

ITEM NO.7

COURT NO.3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 16888/2017

(Arising out of impugned final judgment and order dated 20-02-2017 in LPA No. 255/2016 passed by the High Court Of Delhi At New Delhi)

M/S STRATEGIC ENERGY TECHNOLOGY SYSTEMS PVT. LTD. Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.10199/2018-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.11755/2018-PERMISSION TO PLACE ADDITIONAL FACTS AND GROUNDS)

WITH

SLP(C) No. 35575/2017 (IV-A)

FOR ADMISSION and I.R. and IA No.138308/2017-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.139782/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS)

Date : 13-02-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Gopal Jain, Sr. Adv.
 Mr. Amar Dave, Adv.
 Ms. Nandini Gore, Adv.
 Mr. Sidharth Sharma, Adv.
 Mr. Mohit Mudgal, Adv.
 Mr. Arjun Sharma, Adv.
 Mr. Sushil Jethmalani, adv.
 Ms. Manik Karanjawala, Adv.
 M/S. Karanjawala & Co., AOR

Ms. Vanita Bhargava, Adv.
Mr. Ajay Bhargava, Adv.
Mr. Aseem Chaturvedi, adv.
Mr. Sharngan A., Adv.
For M/S. Khaitan & Co., AOR

For Respondent(s) Ms. Pinky Anand, ASG
 Mr. Ajit Kumar Singh, Sr. Adv.
 Mr. D.N. Goburdhan, aDv.
 Mr. Anmol Chandan, Adv.
 Mr. Sumit Teterwal, Adv.

Mr. Rohit Rao N., Adv.
Mr. Mukund P. unny, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Suvendu Suvasis Dash, AOR

UPON hearing the counsel the Court made the following
O R D E R

SLP(C)NO.16888/2017

The petitioner - M/s. Strategic Energy Technology Systems Pvt. Ltd. was allocated a coal block. For not achieving the milestones in the preparatory work, the bank guarantee to the extent of about 55 crores furnished by the petitioner was invoked and the amount credited to the coffers of the Union of India. In '*Manohar Lal Sharma vs. Principal Secretary and Others*' reported in (2014) 9 SCC 516, the Coal Block allocation both through Screening Committee Route as well as Government Dispensation Route were set aside.

The petitioner approached the High Court of Delhi seeking a return of the amount of the Bank Guarantee. It was contended by the petitioner before the High Court that as the coal block allocations were *per se* found to be illegal all actions thereunder including the furnishing and invocation of the bank guarantee must be understood

to be *non est* in law. The High Court did not reject the said contention of the petitioner but directed that the petitioner should approach the civil Court. Aggrieved this, special leave petition has been filed.

Extensive arguments have taken place and have almost been completed. At that stage an oral contention was advanced by Ms. Pinky Anand, learned Additional Solicitor General, that the matter should be heard by the Coal Bench. By order dated 16.01.2018, this Court directed that the said prayer made orally be put in the form of an application to be filed by the competent authority of the Union of India. Pursuant thereto an affidavit dated 22.01.2018 has been filed by the Under Secretary, Ministry of Coal, wherein it has been mentioned that the matter be listed before the Coal Bench. A reply has been filed by the petitioner opposing the said prayer.

Prima facie, we are of the view that the matter does not pertain to the Coal Block Bench. This is on account of the following reasons :

The issue whether the matter pertains to the Coal Bench was not raised before the High Court or

even before this Court at an appropriate point of time. In fact, from the materials on record it appears that several bank-guarantees of similar kind have been invoked or proposed to be invoked leading to litigations, similar to the present one, which are presently pending in Delhi High Court. In none of the said proceedings the issue of the matter being relatable to the Coal Bench has been raised by the Union of India. This is evident from the reply of the petitioner.

A perusal of the judgment of this Court in *Manohar Lal Sharma vs. Principal Secretary and Others*, reported in (2014) 9 SCC 516 would go to show that in paragraph 166 this Court after rendering its decision in the matter had recorded as follows :

“166. As we have already found that the allocation 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.”

As to what are the “consequence proceedings” referred to in paragraph 116 of *Manohar Lal Sharma* (supra) has been set out by this Court in another

order passed by this Court in '*Manohar Lal Sharma vs. Principal Secretary*' reported in (2014) 9 SCC 614. The relevant paragraphs are extracted below :-

"4. For the purposes of these "consequence proceedings", the Union of India filed an affidavit dated 8-9-2014. It is stated in the affidavit that coal is actually being mined from 40 coal blocks listed in Annexure I to the affidavit. This list includes two coal blocks allotted to a Ultra Mega Power Project [UMPP] [Sasan Power Ltd. allotted the coal blocks Moher and Moher Amroli Extension]. Coal blocks allotted to UMPPs have not been disturbed in the judgment. The list of the 40 coal blocks is attached to this order as Annexure 1. In addition to the above 40 coal blocks, it is stated in the affidavit that 6 more coal blocks are ready for extraction of coal in 2014-2015 and this list is Annexure II to the affidavit. These 6 coal blocks have obtained the Mine Opening Permission from the Coal Controllers Organization under Rule 9 of the Colliery Control Rules, 2004 [framed under the Mines and Minerals (Development and Regulation) Act, 1957]. This permission is granted subsequent to the execution of a mining lease. The list of these 6 coal blocks is attached to this order as Annexure 2."

"5. Therefore, the affidavit is quite clear that 40 coal blocks are already producing coal and 6 coal blocks are in a position to produce coal virtually with immediate effect. The question is whether the allotment of these coal blocks should be cancelled or not."

"6. It was submitted by the learned Attorney General that after the declaration of law and the conclusion that the allotment of coal blocks was arbitrary and illegal, only two consequences flow from the judgment. [Manohar Lal Sharma V. Principal Secy. (2014) 9 SSC 546]. The first is the natural

consequence, that is, the allotment of the coal blocks (other than those mentioned in the judgment) should be cancelled and the Central Government is fully prepared to take things forward. The second option is that 46 coal blocks (as above) be left undisturbed (subject to conditions) and the allotment of the remaining coal blocks should be cancelled."

"7. Expounding on the alternative consequence, it was submitted that Coal India Limited (CIL) a public sector undertaking can take over and continue the extraction of coal from these 44 coal blocks without adversely affecting the rights of those employed therein. However, it was submitted that CIL would require some time to take over the coal blocks and manage its affairs for continuing the mining process. Effectively therefore, it was submitted that even if the allotment of these 44 coal blocks is cancelled, the Central Government can ensure that coal production will not stop."

"8. The Learned Attorney General submitted that all the allottees of coal blocks should be directed to pay an additional levy of Rs.295/- per metric tonne of coal extracted from the date of extraction as per the Report of the Comptroller and Auditor General (CAG) dealing with the financial loss caused to the exchequer by the illegal and arbitrary allotments. It was further submitted that in the case of allottees supplying coal to the power sector, they should be mandated to enter into Power Purchase Agreements (PPAs) with the State utility or distribution company (as the case may be) so that the benefit is passed on to the consumers.

"10. To put the suggestions of the learned Attorney General in perspective, they are summarized below:

"10.1 All coal block allotments (except

those mentioned in the judgment) may be cancelled.

10.2 Alternatively,

(a) Extraction of coal from the 40 functional and 6 "ready" coal blocks may be permitted and the remaining coal blocks be cancelled;

(b) The allottees of all 46 coal blocks be directed to pay an additional levy of Rs.295/- per metric tonne of coal extracted from the date of extraction; and

(c) The allottees of coal blocks for the power sector be also directed to enter into PPAs with the State utility or distribution company as the case may be."

"32. As far as the first category of coal block allotments is concerned, they must be cancelled (except those mentioned in the judgment). There is no reason to "save" them from cancellation. The allocations are illegal and arbitrary; the allottees have not yet entered into any mining lease and they have not yet commenced production. Whether they are 95% ready or 92% ready or 90% ready for production (as argued by some learned counsel) is wholly irrelevant. Their allocation was illegal and arbitrary, as already held, and therefore we quash all these allotments."

"33. The learned Attorney General identified 46 coal blocks that could be "saved" from the guillotine, since all of them have commenced production or are on the verge of commencing production. As these allocations are also illegal and arbitrary they are also liable to be cancelled. However, the allotment of three coal blocks in Annexure 1 is not disturbed and they are Moher and Moher Amroli Extension allocated to Sasan Power Ltd. (UMPP) and Tasra (allotted to Steel Authority of India Ltd. (SAIL), a Central Government public sector undertaking not having any joint venture)."

"34. As far the 6 coal blocks mentioned in Annexure 2 are concerned, the allocatees have not yet commenced production. They do not stand on a different or better footing as far the consequences are concerned. These allotments are also liable to be cancelled. The allocation of the Pakri Barwadih coal block (allotted to National Thermal Power Corporation (NTPC), being a Central Government public sector undertaking not having any joint venture) is not liable to be cancelled."

"38. In addition to the request for deferment of cancellation, we also accept the submission of the learned Attorney General that the allottees of the coal blocks other than those covered by the judgment and the four coal blocks covered by this order must pay an amount of Rs. 295/- per metric tonne of coal extracted as an additional levy. This compensatory amount is based on the assessment made by CAG. It may well be that the cost of extraction of coal from an underground mine has not been taken into consideration by CAG, but in matters of this nature it is difficult to arrive at any mathematically acceptable figure quantifying the loss sustained. The estimated loss of Rs. 295/- per metric tonne of coal is, therefore, accepted for the purposes of these cases. The compensatory payment on this basis should be made within a period of three months and in any case on or before 31-12-2014. The coal extracted hereafter till 31-3-2015 will also attract the additional levy of Rs. 295/- per metric tonne"

It is apparent from the above view expressed by the Court in paragraph 4, 5, 6, 7 and 8 of *Manohar Lal Sharma (supra)*, (2014) 9 SCC 614, that the bank guarantee is not one of the "consequence

proceedings" referred to in the order of this Court. Further more, from the reply filed by the petitioner, it appears that the only matter of Coal Block Allocation pending before this Court is a Writ Petition (Criminal) No.120 of 2012 wherein the scope and pendency of criminal investigation presently undertaken by the CBI is in seisin of this Court.

The above facts enable us to *prima facie* to take a view that the present matter does not pertain to the Coal Bench or as a part and parcel of the "consequence proceedings" referred to by this Court in paragraph 166 of its order in Manohar Lal Sharma (supra), (2014) 9 SCC 516, extracted above.

The prayer made on behalf of the Union of India for assignment of these cases to the Coal Bench, therefore, does not *prima facie* appear to be correct and tenable. Whether it is bonafide or not is an exercise we do not consider it necessary or feasible to undertake.

However, in view of the facts stated above, we are not inclined to continue to hear this matter any further. Registry is directed to place this

matter along with connected matter i.e. SLP(C) No.
35575/2017 before Hon'ble the Chief Justice of
India for being assigned to an appropriate Bench.

(NEETU KHAJURIA)
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER