

Item Nos. 01 & 02

(Court No.1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application No. 40/2016/EZ
(with M.A. No. 632/2016, M.A. No. 969/2016,
M.A. No. 1080/2016, I.A. No. 79/2020,
I.A. No.80/2020)

Manbodh Biswal

Applicant

Versus

Union of India & Ors.

Respondent(s)

WITH

Original Application No. 17/2016/EZ
(I.A. No. 81/2020)

Subhash Mohapatra & Anr.

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 29.11.2021

Date of uploading of order on the website: 08.12.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

ORDER

1. This order will deal with above two Original Applications involving the issue of accountability for violation of Environmental Clearance (EC) conditions by the Project Proponents (PPs) – M/s. Hindalco Industries Limited (Hindalco) and Raipur Energen Limited – REL, after change of name of M/s. GMR Chhattisgarh Energy Limited) in the working of the

open cast mining of Talabira-I Opencast Coalmine of Khinda Village, Rengali Tehsil, Jharsuguda Region, Sambalpur District, Orissa.

2. Hearing was concluded on 29.11.2021 and liberty was given to the parties to file written submissions. We have duly considered the written submissions filed by Respondent Nos. 5 and 9 on 06.12.2021 which are repetition of the submissions already filed and orally made during the hearing.

Issue for Consideration

3. Issue for consideration is as set out in the order of this Tribunal dated 9.12.2019 viz. remedial action against violation of conditions of the EC dated 08.11.2011 read with transfer of EC order dated 16.04.2015, the period of such violation, responsibility for such violation, effect of Section 14(3) of the Coal Mines (Special Provisions) Act, 2015. The said order is referred to in para 17 below. Violations are listed in letter of MoEF&CC dated 17.10.2019, referred to in para 29 below.

Factual Background – Pleadings

Applicant's case

4. We may only refer to OA No. 40/2016/EZ. Separate mention of averments in OA No. 17/2016/EZ is not necessary as the issue is same. Case set out in the application is that the coal mine was initially allotted to Indian Aluminium Company Limited in the year 1994 which was later acquired by Hindalco. EC was granted to Hindalco on 05.03.2001 for 0.4 MTPA which was modified for expansion to 1.5 MTPA on 14.01.2009. On 08.11.2011, EC was granted for expansion of the coal mine from 1.5 MTPA to 3.0 MTPA in a mining lease area of 170.30 ha by MoEF&CC.

5. The coal block was auctioned in February 2015 in pursuance of judgment of the Hon'ble Supreme Court dated 25.8.2014 read with order dated 24.9.2014 in the coal block case Manohar Lal Sharma v. Principle Secretary & Ors.¹ The EC was transferred on 16.04.2015 to GMR (later named REL).

6. The area is critically polluted industrial cluster with score of more than 70 which requires extra mitigation measures for operating any polluting activity. The PP has extracted 17.985 MTPA coal as on 31.03.2014 beyond permissible limit of 3 MTPA. Over extraction has adversely affected the environment by increasing emission of air borne pollutants. The EC requires preparation of progressive mine closure plan based on the quantum of coal extracted from the mining area. Overburden generated was required to be backfilled concurrently. The entire mining area was required to be backfilled upto the ground level. The PP violated the said condition as overburden generated was dumped on agricultural fields adversely affecting land fertility. The same was not reclaimed by plantation, resulting in soil contamination. The PP built an earthen bund by encroaching upon the private land. Hill called Bodarai Dungri was flattened. The Regional Officer, Odisha PCB conducted inspection on 08.07.2013 and 16.11.2013 and found various violations. Further inspection was conducted on 19.11.2013 finding non-compliance of consent conditions including bad condition of road. Water and air samples exceeded norms. Green belt of the area of 28.905 ha was required to be developed but was not done. Mining was undertaken beneath the water table in violation of EC conditions. Artificial ground water recharge measures were not taken. Thus, the EC became liable to be cancelled on account of such violations.

¹(2014) 9 SCC 516 and (2014) 9 SCC 614

7. The original application was filed on 08.03.2016. On 28.03.2016, the Tribunal issued notice to the respondents – MoEF&CC, Ministry of Coal, Odisha PCB, Hindalco and GMR. Vide order dated 02.09.2019, the Tribunal directed that OA 17/2016/EZ will be considered along with OA No. 40/2016/EZ. Replies have been filed by the opposite parties.

Stand of Respondents

8. **The MoEF&CC** in its first reply filed on 08.08.2016 submitted that EC for expansion was granted on 08.11.2011 subject to conditions mentioned therein. In view of judgment of the Hon'ble Supreme Court in coal block case, supra, allotment of coal block in question stood cancelled. On 23.03.2015, allocation was made in favour of GMR. EC granted stood transferred to GMR vide Notification dated 16.04.2015, in view of Notification dated 23.03.2015 read with Notification dated 14.09.2006 subject to the following conditions:

“(i). Any change in scope of work will attract the provisions of Environment Protection Act (EPA), 1986 and Environment Impact Assessment Notification, 2006 in conjunction with the subsequent amendments/circulars.

(ii). All conditions stipulated in the EC letter No. J-11015/98/2009-IA.II(M) dated 8th November, 2011 shall remain unchanged.

(iii). The successful bidder shall be liable, if any, for any act of violation of the EPA, 1986/EIA Notification, 2006/ subsequent amendments and circulars which it has inherited during the transfer.

(iv). Successful bidder shall be liable for compliance of all court directions, if any.”

9. **Reply filed by the Hindalco** on 09.02.2017 is that there is no evidence of pollution on account of “excess production” or “over extraction”. In view of transfer of EC, scrutiny of historical facts is academic. Production by the PP is within the permitted limit and no

damage to ecology has been caused. With regard to the inspection by the State PCB, it is stated that the observations were duly responded and the State PCB was satisfied about the compliance status.

10. In **reply filed by the GMR on 18.11.2016**, it is stated that mine in question was auctioned in accordance with the provisions of Coal Mines (Special Provisions) Second Ordinance 2014 (“Coal Ordinance”), (later replaced by Coal Mines (Special Provisions) Act) and the Coal Mines (Special Provisions) Rules, 2014 and came to be vested in the said PP vide order dated 23.03.2015. EC was transferred to the PP on 16.04.2015. Under section 14 of the said Act, the PP has no liability in respect of violations of prior allottees. The PP has not itself violated any of the EC conditions. Cause of action, if any, is against the previous PP – Hindalco.

11. **Response of the Odisha State PCB** filed on 17.05.2016 is that the State PCB granted Consent to Operate to GMR upto 31.03.2018. The said PP has taken steps to minimise water and air pollution.

12. Further reply by GMR on 23.03.2016 is repetition of earlier reply with only addition that the cause of action first accrued for the application prior to the allocation of coal mine to the said PP and the application filed 60 days after transfer of EC to the said PP is barred by limitation.

13. I.A. No. 43/2019 was filed by Raipur Energen Limited (REL) on 26.11.2019 seeking amendment of cause title by replacing GMR by REL on account of change of the name of the company on 20.08.2019.

14. Vide order dated 02.09.2019, considering the allegations or violations and absence of response thereto in the affidavit filed by the MoEF&CC on 08.08.2016, the Tribunal directed MoEF&CC to file a further affidavit dealing with various questions specifically.

Violations listed by the MoEF&CC

15. Accordingly, the MoEF&CC filed further affidavit on 16.10.2019 to the effect that the Regional Officer, MoEF&CC conducted inspection on 19.09.2019 and noted that the PP had already extracted permitted quantity of 2.7 lakh ton coal by 30.11.2017 and suspended extraction from 01.12.2017. Approved Mining Plan expired on 31.03.2018 and mining stopped since 01.04.2018. Ownership changed from GMR to REL as per certificate of the Registrar of Companies dated 20.08.2019. **During visit it was seen that there were 3 external overburden dumps and total area of 36 ha is covered by the said overburden dumps with a volume of 15.29 million m³. The same will be backfilled and reclamation would commence. For this purpose, re-handling of the overburden dump is necessary. The PP has only stabilized the overburden dumps through plantation. At dump No. 2, no benching has been made as a result of which steep slopes have made soil erosion. Drains have been constructed at the toe of the overburden dumps. Due to non-mining activities since December, 2017, drains were not maintained. Retaining wall at the toe of dumps was provided. Benching of overburden dumps was required. Drainage of rain water runoff from the dumps was required. Retaining wall had broken for 20 mtrs.** There is still reserve of 7.12 MT of coal available in the mine for which Revised Mining Plan is to be submitted. Plantation over the overburden dumps, and back-filled area, which are to be carried out, are yet to be made.

16. Vide order dated 21.10.2019, the Tribunal noted the violations emerging from the compliance report of the MoEF&CC dated 02.09.2019 and directed MoEF&CC to take remedial action and file action taken report. It may be noted that after filing compliance report dated 02.09.2019, MoEF&CC asked the PP to take remedial measures in the

light of violations mentioned in the affidavit dated 16.10.2019 referred to above. REL accordingly took certain measures which were placed on record in the additional affidavit filed by the REL on 26.11.2019.

Order dated 9.12.2019 framing the issues for consideration

17. Vide order dated 09.12.2019, the Tribunal noted the additional affidavit filed by REL on 26.11.2019 (referred to in the order as affidavit filed by MoEF&CC), in response to letter dated 17.10.2019 by the MoEF&CC on the issue of status of compliance of EC conditions. The PP - REL filed compliance status reports dated 06.11.2019 and 07.11.2019. The Tribunal formulated following questions for being addressed by the MoEF&CC:

- “(i). violation of the Environmental Clearance under 08.11.2011 condition, if any;*
- (ii). the period of such violation;*
- (iii). who was responsible for such violation; and*
- (iv). upon whom would the liability for such violation be placed in the light of Section 14(3) of the Coal Mines (Special Provisions) Act, 2015.”*

Versions about compliance status

18. In pursuance of order dated 09.12.2019, further compliance affidavit was filed by MoEF&CC on 27.01.2020. It was submitted that correct EC date is 08.11.2011 and not 08.11.2019 as mentioned in the order dated 09.12.2019 (necessary correction of date was made by NGT). EC stands transferred to GMR/REL subject to compliance of EC conditions. CTO has been granted by State PCB on 28.03.2016 to GMR/REL. Regional Office, MoEF&CC has compiled the non-compliance of EC conditions in its report dated 08.01.2020. The Ministry has asked the Environment Department, Odisha to initiate action against increasing of production capacity to 1.5 MTPA, without EC. Show cause notice dated 23.09.2016 has been issued to GMR followed by reminder dated

16.05.2017. Violations have also been noticed by the Regional Office, MoEF&CC while monitoring the project on 21.07.2016, 07.02.2018 and 19.09.2019 as noted in the report dated 08.01.2020. Inputs have also been sought from the Ministry of Coal on 13.12.2019.

19. REL filed its compliance status on 28.02.2020, 12.08.2020, while Hindalco filed its response on compliance status on 08.07.2020.

20. The applicant has filed written submissions in the matter on 03.09.2020 and 08.09.2020, while REL has filed its written submissions on 08.09.2020.

Rival Submissions

21. We have heard learned Counsel for the applicants, Hindalco, REL and other counsel for the authorities and with their assistance gone through the record.

22. Broad submission of the applicant is that there are violations of EC conditions rendering the EC liable to be cancelled. Violations relied upon are inter alia those mentioned in the inspection report of Regional Officer, MoEF&CC dated 21.07.2016 which have been summed up by the applicant as follows:

“

- *It has been found that Pas are irregular in submitting the six monthly compliance report including required analysis reports to this office.*
- *It has been found that the management of OB dumps including catch drains, height of OB and it's slope, plantation (including density), retaining wall, toe wall etc. is not up to the mark.*
- *It has been found that three tier plantation on the approached road not be done so far in most of the places.*
- *It has been found that thick green cover around the mining area has not been developed so far.*
- *It has been found that Environmental Clearance, compliance reports including monitoring data is not displayed/ uploaded on the company website.*

- *It has been found that Pas have not conducted/submitted the digital processing of the mine area, which will conduct once in three year and submitted to Regional Office.*
- *It has been found that Pas have not yet submitted the detail of work and expenditure made under community development as CSR schemes.*
- *It has been found that Pas have not submitted the detail of work and expenditure made under Environmental Protection measure.*
- *It has been found that Pas have not yet set up Environmental laboratory, which will be set up with adequate monitoring equipment.”*

23. Hindalco operated the mine since 2003 and indulged in excess production. Concerned officials of the State of Odisha and MoEF&CC failed to take action against excess production. There is encroachment of lands outside mining area by overburden. Instead of dumping at designated dumping site, such dumping was outside as found in the inspection dated 21.07.2016. The size of over burden dump is 2,04,82,088 cubic meters and in March, 2019, it was about 1,92,28,264 cubic meters as per report of Tecdatum Infoservices Pvt. Ltd, filed by the PP itself. Green belt has not been developed on area of 28.905 ha along the mining lease boundary, as required.

24. Learned Counsel for the Hindalco submitted that overburden dumps were duly maintained. The same were covered by geo-coir mats and plantation. As per approved Mine Closure Plan, back filling operation was to start from 2015 to 2016, after the area was supposed to be completely de-coaled. Some amount of back filling had already been initiated by the Respondent No.4 in the de-coaled area before March, 2015. The steps taken to stabilize overburden dumps are as mentioned in para 7 of the affidavit filed on 08.07.2020 namely:

- “i) *The dumps were coir matted, reclaimed and plantation was done on it.*
- ii) *The mine spoils and over burden were placed at the duly approved places specified in the mining plan*

- iii) *The slopes of the dump were maintained at natural angle of repose of the material and was stable. This fact has also been acknowledged in a Report prepared by the ISM Dhanbad on assessment of Mine Closure activity.*
- iv) *The heights of the dumps were maintained within permissible limit and were suitably benched.*
- v) *Scientific study by CIMFR was conducted for stability assessment and the condition was found to be safe*
- vi) *Permanent slopes of the OB dumps were protected by coil matting from time to time to prevent the failure of slope and erosion. This technique has stabilized the area and promoted plant growth along the slopes*
- vii) *Garland drains were constructed along the toe to collect eroded OB materials, in order to prevent pollution of local water bodies and siltation.*
- viii) *The respondent no.4 spent towards coir matting a sum of Rs.20,71,097/-*
- ix) *Top soil was used for covering OB dumps and embankments for the plantation purpose as per the approved mining plan.”*

25. With regard to plantation, it is stated that the same was carried out as mentioned in para 8 of the above affidavit to the extent of 1,21,029 nos. of saplings. The plantation had been done in and around the mine area. Total number of approximately 1,21,029 nos. of saplings had been planted in and around the mines area by the Respondent No. 4. The inspection reports of Regional Office of SPCB, Odisha had mentioned the details of plantation in its inspection report dated 06.03.2013 and dated 07.02.2015. The total cost incurred towards plantation and after care was Rs. 32.53 lakhs. The Respondent No. 4 carried out plantation activities in and around the mine wherever there was availability of land @2500 saplings per ha. The plantations were carried out mostly along road side, dump slopes, office premises, embankments, along periphery and nearby villages using local available species e.g. Sal (*Shorea robusta*) Mahul (*Madhuca indica*), Asan (*Terminalia tomentosa*), Dhaura (*Anogeissus latifolia*), Jamun (*Syzygium Cumini*) Mango (*Mangifera indica*) Char (*Buchanania lanzan*) etc. Activities envisaged under the approved Mining Closure Plan till 31.03.2015 were carried out and thereafter, the responsibility was of REL in terms of EC granted.

26. With regard to excess production, it is stated that the EC was subsequently granted on 09.11.2011. With regard to provisions of Section 14(3) of the Coal Mines (Special Provisions) Act, 2015, it is stated that Hindalco did not commit any breach and did not continue to remain liable for breaches committed after the transfer of EC as sought to be contended on the basis of Section 14(3) of the Act.

27. Learned Counsel for REL relied upon written arguments filed on 28.08.2020 and submitted that it has no liability in view of statutory provisions of Section 14 read with Section 29 of the Special Coal Act which contains non-obstante clause. O.A. filed on 02.02.2016 is barred by limitation of 60 days under Section 14(3) of the NGT Act, 2010. There is no violation of EC conditions by REL. It has tried to rectify the non-compliances which were continuing from the period when the mine belonged to Hindalco. Overburden (OB) dumps were created by Hindalco whereas REL stabilized the same by plantations and saplings. 13,650 tree saplings were planted in the financial year 2015-2016, 8,000 saplings were planted in the financial year 2016-17 and in financial year 2017-2018, 1,240 saplings were planted and 8,185 saplings were distributed. Out of 31 ha of OB dump area, about 14 ha have been planted with trees and these portions have been biologically reclaimed. REL had planted 37,940 saplings in addition to the green belt developed. REL has not dumped any OB on the OB dumps which were created during the time period when the mine belonged to the prior allottee Hindalco. Reliance has been placed on study conducted by Tecdatum Infoservices Pvt. Ltd. – “OB dump Volumetric Change Detection Analysis of Talabira-1 Mine” based on 3D satellite images of OB dumps for the period from March 2015 (the period when the mine was with the prior allottee) and January 2019. During the

period since April 2015 till November 2017, the REL had dumped the OB in a separate location in a pit.

Consideration by the Tribunal and Findings

28. We have considered the rival submissions and proceed to deal with the issue of violation of EC conditions and remedial action. We have already noted the rival submissions. We find that breach of conditions of EC dated 8.11.2011 in managing the OB dump has taken place during the operation of lease by Hindalco which has continued till date for which compensation is liable to be paid by both the said PPs. Further, remedial measures are required after an appropriate restoration plan. The extent of violation is demonstrated inter alia by the affidavits filed by the MoEF&CC on 16.10.2019 and 27.01.2020. As already mentioned, the MoEF&CC in its affidavit dated 16.10.2019, has pointed out the violations in the form of three external overburden dumps requiring backfilling and reclamation and maintenance of drains, based on the monitoring report dated 19.09.2019. Conclusions in the said report are as follows:-

“Conclusion:

The Pas have complied or are in process of complying with the conditions stipulated by the Ministry. In this context, information/action plans have been sought on following points.

1. Specific Condition No. (viii): Benching of the OB dumps needs to be done properly. Project authorities should make provisions for proper drainage of rain-water runoff from the OB dumps.

2. Specific Condition No. (xiii): As stated by the project, they have submitted Revised Mining Plan and Mine Closure Plan to Ministry of Coal for approval in October, 2016. This is awaiting approval from the Ministry. Copy of the approved plans should be submitted to this Office.

3. Specific Condition No. (xiv): Progress made in the implementation of the Conservation Plan is to be reported to the Regional Office regularly. Approved conservation plan has not been uploaded on the website of the company.

4. Specific Condition No. (xv): Monitoring of ground water through the piezometers should be initiated. It is noted that presently only one sample is being drawn from a dug well for ground water monitoring. The project must collect from minimum 2 other locations for monitoring.

5. Specific Condition No. (xviii): For monitoring land use pattern and for post mining land use, a time series of land use maps, based on satellite imagery (on scale of 1:5000) of the core zone and buffer zone, from the start of the project until end of mine life, the project has awarded the contract to M/s Orissa Remote Sensing Agency (ORSAC). Report on this is to be submitted to this Regional Office at the earliest.

6. Specific Condition No. (xx): CSR would be implemented in 8 villages-Talabira, Nua Khinda, Purana Khinda, Lapanga, Budhiapali, Matul Camp, and Beheramunda and Mundapara. Budgetary Provisions at @Rs 10 per tonne of coal should be made for CSR activities. Details on activities carried out be provided to this Office.

7. Specific Condition No. (xix): A copy of the revised Mining Plan and Final Mine Closure Plan, approved by the Ministry of Coal should be submitted to this Office.

8. The project authorities may take necessary action for checking their entry into the mine premises for safety as well as security.

9. The project may also appoint a full time well qualified and trained personnel, specialized in the field of environment science as an Executive/Officer in-charge of Environment at the project level.

Recommendations:

This project can be put up in the following tick-marked category of compliance status.

- **Compliance status could not be judged as the project was not operational during the site visit.**
- *No non-compliance detected. No any further action is required.*
- *Minor non-compliance detected (not of immediate danger to health & safety of the people). Letter issued to project authorities for taking corrective measure.*
- **Serious non-compliance detected. Show-Cause Notice issued to project authorities (copy enclosed)."**

29. Report dated 08.01.2020 annexed to the affidavit filed by the MoEF&CC on 27.01.2020 mentions the inspections done in October, 2003, on 11.05.2007, 27.05.2008, 20.01.2012, 21.07.2006 (prior to EC dated 08.11.2011), 21.07.2016, 07.02.2018 and 19.09.2019(Post EC

dated 8.11.2011). Letter dated 17.10.2019 issued by the MoEF&CC to the REL as a follow-up of monitoring on 19.09.2019 is that following remedial measures are required:-

“1. Benching of the OB dumps needs to be done properly. Project authorities should make better provisions for proper change of rain water runoff from the OB dumps (specific condition no. viii).

2. As stated by the project, they have submitted Revised Mining Plan and Mine Closure Plan to Ministry of Coal for approval in October 2016. This is awaiting approval from Ministry. Copy of the approved plans should be submitted to this Office (Specific Condition No. xiii)

3. Progress made in the implementation of the Conservation Plan is to be reported to the Regional Office regularly. Approved conservation plan has not then uploaded on the website of the company (Specific Condition No. xiv).

4. Monitoring of ground water through the piezometers should be initiated. It is noted that presently only one sample is being drawn from a dug well for ground water monitoring. The project must collect from minimum 2 other locations for monitoring (Specific Conditions No. xv).

5. Report on land use analysis based on the satellite imagery to be submitted to this Regional office at the earliest (Specific Condition No. xviii)

6. Monitoring of CSR activities already being carried out with regard to socio-economic development of the villages, using UNDP Human Development Indices is yet to be carried out and reported as part of the Report and submitted to MoEF RO, Bhubaneswar (Specific Condition No. xx).

7. A copy of the revised Mining Plan and Final Mine Closure Plan, approved by the Ministry of Coal should be submitted to this Office (Specific Condition No. xix).

8. The Project authorities may take necessary action for checking the entry of people and cattle from surrounding villages into the mine premises.

9. As per the Environment Management Plan of the project, the project, may also appoint full time well qualified and trained personnel, specialized in the field of environment science as an Executive in charge of Environment at the project level.”

30. REL filed compliance status report dated 06.11.2019 and 07.11.2019 claiming compliance.

Status of compliance not acceptable as OB dumps continue unscientifically managed

31. We find that the issues which remain unaddressed as mentioned in the letter of the MoEF&CC dated 8.01.2020 and compliance claimed by REL does not address the said issues entirely, particularly violation of EC condition with regard to OB management which needs to be ensured, besides assessment of compensation for violations for five years prior to filing of these applications.

Effect of statutory Limitation

32. We make it clear that in view of statutory limitation under section 15(3) of the NGT Act, issues raised by the applicant which relate to more than five years prior to filing of the application cannot be gone into (O.A. No. 17/2016/EZ has been filed on 30.01.2016 and O.A. No. 40/2016/EZ on 08.03.2016). The stand of the REL is that limitation is 60 days under Section 14(3) cannot be accepted in view of section 15(3) of the NGT Act. We, thus, limit ourselves to the breach of EC conditions dated 08.11.2016.

Effect of Section 14 (3) of the Coalmines Special Provisions Act, 2015

33. We do not find any merit in the contention of REL that in view of Section 14 (3) of the Special Act, it has no liability for the breaches of EC conditions, including with regard to maintaining the OBs. The EC conditions specifically bind the successor REL to such obligation which is integral to the operation of the mine. Non-obstante clause has to be read with the enacting provision and is meant to give full effect to the enacting provision. At the same time, EC condition cannot be treated as void or being in conflict with the said provision. There is also no question of contracting out, as argued on behalf of Hindalco.

34. Scheme of the Special Coal Act shows that the same was enacted with a view to effectuate coal block allocations in the wake of judgement

of the Hon'ble Supreme Court in ML Sharma, supra dated 25.8.2014 read with order dated 24.9.2014. Recital in the Act is as follows:

“Whereas the Supreme Court vide judgment dated 25th August, 2014 read with its order dated 24th September, 2014 has cancelled the allocation of coal blocks and issued directions with regard to such coal blocks and the Central Government in pursuance of the said directions has to take immediate action to implement the said order;

And whereas it is expedient in public interest for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the energy security of the country and to minimize any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation;”

Section 14 of the Act relied upon by learned Counsel for REL is reproduced below for ready reference:

“14. Liabilities of prior allottees.—(1) Notwithstanding anything contained in any other law for the time being in force, no proceedings, orders of attachment, distress, receivership, execution or the like, suits for the recovery of money, enforcement of a security or guarantee (except as otherwise provided for under this Act), prior to the date of commencement of this Act shall lie, or be proceeded further with and no remedies shall be available against the successful bidder, or allottee, as the case may be, or against the land and mine infrastructure in respect of Schedule I coal mines.

(2) The proceedings as referred to in sub-section (1), shall continue as a personal remedy against the prior allottee but shall not be maintainable or continued against the land or mine infrastructure of Schedule I coal mine or the successful bidder or allottee, pursuant to this Act.

(3) Every liability of any prior allottee in relation to a Schedule I coal mine in respect of any period prior to the vesting order or allotment order, shall be the liability of such prior allottee and shall be enforceable against it and not against the successful bidder or allottee or the Central Government.

(4) All unsecured loans shall continue to remain the liability of the prior allottee.

(5) The additional levy imposed against the prior allottees of Schedule II coal mines shall continue to remain the liability of such prior allottees and such additional levy shall be collected by the Central Government in such manner as may be prescribed.

(6) For the removal of doubts, it is hereby declared that—

(a) no claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a Schedule I coal mine in respect of any period prior to the date of vesting order or allotment order, as the case may be, shall be enforceable against the Central

Government or the successful bidder or the allottee, as the case may be;

(b) no award, decree, attachment or order of any court, tribunal or other authority in relation to any Schedule I coal mine passed prior to the date of commencement of this Act, in relation to the land and mine infrastructure of Schedule I coal mines, shall be enforceable against the Central Government or the successful bidder or the allottee, as the case may be;

*(c) **no liability for the contravention of any provision of law for the time being in force, relating to any act or omission prior to the date of vesting order or allotment order, as the case may be, shall be enforceable against the successful bidder or allottee or the Central Government.***”

35. Contention on behalf of REL is that conditions of EC dated 8.11.2011 read with EC transfer order dated 16.4.2015 could neither apply to REL for past violation by Hindalco nor transfer of EC could be subject to same conditions as were applicable to original allottee. Applicability of EC condition is void as the Special Act excludes the EP Act and exercise of power thereunder.

36. This contention cannot be accepted so far as continued violation is concerned. Certainly, past liability is not of new allottee for which new allottee is not liable but the new allottee having taken over the lease has to maintain environmental norms and any continuing violation thereafter is actionable. Even the Special Act cannot authorise violation of environmental norms nor does so. As seen above, scope of Special Act is to effectuate hassle free coal allotments and non obstante clause cannot travel beyond the said scope. Obligations under the environmental laws apply to new allottee in terms of EC conditions as well as under other environmental laws – Water Act, Air Act etc. OB dumps are required to be disposed of or managed without adversely affecting the environment.

37. Legal position on the scope of non-obstante clause has been discussed inter alia in R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335 as follows:

“In *Aswini Kumar Ghose v. Arabinda Bose*, 1952 AIR (SC) 369, it was observed as under:

*“It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and **the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.**”*

It was further held that:

*“Nor can we read the non-obstante clause as specifically repealing only the particular provisions which the learned Judges below have been at pains to pick out from the Bar Councils Act and the Original Side Rules of the Calcutta and Bombay High Courts. If, as we have pointed out, the enacting part of Section 2 covers all advocates of the Supreme Court, the **non-obstante clause can reasonably be read as overriding “anything contained” in any relevant existing law which is inconsistent with the new enactment, although the draftsman appears to have had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously; for, even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it. Posteriores leges priores contrarias abrogant (Broom’s Legal Maxims, 10th edn., p. 347).**”*

(emphasis supplied)

In *Union of India v. G.M. Kokil*, 1984 AIR (SC) 1022, it was observed as under:

*“It is well-known that **a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.**”*

In *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*, 1987 AIR (SC) 117, the scope of non-obstante clause is explained in the following words:

“A clause beginning with the expression ‘notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being

in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

On a conspectus of the above authorities, it emerges that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.

Further, the influence of a non-obstante clause has to be considered on the basis of the context also in which it is used. In *State of W.B. v. Union of India*, 1963 AIR (SC) 1241, it is observed as under:

"The Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law and the setting in which the clause to be interpreted occurs."

It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In *Reserve Bank India v. Peerless General Finance and Investment Co. Ltd.*, 1987 AIR (SC) 1023, it is observed that: "That interpretation is best which makes the textual interpretation match the contextual." In this case, Chinnappa Reddy, J. noting the

importance of the context in which every word is used in the matter of interpretation of statutes held thus:

“Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

38. In view of above, the non obstante clause in the Special Coal Act will not in any manner exclude the applicability of the environment laws and the conditions of EC dated 08.11.2011 read with order dated 16.04.2015 can be duly enforced against the REL to the extent of continuing violation, after mining operations were taken over by it.

Conclusion and Directions

39. Accordingly, we hold that while liability of Hindalco for breach of EC conditions dated 08.11.2011 remains, the REL is also not absolved of compliance with EC conditions in view of order of EC dated 16.04.2015, quoted earlier in para 8 above. Having regard to the fact that OB dumps were first created by Hindalco and dumping was done beyond the designated dump sites as found during inspection by the MoEF&CC, primary liability is of Hindalco but once lease was taken over by REL, it remained under an obligation to comply with the EC conditions and to manage the overburden consistent with environmental norms and

obligations. We accordingly apportion the liability between Hindalco and REL in the ratio of 75:25 percent. Compensation for past damage to environment due to the violation and the cost of remediation have to be worked out. The MoEF&CC directions in letter dated 8.01.2020 have to be enforced at the cost of Hindalco and REL in above proportion. Compensation for past violations and cost of remediation may be worked out and restoration plan prepared by a six-member Expert Committee of Regional Officer, MoEF&CC, Bhuvneshwar, Regional Officer, CPCB, Kolkata, Indian School of Mines/IIT, Dhanbad/Central Institute of Mining and Fuel Research, Dhanbad, State PCB and District Magistrate. The nodal agency will be Regional Officer, MoEF&CC, Bhuvneshwar for coordination and compliance. The Committee may ascertain the precise non-compliances of EC/Consent conditions on the subject of compliance of environmental norms which may be taken into account for determining compensation for the past violations as well as for restoration plan. Various inspection reports may also be taken into account. The restoration plan may be prepared within three months. The Committee may undertake visit to the site and interact with the stakeholders. It will be free to co-opt any other expert/institution and coordinate with any other concerned authority. The same may be executed through the Project Proponent or any other appropriate agency, which may be monitored by the same Committee. Pending further decision, a sum of Rs. 7.5 crores may be deposited by Hindalco and Rs. 2.5 crores by the REL to meet the assessed compensation and cost of remediation. The amount may be deposited with the State PCB, to be kept in a separate account to abide by the directions of the Committee.

The applications are disposed of.

All pending M.A.s and I.A.s also stand disposed of.

A copy of this order be forwarded to MoEF&CC, CPCB, Indian School of Mines/IIT, Dhanbad, Central Institute of Mining and Fuel Research, Dhanbad, State PCB and District Magistrate by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

December 08, 2021
Original Application No. 40/2016/EZ
and other connected matter
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