha says, "……*Once the beneficiary has been identified by the Central Government by making the allocation of coal block, there was nothing left out for the State Government to decide*……". It must be noted without an iota of hesitation that the process for allocation of coal blocks for captive use has rendered the role of the State Government only mechanical and the concept of 'previous approval' in Section 5 of the 1957 Act meaningless after recommendation has been made by the State Government. It is not without any reason that

confronted with this difficulty, the 1957 Act has been amended and Section 11A inserted in 2010 providing for allocation of coal blocks and also the mode and manner of such allocation.

69. Assuming that the Central Government has competence to make allocation of coal blocks, the next question is, whether such allocation confers any valuable right amounting to grant of largesse? Learned Attorney General argues that allocation of coal blocks does not amount to grant of largesse since it is only the first statutory step. According to him, the question whether the allocation amounts to grant of largesse must be appreciated not from the perspective whether allocation confers any rights upon the allocatee but whether allocation amounts to conferment of largesse upon the allocatee. An allocatee, learned Attorney General submits, does not get right to win or mine the coal on allocation and, therefore, an allocation letter does not result in windfall gain for the allocatee. He submits that diverse steps, as provided in Rules 22A, 22B, and 22(5) of the 1960 Rules and the other statutory requirements, have to be followed and ultimately the grant of prospecting licence in relation to unexplored coal blocks or grant of mining lease with regard to explored blocks entitles the allocatee/licensee/lessee to win or mine the coal.

70. We are unable to accept the submission of the learned Attorney General that allocation of coal block does not amount to grant of largesse. It is true that allocation letter by itself does not authorize the allottee to win or mine the coal but nevertheless the allocation letter does confer a very important right upon the allottee to apply for grant of prospecting licence or mining lease. As a matter of fact, it is admitted by the interveners that allocation letter issued by the Central Government provides rights to the allottees for obtaining the coal mines leases for their end-use plants. The banks, financial institutions, land acquisition authorities, revenue authorities and various other entities and so also the State Governments, who ultimately grant prospecting licence or mining lease, as the case may be, act on the basis of the letter of allocation issued by the Central Government. As noticed earlier, the allocation of coal block by the Central Government results in the selection of beneficiary which entitles the beneficiary to get the prospecting licence and/or mining lease from the State Government. Obviously, allocation of a coal block amounts to grant of largesse.

71. Learned Attorney General accepted the position that in the absence of allocation letter, even the eligible person under Section 3(3) of the CMN Act cannot apply to the State Government

for grant of prospecting licence or mining lease. The right to obtain prospecting licence or mining lease of the coal mine admittedly is dependant upon the allocation letter. The allocation letter, therefore, confers a valuable right in favour of the allottee. Obviously, therefore, such allocation has to meet the twin constitutional tests, one, the distribution of natural resources that vest in the State is to sub-serve the common good and, two, the allocation is not violative of Article 14.

72. The PIL petitioners have seriously criticized the entire allocation process by the Central Government. They submit that allocations made on the recommendations of the Screening Committee and through the government dispensation route after 1993 are in violation of statutory provisions contained in the 1957 Act. Moreover, the Central Government while making the allocations failed to even follow the basic statutory eligibility for grant of captive coal blocks. The power for grant of captive coal block is governed by Section 3(3)(a) of the CMN Act. According to which, only two kinds of entities, viz., (a) Central Government, or undertakings/corporations owned by the Central Government or (b) a company having end-use plants in iron, steel, power, washing of coal or cement, can carry out coal mining operations. The State Government undertakings are not included in the above provision

and any allocation to them can only be made if they are engaged in any of the end-uses specified under that provision. Commercial mining by the State Public Sector Undertakings/companies is not permitted, yet as many as 38 coal blocks were allocated to State Public Sector Undertakings for commercial mining though these undertakings were not engaged in any specified end-use activity. They submit that allocation of coal blocks made by the Central Government, whether by way of Screening Committee route or dispensation route, is *ipso facto* illegal and it is in total violation of the CMN Act. Moreover, it is submitted that almost all these State PSUs then signed agreements with private companies wherein the right to mine coal was given to them which later sold the coal to the State PSUs either at the market price or at CIL price.

73. According to Mr. Prashant Bhushan, learned counsel for the petitioner-Common Cause and Mr. Manohar Lal Sharma, petitioner-in-person, the expression "engaged in" in Section 3(3)(a)(iii) means that the company that was applying for the coal block must have set up an iron and steel plant, power plant or cement plant and be engaged in the production of steel, power or cement. Most companies were silent in their applications as to whether or not the power, steel or cement plant was operational. They only stated that they proposed to set up such plants.

Moreover, from 2006 even the requirement of end-use project was done away with and the Central Government allowed companies to apply and obtain coal blocks, and it was stated that the coal mined from these blocks would be transferred to an end-user company. Thus, the basic minimum statutory requirements were not adhered to and followed in making allocation of coal blocks.

74. It is submitted on behalf of the PIL petitioners that the allocation of those blocks which had reserves far in excess of requirement for the end-use project was made which demonstrates the total non-application of mind and arbitrariness in the decision making process. Mr. Prashant Bhushan, learned counsel for Common Cause and Mr. Manohar Lal Sharma, petitioner-in-person submit that the allocation of coal blocks constitutes a largesse as it confers very valuable benefit on the applicant to get mining lease. It is argued that the arbitrary and non-transparent allocation process has resulted in windfall gain to the allottees and the State has been deprived of the full value of its resources. Besides that the process of allocation was arbitrary and non-transparent, it is submitted by the PIL petitioners that the process also suffers from *mala fides* inasmuch as though a comprehensive note on competitive bidding on allocation of coal blocks was placed by the then Coal Secretary on 16.07.2004, the allocation process through

the Screening Committee continued leading to windfall gain to the private companies and thereby corresponding loss to the public exchequer. In this regard, Mr. Prashant Bhushan, learned counsel for Common Cause and Mr. Manohar Lal Sharma, petitioner-in-person referred to Parliamentary Standing Committee Report submitted on 24.03.2013, Central Empowered Committee Report made in I.A. No.2167 to the Forest Bench regarding the loss from the allocation of coal mines in the State of Madhya Pradesh, the additional affidavit of the Government of Maharashtra filed on 09.01.2014 and the CAG Report.

75. It is argued on behalf of the PIL petitioners that the Screening Committee did not follow any objective criteria in determining as to who is to be selected or who is to be rejected. The minutes of the Screening Committee meetings do not show that selection was made after proper assessment. There is no evaluation of merit and no *inter se* comparison of the applicants. No chart of evaluation was prepared. The determination of the Screening Committee is apparently subjective. It is no co-incidence that a large number of allottees are either powerful corporate groups or shady companies linked with politicians and ministers or those who came with high profile recommendations. Most of these allottees were in fact ineligible for allocation; they had

misrepresented the facts and were not more meritorious than others whose claims have been rejected, but by serious manipulations and abuse, they were able to get the coal blocks.

76. With regard to Government dispensation route whereby public sector corporations and undertakings were allocated coal blocks, it is submitted by Mr. Prashant Bhushan, learned counsel for the Common Cause and Mr. Manohar Lal Sharma, petitioner-in-person that such allocations were violative of Section 3 of the CMN Act. The State Government undertakings are not included in Section 3 and in any case allocation to them could have been made only if they were engaged in any of the end-uses specified under Section 3(3)(a)(iii) of the CMN Act. The State PSUs have signed agreements with private companies under which substantial benefits or interest from the coal blocks had accrued to the private companies thereby causing huge loss to the public exchequer and windfall gain to the private companies. The PIL petitioners, therefore, vehemently argued that the allocation of coal blocks deserves to be quashed being non-transparent, arbitrary, illegal and unconstitutional.

77. According to Central Government, the need for a Screening Committee was felt because development of coal mines for captive end-uses required consideration of inputs from a variety

of stakeholders such as the Ministry of Coal, Ministry of Railways, the concerned State Government (owner of the coal block), the concerned Administrative Ministry like Ministry of Power (for inputs pertaining to the end use plant) and Coal India Limited (to protect CIL's interest in coal blocks being developed by its subsidiaries). Initially, by Office Memorandum dated 14.07.1992[14], the Screening Committee was constituted by the Ministry of Coal for scrutinizing applications/proposals received from private power generating companies requesting for ownership and operation of captive coal mines. The Screening Committee was reconstituted on more than one occasion by Office Memorandum dated 05.08.1993[15], Office

14.

NO.13011/3/92-CA
Government of India
Ministry of Coal

New Delhi, the 14th July, 1992.

OFFICE MEMORANDUM

Subject: Constitution of a Screening Committee for screening proposals received for captive mining by private power generation companies.

In the context of participation of private power generating companies in power generation, proposals are also being received in the Ministry of Coal from such companies requesting for ownership and operation of captive coal mines. For screening of such applications/ proposals it has been decided to constitute a Screening Committee comprising of the following members:-

1. Additional Secretary, Ministry of Coal	-	Chairman
2. Adviser (Projects), Ministry of Coal	-	Member-Convenor
3. Joint Secretary & Financial Adviser, Ministry of Coal.	-	Member
4. Representative of Ministry of Railways	-	Member
5. Representative of Ministry of Power	-	Member
6. Representative of concerned State Govt. (Revenue Deptt.)	-	Member

The Committee will meet once in a month and examine the proposals received from various parties.

(S. KRISHNAN)
UNDER SECY. TO THE GOVERNMENT OF INDIA

15.

NO.13011/3/92-CA
Government of India

Memorandum dated 10.01.2000[16], Office Memorandum dated 17.04.2003[17] and Office Memorandum dated 26.09.2005[18].

Ministry of Coal

New Delhi, the 5th August, 93.

OFFICE MEMORANDUM

Subject: Constitution of a Screening Committee for screening proposals received for captive mining by private power generation companies – Matter regarding.

In continuation of this Ministry's Office Memorandum of even number dated 14.7.1992 constituting a Screening Committee for screening proposals received for captive mining by private sector power generation companies, it has been decided to revise partially the composition of the said Screening Committee as under:-

1. Additional Secretary, Ministry of Coal, New Delhi.	-	Chairman
2. Adviser (Project) Ministry of Coal, New Delhi.	-	Member-convenor
3. JS & FA, Ministry of Coal, New Delhi.	-	Member
4. Representative of Ministry of Railways, New Delhi.	-	Member
5. Representative of Ministry of Power, New Delhi.	-	Member
6. Representative of concerned State Govt. (Revenue Deptt.)	-	Member
7. Director (Technical) CIL, Calcutta.	-	Member
8. Chairman/Managing Director – CMPDIL, Ranchi.	-	Member
9. CMD/ of concerned subsidiary Companies of CIL.	-	Member.

(J.L. MEENA)
DEPUTY SECY. TO THE GOVERNMENT OF INDIA

16.

No.47011/15/95-CPAM
Government of India
Ministry of Mines and Minerals
Department of Coal

New Delhi, the 10th January, 2000

Office Memorandum

Subject: Constitution of a Screening Committee for screening proposals received for captive mining by companies engaged in the generation of power and manufacture of iron, steel and cement.

The undersigned is directed to refer to this Ministry of O.M. No.13011/3/92-CA dated 14.7.1992 and 5.8.1993 and No.47011/15/95-CPAM dated 26/28.10.1999 and to say that instead of Joint Secretary & Financial Adviser, Deptt. Of Coal, Joint Secretary (Coal), Deptt. Of Coal will be member of the Screening Committee. Accordingly, Screening Committee for screening proposals for allocation of coal/ lignite blocks for

manufacture of iron/ steel captive production of power and production of cement in the public / private sector is reconstituted as under:-

1. Additional Secretary, Department of Coal	-	Chairman
2. Adviser (Projects) Department of Coal	-	Member - Convenor
3. Joint Secretary (Coal) Department of Coal	-	Member
4. Joint Secretary (LA) Department of Coal	-	Member
5. Representative of Ministry of Railways, New Delhi,	-	Member
6. Representative of Ministry of Power, New Delhi.	-	Member
7. Representative of concerned State Govt. (Revenue Deptt.)	-	Member
8. Director (Technical), CIL, Calcutta	-	Member
9. Chairman-cum-Managing Director, CMPDIL, Ranchi	-	Member
10.CMD of concerned subsidiary company Of CIL/NLC	-	Member

(T.K. Ghosh)
Director

17.

No.13011/5/2003-CA
Government of India
Ministry of Coal

New Delhi, dated 17.4.2003

Office Memorandum

Subject:- Reconstitution of a Screening Committee for screening proposals received for captive mining by companies engaged in the generation of power and manufacture of iron, steel and cement.

The undersigned is directed to refer to this Ministry's O.M. No.13011/3/92-CA dated 14.7.1992 and 5.8.1993 and No. 47011/15/95-CPAM dated 10.1.2000 and to state that from the date of issuance of this O.M. the Screening Committee shall be headed by Secretary, Ministry of Coal and Joint Secretary (Coal), Ministry of Coal shall be the member convenor. Accordingly, Screening Committee for screening proposals for allocation of coal / lignite blocks for generation of power and manufacture of iron, steel and cement in the public/ private sector is reconstituted as under:-

1.	Secretary Ministry of Coal	Chairman
2.	Joint Secretary (Coal) Ministry of Coal	Member – Convenor
3.	Adviser (Projects) Ministry of Coal	Member
4.	Joint Secretary (LA) Ministry of Coal	Member
5.	Representative of Ministry of Railways, New Delhi.	Member
6.	Representative of Ministry of Power, New Delhi	Member
7.	Representative of concerned State Govt.	Member

78. Learned Attorney General argues that the Screening Committee provided opportunity to stakeholders to express their views about permitting a particular company to develop a particular coal block for its end-use plant. The State Governments as the owners of coal blocks within their territories participated in the Screening Committee meetings. At no stage, anybody objected to the allocation of coal blocks by the Central Government through the Screening Committee route. Learned Attorney General in this regard referred to the affidavits filed on behalf of Maharashtra, Madhya Pradesh, Odisha, Chhattisgarh, West Bengal, Jharkhand and Andhra Pradesh. The process of allocation was participatory.

8.	Director (Technical), CIL, Calcutta	Member
9.	Chairman-cum-Managing Director, CMPDIL, Ranchi	Member
10.	CMD of concerned subsidiary company of CIL/NLC	Member

(S. Gulati)
Director

18.

No.13016/35/2005-CA-I
Government of India
Ministry of Coal
New Delhi, the 26th September, 2005

OFFICE MEMORANDUM

Subject: Reconstitution of Screening Committee for screening proposals received from companies engaged in the generation of power and manufacture of iron, steel and cement for allocation of coal blocks.

The undersigned is director to refer to this Ministry's O.M. No.13011/5/2003-CA dated 17.4.2003 and corrigendum No.13011/5/2003-CA issued on 7.5.2003 and the O.M. of even no. dated 2.9.2003 on the subject mentioned above and to state that from the date of issuance of this O.M., the following shall be the member of the Screening Committee in addition to the existing members of the Committee:-

Secretary, or his representative, of Ministry of Environment & Forests.

(S.Gulati)
Director.

The coal blocks were allocated to private companies only from the approved list of blocks to be offered for captive mining and the interests of CIL, being paramount, were duly protected and preserved. Only in such cases of subsisting lease, where CIL had no plans to work these blocks in near future and consented to these blocks being offered for captive mining, few of such blocks were allocated but CIL's interest was kept into consideration. He, thus, submitted that allocation of coal blocks during the subject period was transparent and it does not suffer from any constitutional vice or legal infirmity.

79. Moreover, it is the submission of the learned Attorney General that allocation of coal blocks by the Central Government has brought significant benefits and investment to the States in which these coal blocks and the associated end-use plants are located. Due to substantial investment and employment opportunities generated in various States, the State Governments have accepted, participated and made recommendations in the meetings of the Screening Committee. A number of blocks have been allocated in accordance with the recommendations of the State Governments. Besides the benefits and investment to the State in which coal blocks and the associated end-use plants are located, learned Attorney General also submits that there are

number of States where coal blocks are not located, which have got benefits due to the substantial investment in associated end use plants. For instance, it is submitted that blocks in Maharashtra, namely, Baranj – I to IV, Kiloni and Manoradeep were allocated to Karnataka Power Corporation for captive use in its power generation plants. The end-use is the supply of coal to Bellary Thermal Power Station (in Karnataka) which is supplying 1000 MW power to the State grid.

80. Learned Attorney General for the sake of convenience divided the allocations recommended by the Screening Committee for the period between 14.07.1993 and 03.07.2008 in 36 meetings into four periods: first period between 14.07.1993 to 19.08.2003 (1st meeting till the 21st meeting); second period from 04.11.2003 to 18.10.2005 (22nd meeting to 30th meeting); third period from 29/30.06.2006 to 07/08.09.2006 (32nd meeting till the 34th meeting) and the fourth period from 20.06.2007 to 03.07.2008 (35th and 36th meeting). Learned Attorney General argues that in the first period, 21 coal blocks were recommended for allocation after full consideration of each case. During the second period, 26 blocks were recommended. These recommendations were also made by the Screening Committee after consideration of each applicant. The third period relates to recommendations made pursuant to the

advertisement issued by Ministry of Coal in September, 2005. The decision to advertise was taken as there was growing demand for coal blocks which had substantially matured in the economy by this time. In the third period, the Screening committee recommended 20 blocks for allocation. In the fourth period, recommendations were made by the Screening Committee pursuant to the advertisement issued in 2006 whereby 38 coal blocks were advertised for allocation, out of which 15 blocks were reserved for the power sector. Learned Attorney General clarified that a coal block that was approved as one block in the advertisement has been subsequently considered as two blocks in the 36th meeting of the Screening Committee. Learned Attorney General has fairly admitted that the minutes of the Screening Committee meetings in the third and fourth periods do not contain the particulars showing consideration of each application. He, however, justifies the manner in which the exercise was undertaken by the Screening Committee in the third and fourth periods as, according to him, the huge number of applications had been received by the Ministry of Coal in response to its advertisement and recording of particulars of each application in the minutes was not possible. Moreover, he submits that each application was duly considered and evaluated with reference to other applications by the Administrative Ministry

concerned and the recommendations of the Screening Committee were primarily based on the exercise conducted by the concerned Administrative Ministry. Thus, learned Attorney General submits that the entire exercise by the Screening Committee was done properly and in a non-arbitrary manner.

81. Learned Attorney General vehemently contends that allocation of coal blocks without auction is not unlawful. He submits that lack of public auction does not render the allocation process arbitrary. Moreover, according to him, when coal mining sectors were first opened up to private participants, the idea of the Central Government was to encourage the private sector so that they could come forward and invest. Allocation of coal blocks by public auction in such a scenario would have been impractical and unrealistic. As a matter of fact, he would submit that when the proposal for introduction of competitive bidding was first mooted in June, 2004, the State Governments expressed their reservations and concerns. In this regard, learned Attorney General referred to the letters sent by the Governments of Chhattisgarh, West Bengal, Rajasthan and Odisha. Learned Attorney General submits that the concerns of the State Governments could not have been brushed aside by introducing competitive bidding by an administrative fiat. Moreover, according to the learned Attorney General, competitive

bidding could have resulted in increase in the input price which would have a cascading effect.

82. From the above submissions, the following questions fall for determination:

(i) Whether the allocation of coal blocks ought to have been done only by public auction?

(ii) Whether the allocation of coal blocks made on the basis of recommendations of the Screening Committee suffer from any constitutional vice and legal infirmity?

(iii) Whether the allocation of coal blocks made by way of Government dispensation route (Ministry of Coal) is consistent with the constitutional principles and the fundamentals of the equality clause enshrined in the Constitution?

83. Two recent decisions viz., (1) *Centre for Public Interest Litigation* (*2G case*)[19] and (2) *Natural Resources Allocation Reference*[20] directly deal with the question of auction as mode for the disposal or allocation of natural resources. But before we consider these two decisions, reference to some of the decisions of this Court, which had an occasion to deal with disposal of natural resources, may be of some help in appreciating this aspect in correct perspective.

[19] Centre for Public Interest Litigation & Ors. v. Union of India & Ors.; [(2012) 3 SCC 1]
[20] Natural Resources Allocation, In re, Special Reference No.1 of 2012; [(2012) 10 SCC 1]

84. P.N. Bhagwati, J. in *Kasturi Lal Lakshmi Reddy*[21] had said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging setting up of industries within the State, the State was not bound to advertise and tell the people that it wanted a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. It was also observed that if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose.

85. In *Sachidanand Pandey*[22] this Court had observed that ordinary rule for disposal of State-owned or public-owned property, was by way of public auction or by inviting tenders but there could be situations where departure from the said rule may be necessitated but then the reasons for the departure must be rational and should not be suggestive of discrimination and that nothing should be done which gives an appearance of bias, jobbery or nepotism.

[21] Kasturi Lal Lakshmi Reddy & Ors. v. State of J&K & Anr.; [(1980) 4 SCC 1]
[22] Sachidanand Pandey & Anr. v. State of West Bengal & Ors.; [(1987) 2 SCC 295]

86. The statement of law in *Sachidanand Pandey*[22] was echoed again in *Haji T.M. Hassan Rawther*[23], wherein this Court reiterated that the public property owned by the State or by an instrumentality of State should be generally sold by public auction or by inviting tenders. It was emphasized that this rule has been insisted upon not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities and to obviate the factors like bias, favoritism or nepotism. Clarifying that this is not an invariable rule, the Court reiterated that departure from the rule of auction could be made but then it must be justified.

87. The above principle is again stated by this Court in *M.P. Oil Extraction*[24], in which this Court said that distribution of largesse by inviting open tenders or by public auction is desirable but it cannot be held that in no case distribution of such largesse by negotiation is permissible.

88. In *Netai Bag*[25] this Court said that when any State land is intended to be transferred or the State largesse is decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people as that would be a sure method of guaranteeing compliance with mandate of Article 14 of

[23] Haji T.M. Hassan Rawther v. Kerala Financial Corporation; [(1988) 1 SCC 166]
[24] M.P. Oil Extraction & Anr. v. State of M.P. & Ors.; [(1997) 7 SCC 592]
[25] Netai Bag & Ors. v. State of West Bengal & Ors.; [(2000) 8 SCC 262]

Constitution but non-floating of tenders or not holding public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner.

89. In *Villianur Iyarkkai Padukappu Maiyam*[26] the matter before this Court related to the selection of contractor for development of the port of Pondicherry without floating a tender or holding public auction. The Court said that where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging development of the port, the State was not bound to advertise and tell the people that it wanted development of the port in a particular manner and invite those interested to come up with proposals for the purpose.

90. There are numerous decisions of this Court dealing with the mode and manner of disposal of natural resources but we think it is not necessary to refer to all of them. Having indicated the view taken by this Court in some of the cases, now we may turn to *2G case*[19]. In that case, the two-Judge Bench of this Court stated that a duly publicised auction conducted fairly and impartially was perhaps the best method for alienation of natural resources lest there was likelihood of misuse by unscrupulous people who were only interested in garnering maximum financial benefit and have no

[26] Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors.; [(2009) 7 SCC 561]

respect for the constitutional ethos and values. Court laid emphasis that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

91. The above view in *2G case*[19] necessitated the reference by the President of India to this Court under Article 143(1) of the Constitution. The first two questions – Question 1 and Question 2 – referred to this Court for consideration and report read as under:

> "**Question 1** - Whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?
>
> **Question 2** - Whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?"

92. The Constitution Bench which dealt with the above reference observed that the answer to the following three questions would provide comprehensive answer to the parent question, viz., Question 1:

> (i) Are some methods *ultra vires* and others *intra vires* the Constitution of India, especially Article 14?

(ii) Can disposal through the method of auction be elevated to a constitutional principle?

(iii) Is this Court entitled to direct the executive to adopt a certain method because it is the "best" method? If not, to what extent can the executive deviate from such "best" method?

93. The Constitution Bench clarified that the statement of law in *2G case*[19] that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction was confined to the specific case of spectrum and not for dispensation of all natural resources. The Constitution Bench said that findings of this Court in *2G case*[19] were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum.

94. The Constitution Bench while dealing with the aspect of disposal of natural resources other than auction, divided the consideration of this aspect under two heads, viz., "Legitimate deviations from auction" and "Potential of abuse". Under the head "Legitimate deviations from auction" the Court considered the earlier decisions of this Court in *Kasturi Lal Lakshmi Reddy*[21], *Sachidanand Pandey*[22], *Haji T.M. Hassan Rawther*[23], *M.P. Oil Extraction*[24], *Netai Bag*[25] and *Villianur Iyarkkai Padukappu Maiyam*[26], which we have briefly noted above, and it was held that there is no constitutional mandate in favour of auction under Article

14. In the main judgment (paras 129 to 131, pg. 92), the Constitution Bench stated as under:

> "129. Hence, it is manifest that there is no constitutional mandate in favour of auction under Article 14. The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.
>
> 130. A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment. Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilization of the resource discovered; a prudent business venture, would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.
>
> 131. Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in *Kasturi Lal's case*, discussed above. However, these examples are purely illustrative in order to demonstrate that auction cannot be the sole criteria for alienation of all natural resources."

95. While dealing with the argument that even if the method of auction was not a mandate under Article 14, it must be the only permissible method due to the susceptibility of other

methods to abuse, the Court under the head "Potential of abuse" held that a potential for abuse cannot be the basis for striking down the method as *ultra vires* the Constitution. The Court noted two decisions of this Court in *R.K. Garg*[27] and *D.K. Trivedi*[28] and held that neither auction nor any other method of disposal can be held *ultra vires* the Constitution merely because of a potential abuse. The Constitution Bench (para 135, pgs. 93-94) stated as under:

> "135. Therefore, a potential for abuse cannot be the basis for striking down a method as *ultra vires* the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winners curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called *ultra vires* for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held *ultra vires* the Constitution, merely because of a potential abuse."

96. In *Natural Resources Allocation Reference*[20] the Constitution Bench, in the main judgment, thus, concluded that auction despite being a more preferable method of alienation /

[27] R.K. Garg v. Union of India & Ors.; [(1981) 4 SCC 675]
[28] D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors.; [1986 Supp SCC 20]

allotment of natural resources cannot be held to be constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as *ultra vires* the constitutional mandate. The Court also opined that auction as a mode cannot be conferred the status of a constitutional principle. While holding so, the Court held that alienation of natural resources is a policy decision and the means adopted for the same are, thus, executive prerogatives. The Court summarized the legal position as under:

> "146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are *ultra vires* and *intra vires* the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.

147. Finally, market price, in economics, is an index of the value that a market prescribes to a good. However, this valuation is a function of several dynamic variables: it is a science and not a law. Auction is just one of the several price discovery mechanisms. Since multiple variables are involved in such valuations, auction or any other form of competitive bidding, cannot constitute even an economic mandate, much less a constitutional mandate.

148. In our opinion, auction despite being a more preferable method of alienation/allotment of natural resources, cannot be held to be a constitutional requirement or limitation for alienation of all natural resources and therefore, every method other than auction cannot be struck down as *ultra vires* the constitutional mandate.

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

97. J.S. Khehar, J., while concurring with the main opinion has stated that auction is certainly not a constitutional mandate in the manner expressed, but it can be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. In his view, if the State arrives at a conclusion, in a

given situation, that maximum revenue would be earned by auction of the particular natural resource, then that alone would be the process which it would have to adopt. In the penultimate para of his opinion, J.S. Khehar, J., observed, "…….*there can be no doubt about the conclusion recorded in the "main opinion" that auction which is just one of the several price recovery mechanisms, cannot be held to be the only constitutionally recognised method for alienation of natural resources. That should not be understood to mean, that it can never be a valid method for disposal of natural resources*……..".

98. In *Natural Resources Allocation Reference*[20], the Constitution Bench said that reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). In the main judgment, with reference to Article 39(b), the Court stated as follows:

> "113…The disposal of natural resources is a facet of the use and distribution of such resources. Article 39(b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on "distribution" built into the Constitution. But

the restriction is imposed on the object and not the means. The overarching and underlying principle governing "distribution" is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word "distribution". Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the "common good".

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115. It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. Having regard to the basic nature of Article 39(b), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(b). There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualisation.

116. The learned counsel for CPIL argued that revenue maximisation during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelised to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. Auctions may be the best way of maximising revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).

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119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional

> yardstick—it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.
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> 120. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies—Article 14 does not predefine any economic policy as a constitutional mandate. Even the mandate of Article 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."

99. In light of the above legal position, the argument that auction is a best way to select private parties as per Article 39(b) does not merit acceptance. The emphasis on the word "best" in Article 39(b) by the learned senior counsel for the intervener does not deserve further discussion in light of the legal position exposited by the Constitution Bench in *Natural Resources Allocation Reference*[20] with reference to Article 39(b). We are fortified in our view by a recent decision of this Court (3-Judge Bench) in *Goa*

Foundation[29] wherein following *Natural Resources Allocation Reference*[20], it is stated, "…*it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions*…".

100. The explanation by the Central Government for not adopting the competitive bidding is that coal is a natural resource used as a raw material in several basic industries like power generation, iron and steel and cement. The end products of these basic industries are, in turn, used as inputs in almost all manufacturing and infrastructure development industries. Therefore, the price of coal occupies a fundamental place in the growth of the economy and any increase in the input price would have a cascading effect. The auction of coal blocks could not have been possible when the power generation and, consequently, coal mining sectors were first opened up to private participants as the private sector needed to be encouraged at that time to come forward and invest. Allocation of coal blocks through competitive bidding in such a scenario would have been impractical and

[29] Goa Foundation v. Union of India and Others; [(2014) 6 SCC 590]

unrealistic. When the proposal for introduction of competitive bidding was first mooted in June, 2004, the State Governments expressed their reservations based on diverse concerns. The Government of Chhattisgarh *inter alia* pointed out that (a) competitive bidding would result in substantial increase in the cost of coal for iron/steel undertakings, (b) there were large number of projects under implementation whose viability is based on availability of coal as per the then existing policy, (c) competitive bidding would raise the price of domestic coal, which would result in end-use projects in inland States like Chhattisgarh becoming unviable due to additional costs by transporting coal by rail/road, and (d) competitive bidding would result in only the bigger players getting the coal blocks. The Government of West Bengal opposed the introduction of competitive bidding because (a) the then existing system could accommodate both subjective and objective aspects of the projects whereas competitive bidding would only lead to coal blocks going to the highest bidder, (b) competitive bidding would not allow priority being accorded to the power sector, (c) competitive bidding would result in views of the State Governments becoming redundant, and (d) competitive bidding would lead to concentration of industries in a particular State. The Government of Orissa opposed competitive bidding because (a) the State Government had

signed MOUs for investment in end-use plants based on existing policy and those MOUs would suffer, (b) State Government's authority to recommend cases for allocation based on investment in the State would not be available, and (c) competitive bidding would prevent the State from leveraging its coal reserves to accelerate its industrial development.

101. It was for the above reasons that the Central Government says that competitive bidding was not introduced from 2004.

102. As a matter of fact, the Central Government has explained the circumstances because of which since 1992-1993 competitive bidding for allocation of coal blocks was not followed. The explanation is that in 1992-1993, the power generation and coal mining sectors were first opened up to private participants and, at that time, the private sector had to be encouraged to come forward and invest. Allocation of coal blocks through auction in such a scenario would have been impractical and unrealistic because during that time existing demand for coal was not being fully met by CIL and SCCL. There was supply-demand mismatch and there was also a huge shortage of power in the country. The State Electricity Boards had been unable to meet power requirements.

103. The material placed on record reveals that the then Coal Secretary in his note dated 16.07.2004 and subsequent note dated 30.7.2004 mooted introduction of bidding system to achieve transparency and objectivity in the allocation process and also to tap part of the windfall gain to the allottee for captive mining. These notes were considered at the level of Minister (Coal and Mines) and the PMO and certain disadvantages of allocation of coal blocks through competitive bidding were noted. Ultimately, it appears that in the month of October, 2004 the proposal for competitive bidding was not pursued further as it was felt that this would result in delay in the allocation of coal blocks. The Coal Secretary in October, 2004 after discussion also felt that since a number of applicants had requested for allotment of blocks based on the current policy, it would not be appropriate to change the allotment policy through competitive bidding in respect of applications received on the basis of existing policy. He suggested that the policy of allotment through competitive bidding could be made prospective and pending applications might be decided on the basis of existing policy.

104. Then, there appears to be exchange of notes and discussion at various levels on the question whether CMN Act needed to be amended before the proposed competitive bidding becomes operational or 1957 Act so that the system of competitive

bidding could be made applicable to all minerals covered under the said Act. The opinion of Department of Legal Affairs was also sought. In 2006, it appears that Ministry of Coal communicated to the PMO and Cabinet Secretariat that Ministry of Law and Justice has advised Ministry of Coal to initiate suitable measures for amendment in the 1957 Act for addressing the issue of competitive bidding. A Bill to amend the 1957 Act was introduced in the Parliament by the Ministry of Mines. The Amendment Bill was then referred to Standing Committee on Coal and Steel for examination and for its report. On receipt of the report from the Standing Committee in 2009, the MMDR Amendment Bill, 2008 was passed by both the Houses of Parliament in 2010 and ultimately Section 11A was inserted in the 1957 Act providing for competitive bidding for allocation of coal blocks by the Central Government. Then, on 02.02.2012, rules for auctions by competitive bidding of coal mines were notified.

105. The above facts show that it took almost 8 years in putting in place allocation of captive coal blocks through competitive bidding. During this period, many coal blocks were allocated giving rise to present controversy, which was avoidable because competitive bidding would have brought in transparency, objectivity and very importantly given a level playing field to all

applicants of coal and lowered the difference between the market price of coal and the cost of coal for the allottee by way of premium which would have accrued to the Government. Be that as it may, once it is laid down by the Constitution Bench of this Court in *Natural Resources Allocation Reference*[20] that the Court cannot conduct a comparative study of various methods of distribution of natural resources and cannot mandate one method to be followed in all facts and circumstances, then if the grave situation of shortage of power prevailing at that time necessitated private participation and the Government felt that it would have been impractical and unrealistic to allocate coal blocks through auction and later on in 2004 or so there was serious opposition by many State Governments to bidding system, and the Government did not pursue competitive bidding/public auction route, then in our view, the administrative decision of the Government not to pursue competitive bidding cannot be said to be so arbitrary or unreasonable warranting judicial interference. It is not the domain of the Court to evaluate the advantages of competitive bidding vis-à-vis other methods of distribution / disposal of natural resources. However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable,

discriminatory, non-transparent, capricious or suffers from favoritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow.

106. The Central Government in its first counter affidavit filed on 22.01.2013 has stated that for the period from 1993 to 31.03.2011, 216 allocations have been made. In the course of arguments, learned Attorney General submitted that in addition to 216, 2 coal blocks for Coal to Liquid (CTL) projects were also allocated. According to said affidavit, out of 216 allocations, 105 allocations were made to private companies, 99 allocations were made to Government companies and 12 allocations were made to Ultra Mega Power Projects (UMPPs) and that after adjusting 24 de-allocations and 2 re-allocations, a total number of 194 allocations, including allocations to private parties, form the subject matter of the writ petitions. In the course of arguments, however, learned Attorney General submitted that total 41 de-allocations have already been ordered.

107. In the first counter affidavit filed on 22.01.2013, the Central Government has also given the details of the procedure adopted for allocation of the above coal blocks, in which it is stated

that the allocations to the private companies were made through the Screening Committee route. As regards allocations made to Government companies, before 2001, allocations were made only through the Screening Committee route but on and from 2001, allocations were made through the Screening Committee route as well as directly by the Ministry of Coal. The allocations which were made by the Ministry of Coal to the Government companies are referred to by the Central Government as the Government dispensation route. Insofar as UMPPs are concerned, it is the stand of the Central Government that captive blocks were pre-identified for the projects, that bidders for the projects were selected as per the competitive bidding guidelines of the Ministry of Power (tariff based bidding) and, thus, the 12 allocations to UMPPs were done by a competitive method. It is further stated in the affidavit that the two blocks allotted for Coal to Liquid (CTL) projects were after inviting applications through advertisement in 2008 and that the applications received were considered by an inter-Ministerial Group (IMG) under the Chairmanship of Member (Energy), Planning Commission and Secretaries of Department of Expenditure, Ministry of Coal, Department of Industrial Policy and Promotion, Department of Science and Technology, Ministry of Petroleum and Natural Gas and Principal Advisor (Energy), Planning Commission as members.

108. We shall first deal with the coal allocations made to the private companies as well as Government companies for captive purpose through Screening Committee route.

109. On 14.09.2012, while issuing notice to the Union of India, the Court framed six questions on which answer was sought in the counter affidavit. One of such questions was about the details of guidelines framed by the Central Government for allocation of subject coal blocks. In the first counter affidavit filed on 22.01.2013, it is stated that from 1993 until 31st meeting held on 23.06.2006, the Screening Committee framed its own guidelines for allocation of coal blocks. Insofar as guidelines for 31st to 36th meetings of the Screening Committee are concerned, it is stated that the Ministry of Coal framed the guidelines and these guidelines were brought to the attention of the members of the Screening Committee.

110. The minutes of the 1st meeting held on 14.07.1993 indicate that the guidelines were framed in that meeting by the Screening Committee for the primary purpose to identify suitable blocks for captive development by power generating companies. The guidelines framed by the Screening Committee on 14.07.1993 read as under:

> "(i) Preferably blocks in green field areas where basic infrastructure like road, rail links, etc. is yet to be developed should be given to the private sector. The

areas where CIL has already invested in creating such infrastructure for opening new mines should not be handed over to the private sector, except on reimbursement of costs.

(ii) The blocks offered to private sector should be at reasonable distance from existing mines and projects of CIL in order to avoid operational problems.

(iii) Blocks already identified for development by CIL, where adequate funding is on hand or in sight should not be offered to the private sector.

(iv) Private sector should be asked to bear full cost of exploration in these blocks which may be offered.

(v) While discussing proposals of power generating companies and identifying blocks the requirement of coal for 30 years would be considered."

111. In its 2nd meeting held on 13.08.1993, the Screening Committee accepted that any addition to generation of power, whether captive or utility, amounted to value addition and, therefore, no distinction would be made between the two.

112. In the 3rd meeting held on 27.09.1993, the Screening Committee discussed whether the guidelines for identification of coal blocks for the power sector were suitable for adoption in respect of the iron and steel sector particularly in view of the position explained by the representative of Ministry of Steel that requirement of coal for iron and steel plants would be much less than the coal required by the power plants. The Screening Committee, accordingly, decided to permit sub-blocking of blocks

identified by Central Mine Planning and Design Institute Ltd. (CMPDIL).

113. In the 4th meeting dated 12.01.1994, proposals relating to M/s. RPG Industries Ltd./Calcutta Electric Supply Corporation, M/s. Kalinga Power Corporation, M/s. Indian Aluminium Company, M/s. Indian Charge Chrome Ltd., Andhra Pradesh State Electricity Board, M/s. Development Consultants Ltd., M/s. Gujarat Power Corporation Ltd., M/s. Associated Cement Company Ltd., M/s. Hellmuth, Obata and Kassabagm P.C. were considered in continuation of earlier meetings. Certain blocks were identified for allocation to some of these companies.

114. In its 5th meeting held on 26.05.1994, the Screening Committee while considering whether any further changes were required in the procedures being adopted for considering proposals for captive mining recorded that in the earlier meetings, the Ministry of Coal had been liberal in considering proposals with a view to make the scheme a success. In the said meeting, the Committee reviewed the progress made by M/s. RPG Industries Ltd., M/s. Kalinga Power Corporation Ltd., M/s. Nippon Denro Ispat Nigam Ltd., Nagpur, M/s. Andhra Pradesh State Electricity Board, M/s. Tamil Nadu Electricity Board, M/s. Indian Aluminium Company Ltd., M/s. Development Consultants Ltd., M/s. Associated Cement

Company Ltd., M/s. Hellmuth, Obata and Kassabagm P.C. and M/s. Gujarat Power Corporation Ltd.

115. In the 6th meeting held on 20.01.1995, the Committee decided to earmark Sarisatolli block and western part of Tara block for captive mining by M/s. RPG Industries Ltd. for proposed Budge-Budge TPS and Balagarh TPS. The proposal of M/s. Jindal Strips Ltd. for a captive block for expansion of their Sponge Iron Plant from 2 lakh tonnes per annum to 6 lakh tonnes per annum was also discussed in the meeting and it was decided that CMPDIL would carry out the exercise of sub-blocking so that a suitable block can be allocated to M/s. Jindal Strips Ltd.

116. In the 7th meeting held on 06.06.1995, the Chairman felt the need for fixing certain time limit and laying down corresponding milestones otherwise there would be a tendency on the part of developer of the mining block to proceed in a casual manner with the result that the coal production would not be realized within the required time frame. It was decided that once the blocks are identified, the party concerned should complete necessary formalities and should be able to apply for lease within 6 months. In continuation of earlier meetings, the Screening Committee further considered the proposal of M/s. RPG Industries Ltd. for identification of coal mining blocks for supply of coal to the proposed Budge-

Budge TPS, Balagarh TPS and Dholpur TPS. In the said meeting, the proposals of M/s. West Bengal State Electricity Board and M/s. Videocon Power Ltd. were also considered.

117. In the 8th meeting held on 04.10.1995, the proposal of M/s. Steel Authority of India Limited for captive blocks in Jharia coalfields was discussed. The Committee decided to identify Parbatpur, Mahal, Seetanala and Tasra blocks located in Jharia Coalfields for captive development by SAIL.

118. In the 9th meeting held on 20.12.1995, the proposal of M/s. Nippon Denro Ispat Ltd. for identification of additional coal mining blocks for supply of coal to the 2nd stage of the Bhadravati TPS was discussed. Apart from the above-mentioned proposal, the other proposals were from Maharashtra State Electricity Board, National Thermal Power Corporation and Lloyds Metals (Sponge Iron Plant) and Larsen & Tourbo captive power plant, Chandrapur. Since there were conflicting requirements of various projects, the Committee decided that the long-term coal requirements of various projects of M/s. Nippon Denro Ispat Ltd., Maharashtra State Electricity Board, National Thermal Power Corporation, Lloyds Metals and Larsen & Tourbo should be examined in a comprehensive exercise so that the available resources are optimally utilized. Review of the proposals of M/s. Jindal Strips –

Sponge Iron Plant and M/s. Monnet Ispat – Sponge Iron Plant was also undertaken.

119. In the 10th meeting held on 03.04.1996, the Committee noted with concern that out of the blocks already offered, only four parties have taken action for development of blocks. The Committee decided that all the identified parties should be issued a notice to pay the exploration cost by 30.06.1996 and take action for development of the block failing which the offer would be cancelled.

120. In the 11th meeting held on 26/27.09.1997, the Screening Committee carried out a review of the progress made so far. It was noted that M/s. RPG Industries for Budge-Budge TPS, M/s. Indian Aluminium Company Ltd. for new captive power plants in Orissa, M/s. Associated Cement Co. Ltd. for new captive power plant at Wadi, Karnataka, M/s. West Bengal State Electricity Board for higher generation for Bendel TPS and Santaldih TPS, M/s. West Bengal Power Development Corpn. Ltd. for Bakreshwar TPS, M/s. BLA Industries for 24 MW capacity power plant in Distt. Narsinghpur, Madhya Pradesh, M/s. Jindal Strips Ltd. for Sponge Iron Plant in Madhya Pradesh and M/s. Nippon Denko Ispat Ltd. for Bhadravati TPS, Stage – I, had paid exploration charges to CIL and submitted mining plans which had been approved by the Standing Committee of Ministry of Coal. In that meeting, the representative

of M/s. Nippon Denko Ispat Ltd. submitted that Bunder block was far away from the power plant as well as from the other two mining blocks allotted to them and requested that a block nearer to the other two blocks, i.e., Baranj and Lohara West may be considered for allotment by the Committee. Accordingly, the Committee decided to allocate Monora Deep Block, which is adjacent to Baranj and Lohara Extn. (which is adjacent to Lohara West) to M/s. Nippon Denko Ispat Ltd. The Committee also discussed the proposals which were considered earlier but no final decision could be taken. The Committee decided that Utkal 'C' block in Talcher coalfield having geological reserves of about 190 m.t. may be considered for allotment to M/s. Indian Charge Chrome Ltd. for two additional captive power plants at Choudhwar, Orissa. It is pertinent to mention that the Committee found that the total requirement for all the three units would be about 2.36 m.t. and for a life of 30 years, it would work out to be 71 m.t. The Committee, however, proposed allocation of Utkal 'C' block having geological reserves of about 190 m.t. In that meeting, Takli-Jena-Bellora block was allotted to M/s. Lloyds Metals and Engineers Ltd. and the company was directed to obtain mining lease within six months of issue of these minutes. As regards the proposal of M/s. Associated Cement Company Ltd. for expansion at Wadi Cement Works in Karnataka, the Committee

decided to allot Bisrar block in addition to Lohara (East) allocated earlier as the total requirement was of the order of 3.7 m.t. In the said meeting, M/s. J.K.Corp. Ltd. was allocated Gare IV/8 block with gross geological reserves of 91 m.t. for their Cement Plant at Sirohi and Khemli in Rajasthan for which their total coal requirement was 1.23 m.t.p.a.

121. In the 12th meeting held on 03.04.1998, the Committee allocated Gare-Palma IV/2 and IV/3 blocks having Geological reserves of 100 and 110 m.t. to M/s. Jindal Power Ltd. for Raigarh TPS Stage – II (500 MW). In the said meeting, M/s. Central Collieries Co. requested the Screening Committee for a portion of the Takli-Jena-Bellora block which had already been allotted to M/s. Lloyds Metals & Engineers Ltd. In the course of discussions, it transpired that the total reserves in the block are higher than the requirement of M/s. Lloyds Metals. The Committee was of the view that it was possible to allot some of the reserves to a party other than M/s. Lloyd Metals. The Committee noted the clarification made by DGM (MS) that it was possible to cut out an independent sub-block of 40 m.t. coal reserves within the Takli-Jena Bellora block. Accordingly, the same was allotted to M/s. Central Collieries Co.

122. In the 13th meeting held on 24.08.1998, as regards the proposal of M/s. Nippon Denro Ispat Ltd. – Bhandravati TPS I, the

Committee was informed that the Apex Committee of CIL on captive mining blocks had objected to allocation of Kilhoni block to Nippon on the ground that the company had been changing its preference from one block to another block and allotment of Kilhoni block would not be sufficient to satisfy the company's coal requirement for 30 years. Therefore, it was suggested that the company should either work the Lohara West block or enter into an agreement with WCL for supply of their balance coal requirement. The Ministry of Power, on the other hand, indicated that they had no objection if the same was acceptable to the Government of Maharashtra. It was also indicated that in the absence of firm figures of availability of coal and its likely price on cost plus basis, only an in-principle agreement could be arrived at for linkage in lieu of the Kilhoni block. It was also stated that the Kilhoni block being adjacent to Baranj block would be more practicable for them to mine the reserves whereas WCL would have to develop the block as an isolated project. The Government of Maharashtra strongly supported the allocation of Kilhoni block to the company. The Director (Technical), CIL and CMD, WCL indicated that the Kilhoni block was likely to be taken up in the 11th plan period and pointed out some unique geographical and man-made features of the block which, according to them, would make the project both cost and time intensive, resulting in very high cost

for WCL. The Committee felt that Nippon would be better placed to tackle these problems. It was finally decided that M/s. Nippon Denro Ispat Ltd will work Baranj I-IV, Manora Deep and Kilhoni Blocks for mining coal for Bhadravati TPS, Lohara West and Lohara West Extension blocks will be withdrawn from the party and no further request for change or modification of blocks made by the party will be considered.

123. The Committee had decided in the 12th meeting to allocate southern portion of Takli-Jena-Bellora block to M/s. Central Collieries Co. Ltd. In the 13th meeting, the representative of M/s. Central Collieries Co. Ltd. requested that a decision on allocation of a small portion of Kilhoni block should be taken. It was informed to the Committee that the area identified at Kilhoni by the company was actually a different location, and that location did not form part of the identified blocks for captive mining.

124. In its 14th meeting held on 18/19.06.1999, the Screening Committee decided as follows:

> "(i) The Administrative Ministries will assess the soundness of the proposals in consultation with the State Govt. before sending their comments/recommendations to the Screening Committee for consideration of allotment of a captive mining block; and
>
> (ii) The Administrative Ministries should consult State Governments as well as use their own agencies for assessing the progress of the implementation of end

use plants for which blocks have already been allotted by the Screening Committee and send a report to the Screening Committee for further action."

124.1. In the said meeting, Adviser (Projects), Ministry of Coal informed that a policy has been framed that captive mining block producing less than 1 m.t. of coal per annum from an opencast block and less than 0.25 m.t. of coal per annum from an underground block will not be considered for allotment. The Committee agreed to adopt the above policy. In that meeting, the Committee decided to withdraw the Gare-Palma IV/4 block allotted to M/s. Phoenix Cement Ltd. The block Gare-Palma IV/8 allotted to M/s. J.K. Corp. Ltd. was also withdrawn due to non-seriousness of the party in the matter.

124.2 In the 14th meeting, the proposal of M/s. Monnet Ispat Ltd. for a new Sponge Iron plant in Keonjhar area of Orissa of 1.2 million tonnes of capacity for which the requirement of 2.2 m.t. of raw coal has been indicated, was discussed. This plant will have a CPP of 40 MW in the 1st phase. The party requested for Utkal-B2 block in Talcher coalfield having 106 m.t. of reserves. The party informed that the existing plant capacity of 1 lakh tonnes is being expanded to 3 lakh tonnes by March, 2000 and to 5 lakh tonnes beyond that. During discussion, CMD MCL was of the view that Chendipada block is likely to have better grade of coal and

suggested to the party in preference of Utkal B-2 block. However, the party insisted for Utkal B-2 block and the same was allotted subject to the condition that the party must achieve financial closure within one year of allotment of the block, failing which the allotment will be withdrawn.

124.3. As regards the proposal of M/s. Jayaswal Neco Ltd. for their Sponge Iron Plant, the party had earlier requested for Gare-Palma IV/6 and IV/7 blocks for meeting their Sponge Iron Plant and a captive power plant. Now, they requested for allocation of IV/4 and IV/8 blocks as the same have been withdrawn from other firms. Accordingly, the same were allotted to M/s. Jayaswal Neco Ltd.

124.4 The Brahmadiha block was allotted to M/s. Castron Technology in the 14th meeting. The Committee noted that the mine did not fit in the criteria of captive block as per its latest guidelines, but decided to make the allocation in view of the fact that the reserves could either be permitted to be exploited by a private party or lost forever.

125. In the 15th meeting held on 06.03.2000, M/s. Jindal Strips Ltd. had submitted a request for a block in Talcher coalfield to meet the requirement of sponge iron plant of 2 m.t. capacity. In January, 2000, the party made an application for allocation of Utkal D block in MCL having geological reserves of 190 m.t. for their

proposed sponge iron plant of 1 m.t. capacity requiring clean coal of 1.2 mtpa. The party also proposed to set up a washery of 3 m.t. input capacity. The requirement of the block was proposed by the party for working the sponge iron plant and the CPP for a period of 50 years. In the course of discussion, it was pointed out that allocation of block for captive mining is generally made on the basis of 30 years' requirement whereas the party had requested for allocation of block on the basis of 50 years requirement for their sponge iron plant. It was also indicated that the total requirement of coal for 30 years life period of the project worked out to be 90 m.t. for which a geological reserve of about 120 m.t. should be adequate. The estimated reserve of Utkal D block was about 190 m.t. and was, therefore, higher than the probable requirement. The representative of Ministry of Steel indicated that coal block having geological reserve of about 125 m.t. would be adequate. Yet, the Committee decided to allot Utkal D block in principle to M/s. Jindal Strips Ltd. but this was cancelled in the 16th meeting.

125.1. The proposal of M/s. Prakash Industries was rejected in the 14th meeting in view of the company's reference to BIFR and the party enjoying coal linkage of 0.76 m.t. for their existing plant. In November and December, 1999, they informed that they had a linkage of 0.5 mtpa only and that they proposed to develop an

underground mine for the balance 0.5 mtpa. The Committee in the 15th meeting decided to allocate Choita block, having geological reserves of about 60.00 m.t. to M/s. Prakash Industries.

125.2. In the said meeting, M/s. Raipur Alloys & Steel Ltd. had requested for allocation of Choita block for their sponge iron plant at Siltara, Raipur, the capacity of which was proposed to be expanded from the existing 60,000 tpa to 3 lakh tonnes per annum and for a captive power plant of 18 MW. That block was not in the identified list of captive mining. Accordingly, they revised their request for allocation of Gare Palma IV/7 or any one of the three blocks in Gare Palma, i.e., IV/7, IV/6 and IV/8 in order of preference. The Committee decided to allocate Gare Palma IV/7 to M/s. Raipur Alloys & Steel Ltd. with coal reserves of 156 m.t. which is on the much higher side than the requirement of the company.

126. In the 16th meeting held on 31.05.2001, M/s. Orissa Mining Corporation Ltd. was allotted Utkal D block for generation of power through Orissa Power Generation Corporation.

127. In the 17th meeting held on 28.11.2001, the request of M/s. GVK Power Gowindal Sahib Ltd. for allotment of Tokusud coal block for their proposed 2 x 250 MW power plant was considered and Tokusud North block was allotted to them.

128. In the 18th meeting held on 05.05.2003, the Screening Committee, for the first time, considered the issue of determining *inter se* merit of applicants for the same block as well as certain other issues to bring in transparency and felt that guidelines for determining *inter se* priority among claims for blocks between public sector and private sector for captive use and between public sector for non-captive use and private sector for captive use need to be evolved. The Chairman of the Committee put the following few general guidelines for consideration:

(i) The blocks in captive list should be allocated to an applicant only after the same have been put in the pubic domain for a reasonable time and not immediately upon their inclusion in the list of block identified for captive mining, so as to give an opportunity to interested parties to apply for the same and make the process more transparent. The need for giving very cogent and detailed reasons before withdrawal of a block from captive list by CIL was also emphasized.

(ii) The Administrative Ministries were requested to appraise the projects from the point of view of the genuineness of the applicant, techno-economic viability of the project and the state of preparedness/progress in the project while indicating the quantity and quality of coal requirement of the project and recommending allocation of captive block to the applicant. In case there were more than one applicant for the same block the Administrative Ministry should rank them based on the project appraisal and the past/track record of the applicant without necessarily naming the block to be allotted. This would facilitate the Screening Committee in allotting a suitable block to the applicant more objectively.

(iii) Only those power projects would be considered for allocation which are included in the Xth Plan Period.

128.1. The above guidelines met with general approval. The Screening Committee also decided that while recommendations of the State Governments would continue to be taken into consideration, the same would not be taken as pre-condition for entertaining the application by it. In that meeting, the two blocks- Bandhak (East) and Bandhak (West) were also included in the list of captive blocks.

129. In the 19th meeting held on 26.05.2003, various projects were reviewed.

129.1. In that meeting, the Committee allocated Bandhak (West) to M/s. Shree Baidyanath Ayurved Bhawan Ltd. Similarly, M/s. Fieldmining & Ispat Limited was allocated Warora (West) and Chinora blocks.

130. In the 20th meeting held on 06.06.2003, the Committee discussed the matter of allocation of captive mining blocks to small Greenfield projects or to applicant companies who did not have well known track records in the sectors approved for allocation of captive blocks for mining of coal. It adopted a policy that for such small projects the Committee instead of straight away allocating the block, the Committee would reserve the block and offer a temporary

tapering linkage through CIL for achieving financial closure and development of the end-use project first. The allocation of the block would be made subject to the applicant company achieving the project milestones submitted by them to the Committee, and after financial closure is achieved.

130.1. In that meeting, M/s. Jindal Steel and Power Limited requested for allocation of Utkal B-1 block for their sponge iron production, 200 MW of captive power generation, steel plant and ferro alloy plants to be set up in two phases. The Screening Committee decided to allocate Utkal B – 1 block to that company for exclusive and captive use of the entire coal produced from the block in their own project in the end-use plants.

130.2. M/s. Usha Beltron Ltd. requested for allocation of a block for their sponge iron and power plant. CIL had recommended allocation of Kathautia UG block for their expansion project. Accordingly, the Committee allocated the same subject to the existing linkages of coal from CIL continuing.

130.3. The Committee also discussed the proposals of M/s. Shyam DRI Power Ltd. for allocation of Radhikapur block and M/s. Neepaz Metalics Pvt. Ltd. for allocation of Patrapara block. In both the cases, it was found that the size of the block is larger in comparison to the need. However, the applicants stated that while

geological reserve in the block may be large, the recoverable reserve would be very much less. Accordingly, the blocks were allocated provisionally to them for detailed exploration/prospecting purposes.

130.4. In that meeting, M/s. Ambuja Cement requested for allocation of Baranj III and IV block for their new as well as expansion of existing cement plants. Though the Government of Maharashtra supported the proposal, the representative from Ministry of Power stated that there are two contenders for the Baranj blocks and the Ministry of Power is considering and evaluating the case. He stated that decision on allocation of Baranj I to IV could be deferred by one month by which time the Ministry of Power would be in a position to give their views. However, the Screening Committee decided to allocate Baranj III and IV blocks to Ambuja Cement Ltd. subject to any order of the High Court in the matter.

131. In the 21st meeting held on 19.08.2003, the issue of competitive bidding was raised. On this, the Screening Committee felt that further guidelines need to be evolved for allocation of blocks and competitive bidding should also be looked at. In that meeting it was also felt by the Committee that coal being only one of the inputs of end-use projects, other matching inputs should also be considered before allocation of a coal block.

132 Significantly, the guidelines framed and applied by the Screening Committee for the period from 14.07.1993 (1st meeting) to 19.8.2003 (21st meeting) are conspicuously silent about *inter se* priority between the applicants for the same block. In the 18th meeting, the Screening Committee considered the issue of determining *inter se* merit of applicants for the same block as well as certain other issues for bringing in transparency. The Screening Committee felt that guidelines for determining *inter se* priority among claims for block between public sector and private sector for captive use and between public sector for non-captive use and private sector for captive use need to be evolved. However, no guidelines for determining *inter se* priority of applicants for the same block was evolved. The guidelines also do not contain any objective criterion for determining the merits of applicants and lack in healthy competition and equitable treatment. In the first counter affidavit filed by the Central Government, it is admitted that from the 1st meeting (held on 14.07.1993) to the 21st Meeting (held on 19.08.2003), the guidelines did not deal with the subject of determining *inter se* priority between applicants.

133. As regards 26 coal blocks allocated to private companies pursuant to the recommendations of the Screening Committee for the period from 04.11.2003 (22nd meeting) and

18.10.2005 (30th meeting), the Attorney General submits that the Screening Committee had devised guidelines to determine *inter se* priority amongst applicants for the same block. It is also submitted that the recommendations were made by the Screening Committee after consideration of each application and assessment of each applicant's merits in terms of the criterion laid down in the guidelines.

134. The counter affidavit filed by the Central Government on 22.06.2013 at pages 102-159 deals with this period. The compilation (Volume 3-B) contains materials relating to recommendations made by the Screening Committee for allocation of coal blocks to private companies pursuant to its 22nd meeting to 30th meeting held between 04.11.2003 and 18.10.2005. It transpires from the materials placed on record that there was boom in the iron and steel sector at that time. The Screening Committee was usually required to consider 3-4 applicants for each block. Though the guidelines required that a captive block cannot be allocated as replacement for a linkage and that coal blocks can only be allocated for specific projects and not as back up in general and additional guidelines also provided that Central PSU was to be accorded priority over State Government PSU if all other factors (like suitability of coal grade, techno-economic viability/feasibility of

the project, state of preparedness of the project, etc.) were equal but a careful look at these guidelines show that they do not lay down any criterion for evaluating the comparative merits of the applicants. As a matter of fact, the guidelines applied by the Screening Committee are totally cryptic and hardly meet the requirement of constitutional norms to ensure fairness, transparency and non-discrimination.

135. In the 23rd meeting held on 29.11.2004 for Belgaon coal block, three applicants, namely, (i) M/s. Chandrapur Ispat Ltd., (ii) M/s. Gupta Metallics and Power Ltd. and (iii) M/s. Sunflag Iron and Steel Ltd. had applied. The particulars of these three applicants have been noted by the Screening Committee but besides that there is nothing to indicate as to why M/s. Sunflag Iron and Steel Ltd. was found more meritorious than the other two applicants. It is pertinent to note that Ministry of Steel had supported the proposal of both Gupta Metallics and Power Ltd. and Sunflag Iron and Steel Ltd. The consideration of *inter se* merit appears to be ad-hoc. There is no comparative assessment of the merits of the applicants. There is so much of ad-hocism in consideration of the applications that in every meeting, the guidelines were altered.

136. In the 24th meeting held on 09.12. 2004, the Screening Committee altered the norms by shifting insistence on achieving

financial closure of the end-use projects to some appropriate stage after the mining plan approval. In that meeting, the Screening Committee was informed that the proposal to allow disposal of coal produced during development phase of the mine has been approved by the Government. In that meeting, the Committee considered allocation of Brinda, Sisai, Dumri, Meral, Lohari, Moitra, Kotre-Basantpur and Pachmo blocks. Applications were received from M/s. Abhijeet Iron Processors Pvt. Ltd for allocation of Brinda, Sisai, Dumri, Meral and Lohari blocks, M/s. Neelachal Iron and Power Ltd. for allocation of Brinda, Sisai and Dumri blocks, M/s. Bajrang Ispat Pvt. Ltd. for allocation of Dumri, Brinda and Sisai blocks and M/s. Pawanjay Steel and Power Ltd. for allocation of Dumri and Brinda blocks. The Screening Committee noticed that among applicants competing for Brinda and Sisai, M/s. Abhijeet Iron Processors Pvt. Ltd., applied way ahead of others, its requirement was large and it has a good track record and Ministry of Steel had recommended its case. The other applicants, viz., M/s. Bajrang Ispat and M/s. Pawanjay Steel were later applicants. The requirement of M/s. Bajrang was small and sub-blocking was not desirable while M/s. Pawanjay had not yet given the required details to Ministry of Steel. For Meral, M/s. Abhijeet was the only applicant.

The Screening Committee decided to allocate Brinda, Sisai and Meral blocks to M/s. Abhijeet Infrastructure Private Ltd.

136.1 In the same meeting, M/s. Jayaswal Neco Ltd. was allocated Moitra block in place of Jogeshwar and Choritand-Tilaya, already allocated to them. Lohari block was allocated to M/s. Usha Martin Limited subject to the views of Ministry of Steel. It is important to mention that Lohari coal block was acquired under the Coal Bearing Acquisition Act. The Committee noted that the transfer modalities were yet to be worked out in details.

136.2 The Screening Committee in 24th meeting noted the particulars of each applicant but how each applicant met such parameters is neither mentioned nor are they discernible.

137 In its 25th meeting* held on 10.01.2005, the Screening

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* ……The sizes of blocks in terms of reserves are large and the individual requirements of the sponge iron/steel producers were comparatively smaller. All the meritorious applicants deserve to be given captive coal.
In order to accommodate all the meritorious and deserving cases, these blocks would need to be sub-divided which would result in enormous loss of coal between barriers because of statutory and practical mining conditions. Therefore, to sub-block the larger blocks as an alternative for accommodating all the deserving cases had to be ruled out. The second alternative was of grouping the deserving cases, so that they can form a joint venture company, an SPV for mining of coal and carry out the coal mining jointly in the allocated block. This alternative was also presented to the applicant companies, but most of them had expressed reservations on grounds like cultural and administrative differences among the constituents of the joint venture company, inherently because they were competitors, the joint venture company would be off balance-sheet and may not attract sufficient lending, there could be intersee slippages in development of the end-use projects and injection of equity by the constituents which could jeopardize the mining project and would not lead to production at an early stage. A number of other similar objections to the formation of joint venture company or mining through SPV were put forward by a number of applicants. This alternative also, therefore, had to be left alone. It was then discussed that for each natural block, one applicant company who had the highest stake and which was likely to take up proper mining at the earliest, could be designated the Leader company and allocated a captive block and a group of other meritorious companies could be nominated as associated companies for supply of coal by the leader company to these designated associates. The amount of coal to be supplied by the leader company to the associate company would have a ceiling determined by the assessed requirement of the associate company, after deducting the linked quantum of coal given by CIL/its subsidiaries. The leader company would commit to supply the ceiling amount of coal to the

associate company depending upon its requirements i.e. as and when the plant of the associate company comes up, its requirements would be met upto the level of ceiling quantum by the leader company. The yearly percentage of satisfaction through this supply would be in the same proportion as the rated production capacity of the mine, to be approved during the mining plan, to the total of the assessed requirements of the leader (after fully protecting earlier allocation, if any) and the associated companies attached to a coal block. In the alternative, this supply of coal from the leader company to the associated companies could be done through MCL also where depending on the actual requirement of the associate company, subject to the ceiling, MCL would add service charge, gather coal from the leader company and supply the same to the associate company. In either of these cases, coal would be transferred from the leader company to the associate company at administratively determined transfer price and not at any free market price or notified price of CIL, as this arrangement is in lieu of giving coal blocks to the associate companies and their taking up captive mining themselves. This administrative transfer price would be determined by Ministry of Coal through its sub-committee headed by Addl. Secretary (Coal). Having decided as above, the Screening Committee proceeded to select the leader and the associate companies.

…….To sum up, the following companies were found deserving of allocation of coal blocks alongwith their status:

Block	Name of the Company	Status
Utkal A	To be merged with Gopalprasad for Mining by MCL as one mine or by Jindal Thermal Power Ltd./ Jindal Vijayanagar Ltd. and include Jindal Stainless Steel Ltd. as a linked Consumer or an associate. Final decision and details to be taken up in the Ministry of Coal.	
Talabira II	NLC Priority linkage to be given for supply of coal to companies to be worked out in the Ministry of Coal so that their yearly satisfaction level based on their assessed requirement after adjusting the linkage is about equal to those companies in the other blocks.	
Bijahan	Bhushan Limited Associate companies to be worked out in the Ministry of Coal so that their yearly satisfaction level based on their assessed requirement after adjusting the linkages is about equal to the associate companies in the other block.	Leader Company
Radhikapur (West)	Rungta Mines Associate companies to be worked out in the Ministry of Coal, so that their yearly satisfaction level based on their assessed requirement after adjusting the linkages is about equal to the associate companies in the other block.	Leader Company
Radhikapur (East)	Tata Sponge Iron Ltd. Associate companies to be worked out in the Ministry of Coal, so that their yearly satisfaction level based on their assessed requirement after adjusting the linkages is about equal to the associate companies in the other block.	Leader Company

To the extent possible, linkaged/associate companies would be grouped in the blocks sought by them.

Committee considered allocation of five coal blocks in the MCL area. Thirty applicants made presentations before the Committee. Many of these applicants were meritorious. The size of these blocks was large compared to the requirement of the applicants. The Screening Committee decided that for each such block, one applicant company who had the highest stake and which was likely

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Following companies were considered to be included as associate companies or for linkages:

1) Jindal Stainless Steel Ltd.
2) Orissa Sponge Iron Ltd.
3) SMC Power Generation Ltd.
4) OCL India Limited
5) Shree Metalliks Limited
6) Scaw Industries Limited
7) Deepak Steel & Power Limited
8) SPS Sponge Iron Limited
9) Shyam DRI Power Limited

[However, subsequently after the long-term linkage of Aditya Aluminium was revealed from records, the other three companies who substantially met with the criteria employed for selection of the above associate companies, were found includable without much change in percentage satisfaction of the earlier determined associate companies. These companies are:

10) Mahavir Ferro Alloys Ltd.
11) Nalwa Sponge Iron Ltd.
12) Bajrang Ispat Private Ltd.]

The companies whose cases were not decided in their favour for the five captive blocks under consideration, are as follows:

i. N.T.P.C.
ii. Bengal Sponge Iron Ltd.
iii. Mundra SEZ
iv. Gujarat Electricity Board
v. INDAL
vi. OPGENCO
vii. Madhya Utilities & Investment Ltd.
viii. Deo Mines & Minerals P Ltd.
ix. Madhyadesh paper Limited
x. Sunflag
xi. Aditya Aluminium (HINDALCO)
xii. Jaiswal Neco
xiii. MSEB

to take up proper mining could be designated the leader company and allocated the block and a group of other companies could be nominated as associate companies for supply of coal by the leader company to these designated associates. In our opinion, such procedure is apparently in contravention of the statutory provision contained in Section 3(3)(a)(iii) of the CMN Act. Moreover, the arrangement of consortium of companies violates Section 3(3)(a)(iii) of the CMN Act as the leader company supplies the associate share of coal to the associate company at a price (though the price is determined by the Government). Winning or mining of coal by such company is impermissible under the CMN Act. The rules of game were changed to adjust large number of applicants whose applications would have been otherwise rejected as their coal requirement was far less than the coal available in the coal block. However, in order to accommodate these applicants, a novel idea of choosing a leader company and associate companies was evolved which, as indicated above, is impermissible under the CMN Act. The merits of 13 companies whose applications were rejected have not been comparatively assessed with the 17 companies (5 leaders and 12 associates) whose applications were accepted and recommended for allocation to the Central Government.

138. In its 26th meeting** held on 01.02.2005, the Screening

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…..Considering the financial soundness of the companies, status of advance action taken, requirement of the end-use projects already put up, the likelihood of setting up of the entire capacity of the end-use projects and the support of the Ministry of Steel and/or Power and the support of the State Government the following companies were selected by the Screening Committee for allocation of coal from captive blocks on the pattern similar to the blocks in MCL area considered by the Screening Committee in its meeting held on 10.1.2005.

1. Anjani Steels Pvt. Ltd.
2. Hindustan Zinc Limited
3. Chattisgarh Electricity Company Ltd.
4. Ind Agro-Synergy Ltd.
5. Ispat Godavari Ltd.
6. Jayaswal Neco Ltd.
7. Jindal Steel and Power Ltd.
8. MSP Steel and Power Ltd.
9. Nalwa Sponge Iron Ltd.
10. Nav Bharat Coalfields Pvt. Ltd.
11. Prakash Industries Ltd.
12. Sri Bajrang Power and Ispat Ltd.
13. Sri Nakoda Ispat Ltd.
14. Sunflag Iron & Steel Co. Ltd.
15. Vandana Global Ltd.

It was decided to allocate coal from the captive blocks in the same way as decided in case of blocks in MCL area, the Committee proceeded to listing out the possible leaders from among the selected companies and listed out the following possible leaders:

1. Hindustan Zinc Ltd.
2. Chhattisgarh Electricity Company Ltd.
3. Jayaswal Neco Ltd.
4. Jindal Steel & Power Ltd.
5. Prakash Industries Ltd.
6. Sunflag Iron & Steel Co. Ltd.
7. Consortium of Nav Bharat Coalfields Pvt. Ltd.,
   Ind Agro Synergy; Ispat Godawari, Sri Bajrang Power & Ispat Ltd.,
   Sri Nakoda Ispal Ltd., Vandana Global Ltd.

It was decided by the Committee that detailed formulation of groups or 'common pool' for allocation of coal/blocks in line with the dispensation being contemplated in MCL blocks, will be worked out by the Ministry of Coal. In this regard, it was decided that the following three alternative formulations for mining and distribution of coal by the group from the captive mine appear workable.

i) Formation of a Consortium company which will mine coal and distribute among the consortium members.

ii) If no consortium emerges by consensus, a leader may be identified in the group who will do mining of coal and distribute it among the members of the group at a transfer price to be fixed by a Committee in the Ministry of Coal.

iii) If the group members and leaders are not agreeable to a direct dealing with each other, they being competitors among themselves, the subsidiary (here SECL) of CIL operating in that area shall undertake distribution of the coal to the associate companies at the transfer price fixed by a Committee in the Ministry of Coal.

Ministry of Steel raised the issue that a number of companies have, in their presentations, mentioned the capacity of the end-use projects in excess of what has been recommended by the Ministry of Steel and a view has to be taken on the same. Further it was

Committee considered allocation of five blocks in SECL area. Twenty-five applicants had applied for these blocks. Ten applicants who had submitted their applications after the cut-off date were rejected. The remaining fifteen were chosen for allocation on the same lines as was done in the 25th meeting for allocation of coal blocks in the MCL area. Of these 15 applicants, the Screening Committee listed out seven companies as possible leaders for 5 blocks. The procedure followed in the 26th meeting suffered from the flaws similar to recommendations made by the Screening Committee in its 25th meeting. Moreover, the minutes of the 26th meeting reveal that the Ministry of Steel raised the issue that a number of companies have, in their presentations, mentioned the capacity of the end-use projects in excess of what has been recommended by the Ministry of Steel. It is further seen that the representative of the concerned State Government had stated that the ground realities of the projects needed to be verified and the capacities of the end-use plants and coal requirements of such projects is required to be confirmed, but despite that, the Screening Committee proceeded to list out the possible leaders from among

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also observed that a number of companies have raised the proposed capacity of their end-use projects after the cut-off date of 28.6.2004. On this, representative of the State Government stated that the ground realities of the projects need to be verified and the capacities of the end-use plants and coal requirements of such projects require to be confirmed. Therefore, the Screening Committee decided that a Committee of the representatives of the Ministry of Steel and Ministry of Power, Government of Chhattisgarh and the Ministry of Coal will sit in a meeting and assess and firm up the capacities and coal requirement. The Meeting would be convened in the Ministry of Coal.

the selected companies, viz., 1. Hindustan Zinc Ltd.; 2. Chhattisgarh Electricity Company Ltd.; 3. Jayaswal Neco Ltd.; 4. Jindal Steel & Power Ltd.; 5. Prakash Industries Ltd.; 6. Sunflag Iron & Steel Co. Ltd.; and 7. Consortium of Nav Bharat Coalfields Pvt. Ltd., Ind Agro Synergy Ltd., Ispat Godawari Ltd., Sri Bajrang Power & Ispat Ltd., Sri Nakoda Ispat Ltd. and Vandana Global Ltd. Moreover, the Screening Committee did not assess the capacities and coal requirement of these companies. The Committee decided that detailed formulation of groups or 'common pool' for allocation of coal/blocks in line with the dispensation being contemplated in MCL blocks will be worked out by the Ministry of Coal. In our view, the expression 'a company' occurring in Section 3(3)(a)(iii) of the CMN Act does not cover "consortium of companies" or "formulation of groups" or "common pool". The decision of the Screening Committee to recommend allocation of coal blocks to consortium of companies or formulation of groups or common pool is in contravention of Section 3(3)(a)(iii) of the CMN Act. CMN Act places embargo on granting the leases for winning or mining coal to persons other than those mentioned in Section 3(3)(a)(iii). Consortium of companies surely falls outside Section 3(3)(a)(iii). The statutory scheme of the CMN Act generally and Section 3(3)(a)(iii) in particular have been given a complete go-bye in the

procedure followed by the Screening Committee and finally by issuing allocation letters to one leader company with obligation to share associate's share of coal to the associate company at a price determinable by the Government.

139. In the 27th meeting*** held on 01.03.2005, the

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The above submissions of various companies who made presentation before the Screening Committee were deliberated by the members of the committee in details and with the support of the representatives of the state governments concerned, representatives of the administrative ministries, such as Ministry Steel, Ministry Power, Ministry of Commerce and Industries (Deptt. of Industrial Policy and Promotion) and the Ministry of Railway and other members, allocation of the following blocks in favour of the companies mentioned against each in line with consortium/leader and associate approach adopted in case of the blocks in MCL and SECL areas, was decided:-

i)	North Dhadu (670 mt.)	-Tata Power Subject to their studying the details and making available their views to Min. of Coal who would then take an appropriate decision in the matter. M/s. Adhunik Alloys and Power Limited] M/s. Pawanjay Iron and Steel Ltd.] M/s Jharkhand Ispat Ltd.]	- Leader Associates
ii)	Bundu	-Rungta Mines Ltd Jai Balaji Sponge Ltd.	Leader/consortium
iii)	Ardhagram	-Sova Ispat Ltd. - Bengal Sponge Iron Manufactures Mining Ltd.	Leader
iv)	Parvatpur	Electrosteels Casting Ltd.	
v)	Gondulpara	-Tenughat Vidyut Nigam Ltd. - Damodar Valley Corporation Ltd.	

TVNL laid claim to Gondulpara on the assertion that since they have the adjoining block of Badan, it would save coal if the two are mined together. CMPDIL clarified that there had to be two separate mines looking to the geography of the block and, therefore, the question of coal saving does not arise. It was decided to share the produce between DVC and TVNL. Leader would be decided in the Ministry of Coal.

vi)	Pirpainti-Barahat	- Shyam Sel Ltd. - Rashmi Cement Ltd.
vii)	Mahan	- M/s. Hindalco (subject to confirmation by Govt. of Madhya Pradesh)
viii)	Gurha (East)	-M/s. Marudhar Power Pvt. Ltd.

Screening Committee considered allocation of blocks in the CCL area while in 28th meeting **** held on 15.04.2005, the Committee

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ix) Dumri - Neelachal Iron & Power Ltd.
- Bajrang Ispat Pvt. Ltd.

6. In regard to the decision taken on allocation of Mahan coal block to M/s Hindalco since the representative of Govt. of Madhya Pradesh made repeated request to consider to allocation of the block in favour of the Madhya Pradesh State Mineral Development Corporation Limited, it was observed by the Chairman of the Screening Committee that allocation of Mahan block to Hindalco is likely to lead to substantial value addition and economic activities in the state generating considerable revenue to the State exchequer. The State Mineral Corporation can ask for other blocks such as Amelia and Amelia north in the vicinity of the Mahan block. However, considering the overall position, it was decided that it would be appropriate to have the views of the Govt. of Madhya Pradesh on the same. It was decided that within a CIL subsidiary area, production from the blocks, instead of a one to one relation between the leader and the associates, it could be pooled and shared amongst the associate companies via the local CIL subsidiaries. The coal from these blocks would be mined by the designated leader and transferred at a price to be determined administratively as in the case of MCL and SECL blocks.

The issue of change of the area of the Gare-Palma-IV/I block which was allocated to M/s. Jindal Steel and Power Ltd., by the allocatee company themselves was also discussed. The details of the case was explained before the Screening Committee. It was stated that M/s. Jindal Steel & Power Limited had shifted the area of the block to cover an adjoining area containing a coal reserve of about 15 million tonne between the border of the State of Orissa and block boundary which is in the State of Chhattisgarh. On the other side, a portion of the block containing a reserve of about 36 million tonne under forest cover and human habitation has been left out matching the acreage of the changed area with the acreage area of the block allocated to them. It was pointed out by CMPDIL that the area between Orissa border and block boundary which has been covered by M/s. Jindal Steel and Power Ltd., could not form an independent block and should have been included earlier in the area of Gare-Palma-IV/I. It was also stated that M/s. Jindal Steel and Power Ltd., have already obtained a lease over the area which contains the un-allocated area covered by them with the approval to the mining plan and previous approval by the Central Government for grant of mining lease. In view of the same it was held by the Committee that it was an error both on the part of the Government and the Company and this needed to be regularized. Thereafter, it was decided that M/s. Jindal Steel and Power Ltd. should mine the left out area of the block under forest cover and human habitation while mining the reserve in the extra covered area. Accordingly, the representatives of M/s. Jindal Steel and Power Ltd. were called before the Committee and they were informed that they should work the entire area of the block including the forest area and the area under villages and also the additional area in question which has been covered by them and they should give details of the whole area and its coal reserves to the CMPDIL and Ministry of Coal and the mining plan be accordingly revised and considered.

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i) **Patrapara**

Looking to the size of the project, investment involved etc. it was decided that the leadership should go to M/s. Bhushan Steel and Strips Limited and for the associate status M/s. Nepaz Metalicks who had already been allocated a sub-block in Patrapara would need to be included, M/s. Visa Industries in view of the progress achieved by them need to be included and after checking up the availability of reserves, case of M/s. Ocean Ispat could be decided in the Ministry of Coal for inclusion of otherwise. The committee discussed at length the limited reserve available in Patrapara. Considering the requirement of the above applicants and the fact that Aunli block, north of Patrapara, which was yet to be explored in detail, had access from Patrapara and Machhakatta, most of the intervening boundaries of Aunli being occupied by

considered allocation of blocks in SECL area. Neither the counter affidavit nor the minutes of these two meetings show that assessment of comparative merits of the applicants was done. The Screening Committee continued with consortium / leader and associate approach, as was done for the MCL area in the 26th meeting. This procedure is clearly in contravention of Section 3(3)(a)(iii) of the CMN Act. Except recording the particulars of these

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Patrapara, it was decided that CMPDIL would redraw the boundary of Patrapara so as to include Aunli and the necessary part of Machhakatta so as to result in a fairly large size block to meet the requirement of these companies.

ii) **Marki Mangli II, III and IV**

It was decided that Marki Mangli II, III and IV be allocated to M/s. Viangana. As regards the request of M/s BS Ispat it was felt that since they already have MM I and if the percentage satisfaction with MM I matches the percentage satisfaction of Virangana with Marki Mangli II, III and then BS Ispat does not have a case for Marki Mangli II.

iii) **Nirad Malegaon**

The Screening Committee decided to allocate this block to M/s. Gupta Metalicks and Power as the leader and they could give rejects/middlings to M/s. Gupta Coalfields for their proposed power plants. As the grade of coal was superior, allocation of this coal block for power generation would not be desirable.

iv) **Panch Bahini**

The Screening Committee decided to allocate this block to M/s. Radhe Industries they being the sole applicant for this block.

v) **Bisrar**

It was decided that this block be allocated to the following companies:

i) Chattisgarh State Electricity Board as leader and the following as associates:

a) Ultra Tech (for their pre cut of project requirement)

b) M/s Chattisgarh Steel and Power

c) M/s Singhal Enterprises

d) M/s Vnadana

e) M/s Akshay Investment (subject to the views of the Ministry of Steel)

CMD, CMPDIL informed that earlier Madanpur was proposed to be sub-blocked into two blocks and now Bisrar is also being proposed to be sub-blocked in two blocks. However, between the four sub-blocks, i.e. two sub blocks of Bisrar and two of Madanpur, one each from Bisrar and Madanpur, could be combined to be called, Madanpur North or Bisrar (North) and Madanpur (South) or Bisrar (South) could be mined as one block each. Consequently, the total number of blocks between Bisrar and Madanpur would remain two. One would be with about 10 million tones of extractable reserves and the other about 120 million tones of extractable reserves. It was decided that since CSEB would be inducted as the leader consequently one leader from among those selected as leaders in the 26th meeting would need to be dropped. This matter would be analysed and decided in the Ministry of Coal. It was also decided that the allocattees under the leader-associate/consortium concept should be called in the Ministry of Coal for seeking their views and finalizing the sharing of coal from captive mine arrangement between them.

companies, who had given presentation, nothing is said about *inter se* priority or comparative merits of the applicants. By adopting consortium / leader and associate approach, the Screening Committee had indirectly done away with *inter se* priority and merit of the applicant companies. The consideration does not reveal application of any objective criterion. It is admitted in para 206 of the counter affidavit filed by the Central Government that as regards the applicant - Neepaz Metalicks whose case was considered in 28th meeting, the recommendation of the Administrative Ministry was contrary to the recommendation of the State Government, yet the allocation of a sub-block in Patrapara block was made on the basis of State Government's recommendation. Moreover, it may be noticed that though the representative of the State Government supported the request of M/s Bhushan Steel and Strips Limited for allocation of Patrapara block but he stated that the State Government supports the claimants for Patrapara in the following order: (a) M/s Neepaz Metalicks Limited, (b) M/s SCAW, (c) M/s Visa Industries, (d) M/s Shree Metalicks, all of whom have already entered into a MOU with the Government of Orissa and the order of priority for M/s Bhushan Steel and Strips Limited would be lower than these four claimants. As regards Panch Bahini block, the representative of the State Government stated that the applicant,

M/s Shree Radha Industries, may be considered for a share and inclusion in the earliest list of blocks allocated in 26th meeting, still the Screening Committee decided to recommend allocation of Panch Bahini block to M/s Shree Radha Industries.

140. The counter affidavit in para 208 as regards 29th meeting***** held on 03.06.2005 states that the Screening Committee considered a detailed presentation of modalities of

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CMD, CMPDIL stated that with respect to mining in the new patrapara block, which would include Aunil and part of Machhakatta, that Aunil is yet to be explored in detail and part of Machhakatta would also need to be explored. This would take like time. It was pointed out to CMD, CMPDIL that they should examine the possibility of allowing mining in the existing patrapara and thereafter dove-tailing the mining plan of new patrapara which would include Machhakata and Aunil. In any cases Aunil is in the dip side of patrapara and mining would reach there only after many years. Therefore, its immediate exploration for the purposes of mining may not be necessary. Chairman, Screening Committee pointed out that for the purposes of calculating reserves, the data available as on date should be taken into consideration. He also directed that Machhakatta should be explored within the next six months by the time the mining plan for existing patrapara comes up. In case dove-tailing is possible then the mining plan should be approved otherwise it could be modified suitably, instead of holding back the entire process.

……..Sharing of Mahan Block between M/s. Hindalco and Esser Power Limited: The matter was discussed and by way of recapitulation the screening committee was informed that in the last meeting of the screening committee the representative of Government of Madhya Pradesh had taken a position that the Mahan block should be given to the State Mineral Development considering the overall merit of the competing claimants the block should be allocated to M/s Hindalco for their aluminium project in which the coal should be used in the captive power plant. However, the final decision was to be taken in consultation with the Government of Madhya Pradesh. The Government of Madhya Pradesh subsequently have given up their position for allocation of Mahan block to the State Mineral Development Corporation and have instead supported allocation of this block to M/s Essar Power Limited. Representative from Government of Madhya Pradesh stated that as they are power deficit state, they would recommend allocation of mahan coal block to Essar Power Limited only. Representative from the Ministry of power also supported the request of Government of Madhya Pradesh. The Screening Committee decided that the views of the State Government and of the representative of Ministry of power be taken on record as they too had merit.

Iron and Case of M/s. Neelachal Power Limited: The Screening Committee took note of the assessed requirement of M/s. Neelachal Iron and Power Limited and also that of its possible associate M/s. Bajrang Ispat Limited. It also took note of the fact that the overall percentage satisfaction was nearly 50% from the allocated block of Dumri. The decision for allocation of Dumri to M/s. Neelachal Iron and Power Limited as leader with M/s. Bajrang Ispat as associate would remain unchanged.

competitive bidding by the CMPDIL. Despite the fact that modalities for auctioning through competitive bidding were discussed in 29th meeting, that was not carried further as is seen from the minutes of the 30th meeting of the Screening Committee held on 18.10.2005.

141. The minutes of 30th meeting! show that the Screening

! CMPDIL made an audio visual presentation Gare Pelma Blocks viz, IV/1, IV/2, IV/3, IV/6 and IV/7 copy of the presentation is kept at Annexure-II. CMPDIL essentially said that partial detailed exploration, except in IV/6, was done by the allocattees themselves and exploration, in the lower seams in IV/2 and 3 is underway, precise data would be available only thereafter, and hence the estimates of reserves arrived at, based on GSI boreholes which are very few, is highly tentative in respect of lower seams.

On the availability side

Addition to Gare Pelma IV/1

On account of additional area is estimated at 33.6 mill. Tonnes.

On account of lower seams with inferior grade coals, which may not be extracted being deep underground and of inferior grades, is for 4.76 mill. T and is not being taken into amount.

Addition to Gare Pelma IV/2 and IV/3

On account of lower seams is estimated at 35 mill. Tonnes. Of which 22.12 mill tonnes is of superior grade.

Gare Pelma IV/6

The block has been detailed explored by CMPDIL and has total of 102.77 mill tonnes of extractable reserves of which 13.68 mill Tonnes in the lower seams are of superior grades and the remaining 89.09 are inferior grade of which 27.79 are in the lower seams (underground)

Gare Pelma IV/7

The block has been partially detail explored by the allocate. Exploration of the lower seams has not yet been taken up or mandated. The upper seams (opencast) in the approved mining plan show extractable reserves of 56.62 million tonnes. Extractable Reserves in the lower seams are tentatively assessed at 21.98 mill tones of which 14.56 are of superior grade

On the Demand Side

JSPL and JPL

The existing Sponge Iron plant of JSPL of 6 Ltpa capacity requires 72 mill T of inferior grade coal for a 30 year life of which 11 million tones have already been extracted from GP IV/1. The 1000 MW power plants of JPL require about 158 mill T of ROM, considering the inferior grades of coal for a 30 years life.

The Proposed expansion of 6.6. Itpa in sponge Iron capacity of JSPL requires about 80 mill T of inferior grade coal for 30 year life for which GP IV/6 is being sought. The proposed 2.6 itpa sponge iron through the Rotary Hearth Furnace (RHF) of JSPL requires 6.34 mill T of 10-12% ash coal which would result in an increased ROM Quantity depending upon the yield upon washing.

The reserves available in IV/1, Considering 11 mill T already extracted, would be 95.88 mill T. with extracted reserves it would be 106.88 mill. T another 4.76 mill T are inferior and in UG. Total reserve in GP IV/2 and IV/3 would be 160 + 35 = 195 Mill T. Where the 35 addition is highly tentative.

Total available in IV/1, IV/2 and IV/3 = 95.88 + 11 + 4.76 + 195 = 306.64 mill T including 22.12 superior in UG and 17.64 inferior in UG. Inferior equivalent not counting 4.76 in GP IV/1 would be 326.86 mill. T

Total required = 72+79.2+157.5 = 308.7 mill T inferior grade. Not counting the requirement of RHF as superior grade coal in IV/2 and IV/3 may not be suitable for the RHF.

Another 34 mill T inferior equivalent count be added to the requirement if washing yield is taken as 36% instead of 40% for sponge iron and 80% yield is taken for power instead of 100% with rom as direct feed. Addition on account of RHF would depend upon the wash yield, if it is taken as 50% the addition would be about 13 mill tones of superior grade rom coal.

Representative from the Government of Chhattisgarh stated that JSPL and JPL are two separate Companies/legal entities. JPL cannot be compelled to share coal given to them with JSPL. Company Law does not recognize Group companies. Section 370(1B) mention companies under the same management and JPSL JPL do not meet the criteria. Separate mining leases have been executed with them. They have different shareholders, combining them would create legal complications and therefore, they should be treated apart. Reserves in GP IV/2 and GP IV/3 should be kept out of the reckoning when considering request of GP IV/6 as the company is the same and the project is of expansion in capacity.

CMD SECL stated that when allocation are being made in groups why should sister companies not be asked to share first.

Representative from the Govt. of Chattisgarh stated that this would be discrimination against JSPL JPL. When excess coal cannot be taken back from earlier allocattees why should JSPL-JPL be singled out. Besides, all is being based on data/projections which is admittedly highly tentative. He further said that power generation (JPL) is crucial and should not be affected.

Chairman sought views of the Ministry of Steel. The representatives of Mos stated that the date is tentative, it is not fool proof. JSPL and JPL are two separate companies and that they agreed with views of the representative from Chattisgarh Govt.

Representative from CEA (power) stated that coal blocks given for power project of JPL should be kept apart and not clubbed with Sponge Iron project's requirement of JSPL.

Chairman observed that large numbers of people are looking for coal. There should be a sense of enquiry for meeting requirement of people. Legal solution can and should be found for it.

Representative from the Govt. of Chattisgarh stated that JSPL and JPL should not be clubbed. People have invested in these companies. They are public limited companies, listed companies. There would be complications.

Chairman sought views of Chattisgarh on clubbing IV/1 and IV/6. This was agreed and supported by Chattisgarh, CEA and MoS.

It was accordingly decided that reserves in GP IV/2 and IV/3 would be kept out of consideration for deciding on extent of alloction in IV/6. The extractable reserves in GP IV/1 + GP IV/6 are 95.88 + 102.77 = 198.65 mill. T.

The Requirement of JSPL for 6 Itpa + 6.6 Itpa S.I comes to 72-11+79.2=140.2 mill. T. And if 36% yield in washing is considered, given high percentage of G grade coal in GP IV/1 and 6 this becomes 157.2 mill T with addition of 17 mill. T.

As to the requirement in 2.6 Itpa in RHF, CMD CMDPIL was of the view that coal from lower seams of IV/6 may not yield 10-12% ash coal on washing and that JSPL should seek linkage of superior coal.

Representative from the Govt. of Chattisgarh stated that such superior coal is available nowhere and that JSPL should be allowed to innovate and use the lower seams to meet their RHF Requirement. MoC could keep condition that when full facts are known at the mining plan appropriately at the stage and allocate IV/6 to JSPL and Nalwa Sponge.

CMD CMPDIL said that superior coal in lower seams if IV/2 and IV/3 should not be used for power generation and but for sponge Iron marking.

Chairman, summing up the discussion, observed that IV/2 IV/3 are to be kept out; reserve in IV/1 and IV/6 are be clubbed; RHF requirement be kept out; requirement of partner company M/s Nalwa Sponge be included; the existing requirement be accounted for at 100% satisfaction and expansion requirement of JSPL and requirement of Nalwa Sponge be given same satisfaction level as the overall in SECL area. If surplus still remains in IV/1+ after this then JSPL-Nalwa be asked to select another allocattee failing which the excess reserves be handed over to SECL, in terms of annual production, at transfer price to be determined by the Government.

Coal availability and requirement in IV/1

	Inferior	Superior	Total
Available;	95.88+89.09=184.97	13.68	

Committee decided to club Gare Palma Blocks IV/1 and IV/6 and further decided to allot the combined block (IV/1 and IV/6) to JSPL with Nalwa Sponge as a partner company. The minutes also record that if surplus still remains in the block, then JSPL-Nalwa be asked to select another allottee failing which the excess reserves to be handed over to SECL, in terms of annual production, at transfer price to be determined by the Government. Coal availability and requirement in Gare Palma IV/1 block as recorded in the minutes show that 31.05 m.t. remained surplus with these companies. In the 30th meeting, the Screening Committee also recommended to allot Dumri Coal Block to M/s. Neelachal and M/s. Bajrang despite the fact that CMPDIL informed the Committee that north portion (rise side) of Dumri remains unexplored in detail on account of security problems. The unexplored portion has superior grades of coal of about 15 m.t. As regards Gare Palma IV/8 block, the minutes indicate that for this block M/s CECL; Consortium of five applicants

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198.65

Required :	JSPL	157.2	NIL	
At 100% Satisfaction	Nalwa	026.6		
Required	JSPL	144.7 (satisfaction level for existing 6 Itpa SI at 100%)		
	At 86%	Nalwa	022.9	
Satisfaction		167.6		
Surplus:		17.37	13.68	31.05

and M/s Jayaswal Neco Ltd. had made presentations. Consortium of five applicants companies was not recommended apparently *inter alia* for the reasons; (1) that the Consortium of five applicants companies was yet to be incorporated and (2) that they claimed the blocks mainly on the ground of promoting consortium approach. It is interesting to note that in the earlier meetings for allocation of coal blocks in MCL, SECL and CCL areas, the Screening Committee on its own adopted consortium / leader and associate approach and the factor such as that the consortium company was not incorporated was not at all viewed as an impediment for recommendation but in this meeting the claim of consortium of five companies was not accepted and it was noted that they may be accommodated in other blocks. The application of norms by the Screening Committee changed from meeting to meeting. There was no consistent or uniform consideration. The portion of Dumri Coal Block bearing superior grade was admittedly unexplored but it was recommended for allocation. The clubbing of blocks or sub-blocks was done which was not the brief given to the Screening Committee.

141.1 The recommendations made by the Screening Committee in its 30th meeting suffer from the same infirmities as the

recommendations made by it in favour of other applicants in earlier meetings.

142. In the 31st meeting held on 23.06.2006, the Screening Committee examined the applications for lignite blocks. 25 applicants made their presentation. The Screening Committee, after noticing the particulars of each of the 25 applicants individually and recording that it discussed the presentations made by the applicants and that it took into consideration the views/comments of the Ministry of Power, Ministry of Steel, concerned State Governments and the guidelines, recommended allocation of lignite blocks to 6 applicants.

143. In September, 2005, the Ministry of Coal issued advertisement inviting applications for allocation of 20 coal blocks. This was the first time when applications were invited for allocation of coal blocks by way of an advertisement. The applications received pursuant to the above advertisement were taken up for consideration by the Screening Committee in 32nd meeting held on 29.06.2006 and 30.06.2006, 33rd meeting held on 31.08.2006, 01.09.2006 and 02.09.2006 and 34th meeting held on 07.09.2006 and 08.09.2006. In the 32nd meeting, the Screening Committee considered allocation of Rohne, Sitanala, Tenughat-Jhirki, Choritand-Taliya and Jogeswar coal blocks. 54 companies (some

of which were group companies) made presentations. The Committee also considered applications of those companies which did not come for presentation. The minutes of 32nd meeting[!!] record that the applications received in the Ministry regarding above coal blocks were sent to the State Government of Jharkhand and the concerned Administrative Ministries in the Central Government for their views/comments. The views/comments of the Government of Jharkhand were received on 28.06.2006. The Committee then recommended the allocation of Rohne coal block jointly in favour of M/s. JSW Steel Ltd., M/s. Bhushan Steel and Power Ltd. and M/s. Jai Balaji Sponge Ltd. Tenughat–Jhirki coal block was recommended jointly in favour of M/s. Rashtriya Ispat Nigam Limited

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!! The Screening Committee discussed in detail the presentations made and the applications submitted by the companies. Taking into consideration the views/comments of the Ministry of Power, Ministry of Steel, concerned State Governments, and considering the guidelines laid down for the allocation of coal/lignite blocks, the Screening Committee decided to recommend the allocation of the coal blocks as follows:

i) Rohne coal block jointly in favour of M/s. JSW Steels Limited, M/s. Bhushan Steel and Power Limited and M/s. Jai Balaji Sponge Limited.

ii) Sitanala coal block in favour of M/s. Steel Authority of India Limited.

iii) Tenughat-Jhirki coal block jointly in favour of M/s. Rashtriya Ispat Nigam Limited and M/s. Jindal Steel and Power Ltd.

iv) Choritand-Taliaya coal block jointly in favour of M/s. Sunflag Iron and Steel Limited and M/s Rungta Mines Limited.

It was further decided that a sub-committee consisting of Joint Secretary, Ministry of Coal and Joint Secretary, Ministry of Steel would have discussions with the recommended joint allocattees of Rohne, Tenughat Jhirki and Choritand-Taliaya coal blocks and work out the modalities and details of the arrangements of the joint allocation. In case there is a problem in the allocation as proposed, the sub-committee will bring the matter again before the screening committee.

As regards Jogeswar coal block the representative of the Government of Jharkand had informed the Committee that the State Government were of the view that due to some problems at the local level, it may be difficult for private companies to undertake coal mining. He further added that this block may be earmarked for some State Public Sector Undertaking. The Screening Committee also took note of the fact that this block was earlier allocated but due to some local problems the allocattee could not commence mining and it was consequently surrendered. The Screening Committee, therefore, decided not to recommend allocation of Jogeswar block in favour of any applicant for the time being.

and M/s. Jindal Steel and Power Limited while Choritand-Taliya was recommended jointly in favour of M/s. Sunflag Iron and Steel Limited and M/s. Rungta Mines Limited. Insofar as Sitanala coal block is concerned, the Committee recommended the said block in favour of M/s. Steel Authority of India Limited. As regards Jogeswar coal block, the Committee in view of the comments of the representative of the Government of Jharkand decided not to recommend allocation of that block in favour of any applicant for the time being. The minutes of 32nd meeting do not show how and in what manner the applications of those companies were considered which did not come for presentation. There is no comparative assessment or evaluation of the applicants. Why the chosen companies have been preferred over the others is not discernible? Merely because there were large number of applicants, it did not mean that the consideration of each applicant could not have been recorded or comparative assessment or evaluation of the applicants could not have been made. What are the reasons for recommending three blocks jointly in favour of more than one company are neither recorded nor disclosed in the minutes. The recommendations for allocation of blocks jointly in favour of two or three companies, as indicated earlier, are not in conformity with the CMN Act. Rather, they are in contravention thereto.

144. In the 33rd meeting, the Screening Committee considered allocation of Tubed, Chakla, Jitpur and Pengedappa coal blocks. In that meeting, 165 companies made their presentations. The applications of 16 companies which did not turn up for making presentations were also considered. In the 32nd meeting held on three dates, namely, 31st August and 1st and 2nd September, 2006, the Committee decided that recommendations regarding the above four blocks would be finalised after hearing the applicants for the remaining 11 blocks, for which the meeting was already notified for 07.09.2006 and 08.09.2006.

145. On 07.09.2006 and 08.09.2006, the 34th meeting of the Screening Committee was held to consider allocation of Ansettipali, Punukula-Chilka, Brahmpuri, Mandla North, Rawanwara North, Sial-Shoghri Lohara East, Kosar-Dongargaon, Warora West (North), Biharinath and Mednirai coal blocks. In that meeting, geological reserves of some of the coal blocks were reported by CMPDIL/SCCL. The presentations were made by 101 companies. 44 companies did not turn up for making presentations. However, their applications were considered. In that meeting, it was decided that the recommendations regarding the above 11 blocks would be finalized in the next meeting.

146. As seen from the above, in the 33rd meeting held on 31.08.2006, 01.09.2006 and 02.09.2006 for allocation of four blocks and in the 34th meeting held on 07.09.2006 and 08.09.2006 for allocation of 11 blocks, no final decision was taken and the matters were deferred. On 22.09.2006, the Screening Committee met regarding allocation of 15 coal blocks, which was subject matter of consideration in its 33rd and 34th meetings. The minutes!!! of the

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!!! 5.3 The State Government of Jharkhand vide its letter no.571/M.C. dated 29.8.06 and letter no. 592/CS dated 21.9.06 had conveyed the following views regarding the captive coal blocks situated in the State of Jharkhand:-

S.No.	BLOCK	RECOMMENDATIONS
1.	Tubed	i) M/s Hindalco ii) M/s Tata Power iii) M/s Jindal Steel & Power Limited
2.	Jitpur	M/s Jindal Steel & Power Limited
3.	Chakla	i) M/s Essar Power ii) M/s Chaibasa Steel
4.	Medinirai	i) M/s JSMDC ii) M/s Rungta Mines

5.4 The State Government of Madhya Pradesh vide its letter no.F-19-36/2005/12/2 (part-I) dated 23.1.06 and letter no. F-19-36/2005/122 (Part-1) dated 12.7.06 had conveyed the following views regarding the captive coal blocks situated in the State of Madhya Pradesh.

S.No.	BLOCK	RECOMMENDATIONS
1.	Brahmpuri	M/s Satna Power Company Limited
2.	Mandla North	i) M/s Occidental Power Private Limited ii) M/s Jaiprakash Associates Limited
3.	Rawanwara North	M/s Ind Synergy Limited
4.	Sial-Ghoghri	M/s Prism Cement Limited

5.5 The State Government of Maharashtra vide its letter no. MMN-1005/C.R.969/Ind-9 dated 19.11.05, letter no.MMN-1005/C.R. 1000/Ind-9 dated 10.1.06, letter no.MMN-1005/C.R.969 part-II/Ind-9 dated 4.5.06 and letter no.MMN-1005/C.R.1000/Ind-9 dated 11.5.06 had conveyed the following views regarding the captive coal blocks situated in the State of Maharashtra.

S.No.	BLOCK	RECOMMENDATIONS
1.	Lohara East	i) M/s Murli Agro Product Private Limited ii) M/s Ultra Tech Cement Limited iii) M/s IBEL Gas Power Limited
2. Warora	West (North)	i) M/s Bhatia International Limited ii) M/s Shri Sidhbali Ispat limited iii) M/s MSP Steel Private Limited iv) M/s Central India Power Company Ltd. v) M/s Gupta Energy Limited vi) M/s Jas Toll Road Company Limited
3. Kosar-Dongargaon		M/s Wardha Power Company Private Ltd.

5.6 The State Government of West Bengal vide its letter no.5477/PrS/CI dated 9.8.06 had conveyed the following views regarding the captive coal blocks situated in the State of West Bengal.

S.No.	BLOCK	RECOMMENDATIONS
1.	Biharinath	i) M/s Bankura DRI Manufacturing Pvt. Co. Limited

5.7 The Secretary, Industries, Government of Andhra Pradesh apprised the Screening Committee that Ansettipali, Punkula-Chilka and Pengedappa are located in the notified tribal areas where the provisions of AP Land Transfer Regulations are applicable. In such areas, the State Government will not be in a position to grant mining leases in favour of private sector companies. The Government of Andhra Pradesh has also brought out amendments to Section 11(5) of MMDR Act, 1957. Pursuant to this amendment grant of mining lease in Andhra Pradesh to non-tribals except public sector undertakings is prohibited in case of mines located in the notified tribal areas.

5.8 The Screening Committee discussed in detail the presentations made and the applications submitted by the companies. Taking into consideration the views/comments of the Ministry of Power, Ministry of Steel, concerned State Governments, and considering the guidelines laid down for the allocation of coal/lignite blocks, the Screening Committee decided to recommend the allocation of the coal blocks as follows:

S.No.	BLOCK	Company and end use plant
1. Tubed *jointly to*		i) M/s Hindalco Industries Ltd. for its enduse plant in Latehar, Jharkhand ii) M/s Tata Power Company Ltd. for its enduse plant in Singhbhum, Jharkhand
2. Chakla		M/s Essar Power Limited for its enduse plant in Latehar, Jharkhand

3. Jitpur	M/s Jindal Steel and Power Limited for its enduse plant in East Singhbhum, Jharkhand.
4. Mednirai *jointly to*	i) M/s Rungta Mines Limited for its enduse plant in Saraikela Kharswan, Jharkhand
	ii) M/s Kohinoor Steels Pvt. Ltd. for its enduse plant in Saraikela Kharswan, Jharkhand
5. Brahmpuri	M/s Pushp Steel and Mining for its enduse plant in Durg, Chhatisgarh
6. Mandla North	M/s Jaiparkash Associates Limited for its enduse plant in Madhya Pradesh/Himachal Pradesh
7. Rawanwara North	M/s SKS Ispat Limited for its enduse plant in Raipur, Chhatisgarh
8. Sial-Ghoghri	M/s Prism Cement Ltd. for its enduse plant in Satna, MP
9. Lohara East jointly to	i) M/s Murli Agro Product Ltd. for its enduse plant in Nagpur and Chandrapur, Maharashtra
	ii) M/s Grace Industries Ltd. for its enduse plant in Chandrapur, Maharashtra
10 Warora West (North)	M/s Bhatia International Ltd. for its enduse plant in Chandrapur, Maharashtra
11. Kosar-Dongargaon	M/s Chaman Metallics Pvt. Ltd. for enduse plant in Chandrapur, Maharashtra
12. Biharinath	M/s Bankura DRI Manufacturing Pvt. Co. Ltd. for its enduse plant in Bankura, West Bengal
13. Ansettipali	M/s Andhra Pradesh Power Generation Corporation Limited (APGENCO) for its enduse plants in Andhra Pradesh
14. Punkula-Chilka	
15. Pengedappa	

5.9 In respect of blocks recommended to be allocated jointly, the allocatee companies shall share the coal in the ratio of their assessed requirement for the capacities (end-use plants) as reflected in the original applications.

meeting held on 22.09.2006 record recommendation for allocation of 15 coal blocks.

146.1 Of these 15 blocks, three namely, Ansettipali, Punukula-Chilka and Pengedappa were recommended for allocation to Andhra Pradesh Government undertaking as these blocks were located in the notified tribal area. Of the remaining twelve, the Screening Committee recommended their allocation to fifteen companies. Five companies were recommended for their power plants, three were recommended for the cement plants and remaining seven were recommended for the Sponge Iron Units. For these twelve blocks, Jharkhand recommended seven companies, Madhya Pradesh recommended five, Maharashtra recommended ten and West Bengal recommended one company. It is pertinent to notice that some of the companies like Chaman Metallics Ltd., which was recommended by the Screening Committee for Kosar Dongergaon block had no recommendation by the State Government (Maharashtra). Similarly, Pushp Steel and Mining Ltd., which was recommended for Brahmpuri block had no recommendation from the State Government (Madhya Pradesh) and so also Kohinoor Steel (P) Ltd. for Mednirai coal block had no recommendation from the State Government (Jharkhand). The

minutes do not disclose in what manner the merits of the companies which were chosen for recommendation were determined. Even particulars of the applicants individually are not noticed. There is no indication at all in the minutes of 33rd meeting and 34th meeting or the meeting held on 22.09.2006 when final decision that the conditions laid down in the guidelines are met by these companies was taken. Twenty three companies were recommended by the four State Governments while fifteen companies were finally recommended for allocation by the Screening Committee but the reasons therefor are not discernible at all. The minutes also do not disclose the criterion which the Screening Committee applied in selection of the fifteen companies and the reason for allocating twelve blocks to fifteen companies. M/s. Grace Industries Limited was recommended allocation of a coal block although that company had no recommendation/categorization. It is true that the recommendation/allocation made in favour of M/s. Grace Industries Limited was subsequently withdrawn/de-allocated but that is altogether a different matter.

147. In 2006, the Ministry of Coal invited applications for allocation of 38 coal blocks, of which 15 were reserved for the power sector. The advertisement indicated that preference will be accorded to the power sector and steel sector. Within the power

sector, it was indicated that priority shall be accorded to projects with more than 500 MW capacity. Similarly, in the steel sector, priority would be given to steel plants with more than 1 million ton per annum capacity. In response to the advertisement, more than 1400 applications were received for 38 coal blocks.

148. The allocation of coal blocks earmarked for power generation was considered by the Screening Committee in its 35th meeting which was held on 20.06.2007 to 23.06.2007, 30.07.2007 and 13.09.2007. The coal block that was numbered as one block in the advertisement was subsequently considered as two blocks. Thus, 15 coal blocks, namely, Amarkonda - Murgadangal, Ashok Karkata Central, Durgapur-II/Sariya, Durgapur-II/Taraimar, Fatehpur, Fatehpur (East), Ganeshpur, Gourangdih ABC, Lohara West & Lohara East, Mahuagarhi, Mandakini, Patal East, Rampia Dip Side of Rampia, Sayang and Seregarha were considered. The status of geological reserve of 15 blocks was indicated. The minutes≠ of the 35th meeting briefly record the proceedings of the

≠ The Screening Committee, thereafter, deliberated at length over the information furnished by the applicant companies in the application forms, during the presentations and subsequently. The Committee also took into consideration the views/comments of the Ministry of Power, Ministry of Steel, State Governments concerned, guidelines laid down for allocation of coal blocks, and other factors as mentioned in paragraph 10 above. The Screening Committee, accordingly, decided to recommend for allocation of coal blocks in the manner as follows:

	Name of Block	Recommended Companies	End use Plant

1.	Mandakini	1. M/s. Monnet Ispat & Energy Ltd. 2. M/s. Jindal Photo Ltd. 3. M/s. Tata Power Comp. Ltd.	Orissa Orissa Orissa
2.	Rampia & Dip Side of Rampia	1. M/s. Sterlite Energy Ltd. 2. M/s. GMR Energy Ltd. 3. M/s. Lanco Group Ltd. 4. M/s. Navbharat Power Pvt. 5. M/s. Mittal Steel India Ltd. 6. M/s. Reliance Energy Ltd.	Orissa Orissa Orissa Orissa Orissa Orissa
3.	Durgapur II/Sariya	1. M/s. D.B. Power Ltd.	Chhattisgarh
4.	Durgapur II/Taraimar	1. M/s. Bharat Aluminium Co. Ltd.	Chhattisgarh
5.	Sayang	1. M/s. AES Chhattisgarh Energy Pvt. Ltd.	Chhattisgarh
6.	Fathepur	1. M/s. SKS Ispat & Power Ltd. 2. M/s. Prakash Industries Ltd.	Chhattisgarh Chhattisgarh
7.	Fathepur East	1. M/s. JLD Yavatmal Energy Ltd. 2. M/s. Green Infrastructure Pvt. Ltd. 3. M/s. R.K.M. Powergen Pvt. Ltd. 4. M/s. Visa Power Ltd. 5. M/s. Vandana Vidyut Energy Ltd.	Maharashtra Chhattisgarh Chhattisgarh Chhattisgarh Chhattisgarh
8.	Lohara West & Lohara East	1. M/s. Adani Power (P) Ltd. (1200 MW)	Maharashtra
9.	Ganeshpur	1. M/s. Tata Steel Ltd. (CPP-600 MW) 2. M/s. Adhunik Thermal Energy Ltd. (Equal Share) 1000 MW	Jharkhand Jharkhand
10.	Seregarha	1. M/s Mittal Steel Ltd. 2. M/s GVK (Gonvindwal Sahib) Ltd.	Jharkhand Punjab
11.	Ashok Karkata Central	M/s. Essar Power Ltd.	Jharkhand
12.	Patal East	M/s. Bhushan Power & Steel Ltd. (750)	Jharkhand
13.	Amarkonda Murgadangal	1. M/s. Jindal Steel & Power Ltd. 2. M/s. Gagan Sponge Iron Pvt. Ltd.	Jharkhand Jharkhand
14.	Mahuagarhi	1. CESC 2. Jas Infrastructure Capital Pvt. Ltd.	Jharkhand West Bengal

meeting held on 20.06.2007 to 23.06.2007, 30.07.2007 and 13.09.2007. The Screening Committee in that meeting recommended to allocate all the 15 blocks reserved for power sector, many of which were recommended jointly in favour of two or more companies. The minutes do not contain the particulars showing consideration of each application. They also do not disclose any comparative assessment or evaluation of the applicant companies. In what manner and for what reasons the companies were selected for recommendation are neither disclosed nor are they discernible from the minutes. Though, the guidelines[±] provide

15.	Gourangdih ABC	1. M/s. Himachal Emta Power Ltd. and M/s. JSW Steel Ltd. on equal share basis. 2. Representative from the West Bengal Govt. suggested that either the block be allotted to WBMDTC Bengal or else be left unallotted. The committee felt that since WBMTDC Bengal had not applied for the block, it would not be possible to consider them. Regarding non-allotment, the matter may be placed for consideration of the Govt.	

± Inter-se priority for allocation of a block among competing applicants for a captive block may be decided as per the following guidelines.
Status (stage) level of progress and state of preparedness of the projects;
Networth of the applicant company (or in the case of a new JV, the networth of their principals);
Production capacity as proposed in the application;
Date of commissioning of captive mine as proposed in the application;
Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;
Technical experience (in terms of existing capacities in coal/lignite mining and specified end use);
Recommendation of the Administrative Ministry concerned;

for norms for consideration for *inter se* priority for allocation of a block among competing applicants for a captive block but the minutes do not disclose at all how the norms for *inter se* priority are met by the companies selected for recommendation by the Screening Committee. Many of the companies selected by the Screening Committee had no recommendation from the State Government or from the Ministry of Power and CEA and some of them had no recommendation either from the State Government or the Ministry of Power and CEA at all. For example, for Durgapur-II/Taraimar, the selected company Balco had no recommendation at all from the State Government, Ministry of Power and CEA. Although the group company M/s. Vedanta Alumina Ltd. was recommended by Ministry of Power and CEA, but it was not selected. Similarly, for Mandakini block, M/s. Tata Power Company Ltd. had no recommendation from the State Government and Ministry of Power and CEA. For Rampia and Dip Side of Rampia, Reliance Energy Ltd. did not have any recommendation from the State Government, Ministry of Power and CEA. For Fatehpur East, the selected company Visa Power Ltd. had no recommendation

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Recommendation of the State Government concerned (i.e. where the captive block is located);
Track record and financial strength of the company
Preference will be accorded to the power and the steel sectors. Within the power sector also, priority shall be accorded to projects with more than 500 MW capacity. Similarly, in steel sector, priority shall be given to steel plants with more than 1 million tonne per annum capacity.

from Ministry of Power and CEA. For Fatehpur block, Prakash Industries Ltd. had neither recommendation from the State Government nor from the Ministry of Power and CEA. The Screening Committee, as a matter of fact, did not select eight companies which were recommended by the Ministry of Power but selected eleven companies which were not recommended by Ministry of Power. Though in additional counter affidavit, some justification in this regard has been sought to be made but we are afraid that the said justification hardly merits acceptance as the minutes of the 35th meeting of the Screening Committee do not disclose anything what is now stated in the additional counter affidavit. The eight companies which were recommended by the Ministry of Power but not selected by the Screening Committee are (1) M/s. Rashmi Cement Ltd.; (2) M/s. TRN Energy Pvt. Ltd.; (3) M/s. Maithon Power Ltd.; (4) M/s. Mahavir Global Coal Ltd.; (5) M/s. Rosa Power Supply Ltd.; (6) M/s. Bhushan Energy; (7) M/s. Lanco Amarkantak Power Ltd. and (8) M/s. Vedanta Alumina Ltd. The minutes do not disclose any reason at all for not selecting these companies which were recommended by the Ministry of Power. The eleven companies which were not recommended by the Ministry of Power and selected by the Screening Committee are (1) M/s. Tata Power Company Ltd.; (2) M/s. Reliance Energy Ltd.; (3)

M/s. Balco; (4) M/s. SKS Ispat and Power Ltd.; (5) M/s. Prakash Industries Ltd.; (6) M/s. Green Infrastructure Pvt. Ltd.; (7) M/s. Visa Power Ltd.; (8) M/s. Vandana Vidyut Energy Ltd.; (9) M/s. GVK (Govindwal Sahib) Ltd.; (10) M/s. Gagan Sponge Iron Pvt. Ltd.; and (11) M/s. Lanco Group Ltd. The reasons for selecting above eleven companies which were not recommended by the Ministry of Power are neither disclosed nor discernible.

149. In the 36th meeting, which was held on 07.12.2007-08.12.2007, 07.02.2008-08.02.2008 and 03.07.2008, the Screening Committee considered allocation of 23 coal blocks earmarked for non-power sector. For these 23 coal blocks earmarked for non-power sector, 674 applications were submitted by 184 companies for allocation. Some companies had applied for more than one block and some had submitted more than one application for single block for different end use plants located at different locations. The geological reserve of 23 blocks## was noted by the Screening Committee. The minutes of the 36th meeting show that the Committee decided to recommend blocks earmarked for pig iron (coking coal) jointly to two or more than two companies and

Urtan Beharaband North Extn., Tandsi-III & Tandsi-III extn., Urtan North (coking blocks), Macherkunds, Rajhara North (Central & Eastern) Moira Madhujore (North & South), Datima, Bhaskarpara, Kudari, Bikram, Vijay Central Rajgamar Dipside (South of Phulakdih Nala), Kesla North, Gondkhari, Kappa & Extn. Dahegaon-Makardhokra-IV, Bander, Hurilong, Hutar sector C, Rajgamar Dipside (Deavnara), Tehsgora-B/Rudrapuri and Andal East (Non cooking blocks)

nineteen blocks earmarked for other end-uses/non-cooking coal were recommended for allocation to single companies as well as jointly to two or more companies. The minutes of 36th meeting do not contain the particulars showing consideration of each application. There is no assessment of comparative merits of the applicants who were selected for recommendation. The minutes do not disclose how and in what manner the selected companies meet the norms fixed for *inter se* priority. Many of the selected companies were neither recommended by the State Government nor by the Administrative Ministry. Some of them were recommended by the State Government but not recommended by the Administrative Ministry while one of them was not recommended by the State Government but recommended by the Administrative Ministry. For Rajhara North (Central & Eastern) coal block, Vini Iron & Steel Udyog Ltd. had no recommendation by the State Government or by the Administrative Ministry. Similarly, for Thesgora-B/Rudrapuri coal block, Revati Cement P. Ltd. did not have recommendation either from the State Government or from the Administrative Ministry. As regards Tandsi-III and Tandsi-III (Extn.), Mideast Integrated Steels Ltd. did not have recommendation from the State Government. Similarly, as regards Thesgora-B/Rudrapuri, Kamal Sponge Steel & Power Limited had no recommendation from

the State Government. As regards Moira Madhujore coal block, Ramswarup Lohh Udyog Ltd. had no recommendation from the Administrative Ministry.

150. From the above discussion, it is clear that 21 coal blocks stood allocated to private companies in pursuance of Screening Committee's recommendations during the period from the 1st meeting held on 14.07.1993 till the 21st meeting held on 19.08.2003. For the period from 04.11.2003 (22nd meeting) to 18.10.2005 (30th meeting) in pursuance of Screening Committee's recommendations, 26 coal blocks stood allocated to private companies. Following 32nd meeting held on 29.06.2006/30.06.2006 till the 34th meeting on 07.09.2006/08.09.2006, in pursuance of the recommendations made by the Screening Committee, two coking coal blocks were allocated to private companies and twelve non-coking coal blocks were allocated to private companies. In pursuance of the recommendations made by the Screening Committee in 35th and 36th meetings, 33 coal blocks were allocated to private companies. Some of the coal block allocations made to the private companies have been de-allocated from time to time. For consideration of legality and validity of allocations made to such companies, it is not necessary to deal with de-allocation aspect. It needs no emphasis that assuming that the Central Government had

power of allocation of coal blocks yet such power should have been exercised in a fair, transparent and non-arbitrary manner. However, the allocation of coal blocks to the private companies pursuant to the recommendations made by the Screening Committee in 36 meetings suffers from diverse infirmities and flaws which may be summarized as follows:

1st Meeting to 21st Meeting

1. The guidelines framed and applied by the Screening Committee for the period from 14.07.1993 (1st meeting) to 19.08.2003 (21st meeting) are conspicuously silent about *inter se* priority between the applicants for the same block. As a matter of fact, for the 21 coal blocks allocated to private companies in pursuance of Screening Committee's recommendation during the first period, *inter se* priority or merit of the applicants for the same block had not at all been determined.

2. The guidelines do not contain any objective criterion for determining the merits of the applicants. The guidelines do not provide for measures to prevent any unfair distribution of coal in the hands of few private companies. As a matter of fact, no consistent or uniform norms were applied by the Screening Committee to ensure that there was no unfair distribution of coal in the hands of the applicants.

3. The Screening Committee simply relied upon the information supplied by the applicants without laying down any method to verify applicant's experience in the end-use project for which allocation of coal block was sought. The guidelines also do not lay down any method to allot coal blocks as per the end-use projects coal requirement.

4. The Screening Committee kept on varying the guidelines from meeting to meeting. It failed to adhere to any transparent system.

5. No applications were invited through advertisement and thus the exercise of allocation denied level playing field, healthy competition and equitable treatment.

6. Certain coal blocks which did not fit into the criteria of captive blocks were decided to be allocated by applying peculiar approach that the reserves could either be permitted to be explored by a private party or lost forever. For example, Brahmadiha block was allocated to M/s. Castron Technology pursuant to the recommendations made by the Screening Committee in the 14th meeting.

7. If a certain party requested for a particular block, it was so recommended without objectively considering the merit of such request. For example, in the 14th meeting, the proposal of M/s.

Monnet Ispat Ltd. for a new Sponge Iron plant in Keonjhar area of Orissa of 1.2 million tonnes of capacity for which the requirement of 2.2 m.t. of raw coal has been indicated, was discussed. The party requested for Utkal-B2 block in Talcher coalfield having 106 m.t. of reserves. CMD, MCL was of the view that Chendipada block is likely to have better grade of coal and suggested to the party for preference of Utkal B-2 block. However, the party insisted for Utkal B-2 block and the same was allotted. Similarly, as regards the proposal of M/s. Jayaswal Neco Ltd. for their Sponge Iron Plant, the party had earlier requested for Gare-Palma IV/6 and IV/7 blocks for meeting their requirement of 1 m.t. Sponge Iron Plant and a captive power plant. Then they requested for allocation of Gare-Palma IV/4 and IV/8 blocks. On the representation made by the representative of the party that 125 m.t. of reserves in Gare-Palma IV/4 block will be adequate for meeting the requirement of their Sponge Iron Plant for a period of 30 years and 91 m.t. of reserves in Gare-Palma IV/8 block will be adequate for 30 years life of the proposed CPP, the Screening Committee recommended allocation of Gare-Palma IV/4 and IV/8 blocks to M/s. Jayaswal Neco Ltd. The representation made by the party was accepted as it is without any verification.

8. Certain blocks with coal reserves on the higher side were recommended to the companies with lower requirement.

There were no steps or measures taken to prevent possible misuse of end-use project of private companies. For example, M/s. Prakash Industries Limited, being a BIFR company, was denied coal block earlier. However, the Screening Committee recommended Chotia I and II coal blocks to M/s. Prakash Industries Limited in 2003 for its proposed expansion project of 0.4 MTPA Sponge Iron though the company was having capacity of only 0.3 MTPA.

9. Some coal blocks which were already identified for development by CIL were offered to the private companies and some of the blocks which were close to the projects of CIL were, in fact, recommended for allocation and ultimately allocated. This was clearly in breach of the guidelines for selection of captive blocks.

22nd Meeting to 30th Meeting

10. With regard to allocation of coal blocks to private companies pursuant to its 22nd meeting to 30th meeting held between 04.11.2003 and 18.10.2005, the guidelines do not lay down any criteria for evaluating the comparative merits of the applicants. The consideration had been ad-hoc in so much so that in every meeting, the guidelines were altered.

11. In the 24th meeting held on 09.12.2004, the Screening Committee altered the norms by shifting insistence on achieving financial closure of the end-use projects to some appropriate stage

after the mining plan approval. Except mentioning the particulars of each applicants, the minutes do not show that there was any application of mind by the Screening Committee. How the guidelines are met by the recommended companies has not been discussed.

12. In the 25th meeting held on 10.01.2005, the Screening Committee considered allocation of 5 coal blocks in the MCL area. The size of these blocks was large as compared to the requirement of the applicants. The rules of game were changed to adjust large number of applicants whose applications would have been otherwise rejected as their coal requirement was far less than the coal available in the coal blocks. However, in order to accommodate these applicants, a novel idea of choosing a leader company and associate companies was evolved though such procedure is apparently in contravention of the statutory provision contained in Section 3(3)(a)(iii) of the CMN Act.

13. The merits of the companies, who were recommended for selection and those companies whose applications were rejected were not comparatively assessed.

14. While considering allocation for 5 blocks in SECL area in the 26th meeting, despite the revelation by the Ministry of Steel that number of companies have in their presentations mentioned the

capacity of the end-use plants in excess of what has been recommended by the Ministry and the concern expressed by the representative of the State Government that the ground realities of the project needed to be verified and the capacities of the end-use plants and coal requirements of such projects are required to be confirmed, the Screening Committee proceeded to list out the possible leaders without assessing the capacities of coal requirements of these companies.

15. The minutes of the 27th and 28th meetings also do not show that the assessment of comparative merits of the applicants was done. The Screening Committee continued with consortium / leader and associate approach which, as noted above, was in contravention of Section 3(3)(a)(iii) of the CMN Act. Even in case of a certain company, where recommendation of the Administrative Ministry was contrary to the recommendation of the State Government, yet the recommendation was made by the Screening Committee that led to allocation on the basis of State Government's recommendation. The Screening Committee even decided to club the blocks and recommended allotment of such combined block to two companies jointly.

16. The consideration has been absolutely ad-hoc and without even knowing how much surplus will remain, the company

so chosen was asked to select another allottee for surplus, if any. This is seen from the minutes of the 30th meeting. In the 30th meeting, the Screening Committee also recommended allocation of Dumri coal block although north portion of that block remained unexplored and the unexplored portion had superior grade of coal.

17. The policy of pick and choose was adopted. The application of norms was changed from meeting to meeting with no uniform or consistent consideration.

18. Certain companies which did not come for presentation were also considered but how and in what manner the applications of those companies were considered is not discernible. Why the chosen companies have been preferred over the others is also not discernible.

32nd Meeting to 36th Meeting

19. The minutes of the 32nd meeting do not show the reasons for recommending three blocks jointly in favour of more than one company.

20. Some of the companies which had no recommendation by the State Government were recommended by the Screening Committee. The minutes of the 33rd and 34th meeting do not show in what manner the merits of the companies which were chosen for recommendation were determined. The minutes of the 33rd and

34th meeting even do not note the particulars of the applicants individually. The criterion which the Screening Committee applied in the selection of 15 companies and the reasons for allocating 12 blocks to these companies are not discernible.

21. A certain company which has no recommendation/categorisation was also recommended for allocation and ultimately allocation was made. The recommendation to allocate 15 blocks reserved for power sector by the Screening Committee in its 35th meeting does not contain the particulars showing consideration of each application. Though, at that time, the guidelines provided for norms for consideration of *inter se* priority for allocation of a block among competing applicants for a captive block, but the minutes do not at all disclose how the norms for *inter se* priority are met by the company selected for recommendation by the Screening Committee. Many of the companies selected by the Screening Committee had no recommendation from the State Government or from the Ministry of Power and CEA and some of them had no recommendation from the State Government, Ministry of Power and CEA at all. As many as eight companies which were recommended by the Ministry of Power were not recommended by the Screening Committee while

eleven companies which were not recommended by the Ministry of Power were recommended by the Screening Committee.

22. The minutes of the 36th meeting do not contain the particulars showing consideration of each application for allocation of 23 coal blocks earmarked for non-power sector. There is nothing in the minutes to indicate how and in what manner the selected companies meet the norms fixed for *inter se* priority. Many of the selected companies were neither recommended by the State Government nor by the Administrative Ministry. Some of them were recommended by the State Government but not recommended by the Administrative Ministry while one of them was not recommended by the State Government but recommended by the Administrative Ministry. Many companies which had failed to secure allocations earlier yet they were recommended. The Screening Committee failed to consider capability and capacity of the applicant in implementing the projects.

151. The entire exercise of allocation through Screening Committee route thus appears to suffer from the vice of arbitrariness and not following any objective criteria in determining as to who is to be selected or who is not to be selected. There is no evaluation of merit and no *inter se* comparison of the applicants. No chart of evaluation was prepared. The determination of the Screening

Committee is apparently subjective as the minutes of the Screening Committee meetings do not show that selection was made after proper assessment. The project preparedness, track record etc., of the applicant company were not objectively kept in view. Until the amendment was brought in Section 3(3) of the CMN Act w.e.f. 09.06.1993, the Central Government alone was permitted to mine coal through its companies with the limited exception of private companies engaged in the production of iron and steel. By virtue of the bar contained in Section 3(3) of the CMN Act, between 1976 and 1993, no private company (other than the company engaged in the production of iron and steel) could have carried out coal mining operations in India. Section 3(3) of the CMN Act, which was amended on 09.06.1993 permitted private sector entry in coal mining operations for captive use. The power for grant of captive coal block is governed by Section 3(3)(a) of the CMN Act, according to which, only two kind of entities, namely, (a) Central Government or undertakings/corporations owned by the Central Government; or (b) companies having end-use plants in iron and steel, power, washing of coal or cement can carry out coal mining operations. The expression “engaged in” in Section 3(3)(a)(iii) means that the company that was applying for the coal block must have set up an iron and steel plant, power plant or cement plant and be engaged in

the production of steel, power or cement. The prospective engagement by a private company in the production of steel, power or cement would not entitle such private company to carry out coal mining operation. Most of the companies, which have been allocated coal blocks, were not engaged in the production of steel, power or cement at the time of allocation nor in the applications made by them any disclosure was made whether or not the power, steel or cement plant was operational. They only stated that they proposed to set up such plants. Thus, the requirement of end-use project was not met at the time of allocation.

152. It is pertinent to note here the stand of Maharashtra. According to Maharashtra, the allocation of coal blocks by the Screening Committee meant that the benefits of the differential in price of coal, as the case may be, would accrue to the allottee of the coal block. The differential in price would not necessarily be passed to the public as the price of the final product of the company is determined by import parity price in case of steel companies, competitive market price in case of cement companies (many may not have access to captive coal) and the price of power on an exchange or in bids by State utilities irrespective of source of fuel. No material has been placed by the Central Government which may rebut the Maharashtra's stand.

153. The challenge has also been laid to the legality of the allocations made to the State/State PSUs through the Screening Committee route as well as Government dispensation route. It is not in dispute that the Screening Committee has recommended allocation of coal blocks to 29 State Government PSUs while through Government dispensation route allocation has been recommended for 72 PSUs. The question that requires consideration is whether commercial mining operation can be carried on by the State or State PSUs. The answer has to be found out from the statutory provisions. By virtue of Section 3 of the CMN Act, as was originally enacted, on and from the appointed day, the right, title and interest of the owners in relation to the coal mines specified in the Schedule stood transferred to and vested absolutely in the Central Government free from all encumbrances. This provision further provides that if after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, the provisions of the Coal Mines Management Act shall apply until that mine is nationalized by an appropriate legislation. Section 3 of the CMN Act was amended by the 1976 Nationalisation Amendment Act whereby sub-sections (3) and (4) of Section 3 were inserted. Along with this, Section 1A was also inserted in the CMN Act. By sub-section (3) of Section 3, it is

provided that on and from the commencement of amendment in Section 3, no person other than the Central Government or a Government company or a corporation owned, managed or controlled by the Central Government or a person to whom the sub-lease has been granted by any such Government, Government company or corporation or a company engaged in the production of iron and steel shall carry on coal mining operation in any form. Clause (b) of sub-section (3) also provides for termination of all mining leases and sub-leases for winning or mining of coal except the mining leases granted before such commencement in favour of the Government, Government company or corporation and any sub-lease granted by any such Government, Government company or corporation. Clause (c) of sub-section (3) of Section 3 prohibits grant of lease for winning or mining coal in favour of any person other than the Government, Government company or corporation referred to in clause (a) thereof. But this prohibition is subject to only one exception inasmuch as the Government, company or corporation owned, managed or controlled by the Central Government may grant a sub-lease to any person in any area on such terms and conditions as may be specified in the instrument granting sub-lease provided the reserves of coal in the area are in isolated small pockets or are not sufficient for scientific and

economical development in a coordinated and integrated manner and the coal produced by the sub-lessee will not be required to be transported by rail. Section 3(3)(a)(i) thus provides that only Central Government or a Government company (Central PSU or a corporation owned or managed by the Central Government) can carry on mining operations in India in any form. In other words, commercial mining cannot be carried on by the State Government or the State PSU. The expression "Government company or a corporation owned, managed or controlled by the Central Government" means Government of India Public Undertaking. It does not include State Government Public Sector Undertaking. This is fortified by Section 3(4), Section 4 and Sections 5, 6 and 7. The mining leases and sub-leases which were terminated under Section 3(3)(b) were available only to the Central Government or for that matter, the Government company or a corporation owned, managed and controlled by the Central Government. The State Government or State Public Sector Undertakings became entitled to obtain sub-lease of reserves of coal in isolated small pockets under clauses (i) and (ii) of proviso to Section 3(3)(c). It is pertinent to notice here that Circular dated 30.07.1979 records the correct position of legislative policy articulated in the CMN Act under which only the Central Government Public Undertakings have been permitted to

carry on coal mining operations in the country. After the amendment was carried out in the CMN Act, the circular states that while continuing the existing policy of the Central Government carrying out coal mining operations by its own undertakings, the State Governments might also be allowed to carry out coal mining operations in isolated small pockets subject to the conditions set out therein. The "isolated small pockets" are those which are away from the main coalfields and have limited known reserves which are not sufficient for scientific and economic development in a coordinated and integrated manner and the coal produced from such areas would mainly be utilized for local consumption without transportation by railways. However, almost after 22 years, vide Circular dated 12.12.2001, the Central Government, reviewing its earlier policy, allowed the State Government companies or undertakings to do mining of coking and non-coking coal or lignite reserves either by opencast or underground method, anywhere in the country, subject to the conditions set out therein. Under the revised policy, the State Government company/undertaking was permitted to mine non-coking coal and coking coal reserves or lignite by opencast/underground method without the restriction of "isolated small pockets". Having carefully examined the Circular dated 12.12.2001, in light of the provisions of the CMN Act, as amended in

1976, it appears to us that the circular is not in conformity with the provisions of the CMN Act and, consequently, has no legal sanction. CMN Act and further amendments therein carried out in 1976 do not allow State Government or State PSUs to mine coal for commercial use. The problem seems to have arisen because of the 2001 circular which permits the State Government companies or undertakings to do mining of coking and non-coking coal reserves but, as noted above, the legislative policy in the CMN Act does not permit that. The recommendation for allocation by the Screening Committee to the State PSUs and also the allocation made to the State PSUs through Government dispensation route are, therefore, in violation of the provisions of the CMN Act, as amended from time to time. Moreover, the State PSUs, besides having been allocated coal mines for commercial purpose, have also been allowed to form joint venture companies, i.e., 51% shareholding of State PSUs and 49% of private company. However, in the joint venture agreements between the State PSUs and the private companies, mining operations have been given to private company. For example, the notice inviting offer dated 02.07.2008 issued by Chhattisgarh Mineral Development Corporation (CMDC) for selection of partner for formation of a joint venture company for exploration, development, mining and marketing of coal from coal blocks

provided that the Joint Venture Company (JVC) to be formed by CMDC and the selected offerers / bidder will explore, develop and operate such coal deposits and the coal produced by JVC will be sold commercially to various consumers in the open market. CMDC was allocated Sondiha coal block and coal blocks Bhatgaon-II and Bhatgaon-II (Extension). Similarly, the Joint Venture Agreement between the Madhya Pradesh State Mining Corporation Limited and Monnet Ispat and Energy Limited reveals that Joint Venture Company has been further allowed to enter into Mine Development Operation Agreements with other private partner or sister concern. This modus operandi has virtually defeated the legislative policy in the CMN Act and winning and mining of coal mines has resultantly gone in the hands of private companies for commercial use. As indicated above, by 1976 amendment in the CMN Act, other than the Central Government or Central Government undertakings, a company engaged in the production of iron and steel was permitted to carry on coal mining operations in any form. By subsequent amendments in Section 3 of the CMN Act, besides a company engaged in the production of iron and steel, a company engaged in generation of power or a company engaged in washing of coal obtained from a mine or such other end-use, as the Central Government may by notification specify, no other company

can “carry on mining operation in coal”. Allocation of coal blocks to the State PSUs which ultimately on getting mining leases may enable them to win or mine coal commercially is clearly in breach of the provisions of the CMN Act.

154. To sum up, the entire allocation of coal block as per recommendations made by the Screening Committee from 14.07.1993 in 36 meetings and the allocation through the Government dispensation route suffers from the vice of arbitrariness and legal flaws. The Screening Committee has never been consistent, it has not been transparent, there is no proper application of mind, it has acted on no material in many cases, relevant factors have seldom been its guiding factors, there was no transparency and guidelines have seldom guided it. On many occasions, guidelines have been honoured more in their breach. There was no objective criteria, nay, no criteria for evaluation of comparative merits. The approach had been *ad-hoc* and casual. There was no fair and transparent procedure, all resulting in unfair distribution of the national wealth. Common good and public interest have, thus, suffered heavily. Hence, the allocation of coal blocks based on the recommendations made in all the 36 meetings of the Screening Committee is illegal.

155. The allocation of coal blocks through Government dispensation route, however laudable the object may be, also is illegal since it is impermissible as per the scheme of the CMN Act. No State Government or public sector undertakings of the State Governments are eligible for mining coal for commercial use. Since allocation of coal is permissible only to those categories under Section 3(3) and (4), the joint venture arrangement with ineligible firms is also impermissible. Equally, there is also no question of any consortium / leader / association in allocation. Only an undertaking satisfying the eligibility criteria referred to in Section 3(3) of the CMN Act, viz., which has a unit engaged in the production of iron and steel and generation of power, washing of coal obtained from mine or production of cement, is entitled to the allocation in addition to Central Government, a Central Government company or a Central Government corporation.

156. In this context, it is worthwhile to note that the 1957 Act has been amended introducing Section 11-A w.e.f. 13.02.2012. As per the said amendment, the grant of reconnaissance permit or prospecting licence or mining lease in respect of an area containing coal or lignite can be made only through selection through auction by competitive bidding even among the eligible entities under Section 3(3)(a)(iii), referred to above. However, Government

companies, Government corporations or companies or corporations, which have been awarded power projects on the basis of competitive bids for tariff (including Ultra Mega Power Projects) have been exempted of allocation in favour of them is not meant to be through the competitive bidding process.

157. As we have already found that the allocations made, both under the Screening Committee route and the Government dispensation route, are arbitrary and illegal, what should be the consequences, is the issue which remains to be tackled. We are of the view that, to this limited extent, the matter requires further hearing.

158. By way of footnote, it may be clarified and we do, that no challenge was laid before us in respect of blocks where competitive bidding was held for the lowest tariff for power for Ultra Mega Power Projects (UMPPs). As a matter of fact, Mr. Prashant Bhushan, learned counsel for Common Cause submitted that since allocation for UMPPs is in accord with the opinion given in *Natural Resources Allocation Reference*[20] and the benefit of the coal block is passed on to the public, the said allocations may not be cancelled. However, he submitted that in some cases the Government has allowed diversion of coal from UMPP to other end uses i.e. for commercial exploitation. Having regard to this, it is

directed that the coal blocks allocated for UMPP would only be used for UMPP and no diversion of coal for commercial exploitation would be permitted.

……..……CJI.
(R.M. Lodha)

……..……J.
(Madan B. Lokur)

……..……J.
(Kurian Joseph)

NEW DELHI;
AUGUST 25, 2014.