

A M/S. ASHOKA SMOKELESS COAL INDUSTRIES PVT. LTD. AND ORS.

v

UNION OF INDIA AND ORS.

DECEMBER 12, 2005

B

[S.B. SINHA AND R.V. RAVEENDRAN, JJ.]

Auction:

C *E-auction—Coal India Ltd. and its subsidiaries introducing scheme for sale of coal through E-auction—Writ petitions filed in various High Courts by industrial undertakings having coal linkage with Coal India Ltd. and its subsidiaries contending that under the new scheme they were required to pay more than what was earlier known as the notified price—SLP and Transfer*
D *Petition filed before the Supreme Court—Petitions pending before various High Courts transferred to Supreme Court—Held, petitioner companies/firms, having coal linkage, would pay in addition to the notified price, 33 1/3% of the enhanced price, each time they claim supply of coal to them based on the linkage and would furnish security for the balance of 66 2/3% of the enhanced price with an undertaking filed in this Court that the said part of the price will also be paid within 6 weeks of the decision of this Court in*
E *the writ petitions in case the writ petitions are decided against the petitioners—The Coal India Ltd. and its subsidiaries undertake that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to them within 6 weeks of the judgment of this*
F *Court with interest thereon at 12% per annum from the date of payment till the date of return to the petitioners—The coal as per the linkage will be supplied to the concerned petitioner within a period of 3 weeks from the date of such payment—It is clarified that there will be no obligation on the part of the Coal India Ltd. and its subsidiaries to supply the coal as per this interim order in the case of those who have not complied with the order for*
G *payment of 33 1/3% of the difference in price in addition to the notified price and for furnishing of security for the balance 66 2/3% of the enhanced price, and filing the undertaking in this Court to pay the entire amount if they do not succeed in their challenge—Interim order—Constitution of India—Article 139-A—Coal—Supply of.*

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 20471 of 2005. A

From the Judgment and Order dated 13.9.2005 of the Jharkhand High Court in W.P.(C) No. 2460 of 2005.

WITH B

SLP (C) Nos. 20541, 20542, 21792, 22596, 23302, 23305, 23323, 23324, 23325, 23326, 23327, 23345, 23374, 24403, 24034/2005, T.P. (C) No. 107-118/2005, W.P.(C) No. 67/2005, T.P.(C) Nos. 73, 510-512, 554-557, 558-559, 470, 471, 474, 477, 484, 480, 479, 478, 486, 503-504, 505-509, 514-515, 516, 517-519, 520, 521-524, 525, 526-528, 533-534, 542-543, 544-545, 546, 535-537, 538, 550-552, 560-561, 672-673, 674, 680-681, 687-690, 492, 493, 494, 495, 496, 777-789/2005. C

K.K. Venugopal, R.F. Nariman, M.L. Verma, S.K. Dubey, Rana Mukherjee, Rajendra Krishan, Siddharth Gautam, Goodwill Indeevar, Rajesh Singh, Pankaj Singh, Devashish Bharuka, Gouri Karuna Das, Ms. Anu Gupta, Kamal Kant Tripathi, S.D. Sanjay, Dr. Sushil Balwada, Pankaj Bhagat, Anip Sachthey, Shrinivas R. Khalap, Mohit Paul, M.P. Jha, Ram Ekbal Roy, Harshvardhan Jha, S. Muralidhar, Manish S. Verma, Anupam Lal Das, Manish Kr. Saran, Rajendra Krishna, Manish Verma and K.S. Bhati for the Petitioners. D

Goolam E. Vahanvati, Solicitor General, Soli J. Sorabji and Ajit Kumar Sinha for the Respondent. E

Krishan Mahajan, V.K. Varma, Manish Tiwari, Vivek Sood, P.K. Jain, C.L. Pandey, Dr. Meera Agarwal, R.C. Mishra, Rakesh K. Khanna, Dr. Rashmi Khanna, Shashank Shekhar, Surya Kant, Gaurav Agrawal, Sourav Agrawal, Jhanavi Worah, Mrs. Akila Agrawal, Rajiv Mehta, G. Ramakrishna Prasad, Bharat Sangal, Mohanprasad Meharia, Amit Meharia and B.B. Singh for Central Agency. F

The Judgment of the Court was delivered by

ORDER G

1. These petitions for special leave to appeal are filed by Industrial Undertakings which have coal linkage with Coal India Limited and its subsidiaries. The Coal India Ltd. and its subsidiaries introduced a new scheme for sale of coal through E-auction. This meant that the industrial concerns which had linkage with Coal India Ltd and its subsidiaries for the supply of H

A coal to them had to pay more for the coal compared to what they were paying earlier or what was known as the notified price. This led to the various Undertakings approaching different High Courts challenging the E-auction scheme and seeking interim protection of their right to get coal at notified prices on the basis of the linkage with Coal India Ltd and its subsidiaries. The various High Courts entertained the writ petitions and passed interim orders in regard to supply of coal at the price payable, pending the disposal of writ petitions filed by the concerned Undertakings. Some of the High Courts directed the linked Undertakings to furnish bank guarantees for the difference in prices or to pay cash or to furnish security for the difference while seeking supply of coal, based on linkage. Being aggrieved by the directions to furnish bank guarantee or pay the price of coal in cash, these petitions for special leave to appeal have been filed by the petitioners herein taking the stand that they are entitled to have the coal supplied at the notified price instead of the E-auction average price. This Court while entertaining the petitions for special leave to appeal had passed orders as interim measure directing that the coal would be supplied to the petitioners by Coal India Ltd and its subsidiaries on the basis of linkage at the notified price on the concerned undertaking executing indemnity bonds and in addition, filing an undertaking by the concerned Managing Director or Managing Partner of the Company or the Firm, undertaking to pay the difference, in case the petitions fail. Subsequently, a further order was passed directing the petitioners before this Court to file certificate/statement/chart showing the net worth of their respective undertaking/firm/company as on 30th October, 2005 and also work out the difference in the amount involved by working out the difference between the E-auction and the notified prices.

2. Two conflicting judgments have been passed; one by the Gauhati High Court and another by the M.P. High Court. Whereas the Gauhati High Court held the scheme of selling coal through E-auction as invalid, its validity has been upheld by the M.P. High Court.

3. Meanwhile, petitions for transfer have been filed by Union of India, the respondent in these petitions for special leave, praying that the various writ petitions pending in the various High Courts be withdrawn to this Court to be heard and finally disposed of so that conflicting decisions and protracted litigation could be averted especially considering that the commodity involved is coal and what is involved is its regular supply to those Undertakings which have linkage with the Coal India Ltd. and its subsidiaries. Notices have been ordered on the petitions for transfer and the petitions for special leave to

appeal and a connected appeal in this Court are being posted in the month of January for final disposal. A

4. Learned Solicitor General and Mr. Soli J. Sorabjee, learned Senior Counsel appearing on behalf of the Coal India Ltd and its subsidiaries have submitted that some of the companies have not complied with the order of this Court dated 28.10.2005 and in respect of some of the petitioners the certificates/statements/charts filed show that their net worth is not significant and considering the liability that would be incurred to Coal India Ltd. and its subsidiaries by these petitioners if the supply of coal was to be continued at the old or notified price, it was just and necessary to modify the interim order of this Court and provide for payment of money for the coal to be lifted by the petitioners on the basis of an undertaking by Coal India Ltd. and its subsidiaries to refund the amount over and above the notified price paid by the petitioners in case this Court accepts the challenge of the petitioners to the new scheme introduced by Coal India Ltd. and directs that continued supply should be made to the petitioners on the basis of the original notified price. Mr. Soli J. Sorabjee, learned Senior Counsel reminded the Court that Coal India Ltd. and its subsidiaries cannot run their business on securities or bank guarantees and in the interests of all concerned, it would be just and proper to direct the petitioners to make payment of a part of the amount claimed in excess by Coal India Ltd. and its subsidiaries and to furnish security for the balance, with an undertaking to pay the money if and when the writ petitions filed by the petitioners are decided against them. He and learned Solicitor General submitted that the Coal Companies are prepared to give an undertaking to this Court that they would refund the amount to the petitioners with interest on the amount as fixed by this Court in case the petitioners ultimately succeed in their challenge. B C D E

5. Messers K.K. Venugopal, M.L. Verma, Rohinton Nariman, learned Senior counsel and host of other counsel appearing for the petitioners resist the prayer by pointing out that the interim order was passed after hearing both sides and there was no justification in varying or modifying the same. Learned counsel submit that the statements as directed by this Court on 28.10.2005 had been filed by the various Undertakings and it would not be correct to say that the order had not been complied with. It was also not correct to say that the net worth of the companies was not enough and by supplying coal without collecting the difference, Coal India Ltd. and its subsidiaries would be running a great commercial risk. F G

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A 6. We have given our anxious thought to the rival submissions. Most
of the High Courts have passed orders directing the furnishing of bank
guarantee and some of the High Courts have passed orders directing the
B furnishing of security for the difference in prices before claiming the supply
of coal based on the coal linkage. Learned counsel for the petitioners pointed
out that as the price of the commodity is paid in advance, substantial amounts
C belonging to the petitioners herein remain in the hands of Coal India Ltd. and
its subsidiaries to be adjusted against the price payable by the petitioners for
the coal to be lifted and there was no risk involved in continuing to supply
coal to the petitioners on the basis of the individual coal linkage. It is pointed
out on behalf of the Coal India Ltd. that the amount paid is to be adjusted
D towards the supply of coal to be made and it gets dwindled every time when
a supply is made and that would be inadequate security or protection to Coal
India Ltd. and its subsidiaries.

7. Keeping in mind the interests of both sides and taking note of the
facts and circumstances as a whole, we think that it would be appropriate to
D direct the petitioners to pay a part of the enhanced price while at the same
time furnish security for the balance that might become payable in case their
challenge to the E-auction scheme is repelled. The rights of the petitioners
claiming themselves to be small scale industries can be protected by directing
E them to furnish security for a major part of the enhanced price and accepting
the undertaking given on behalf of Coal India Ltd. and its subsidiaries to
refund whatever had been paid in excess with interest thereon in case the
petitioners succeed in their challenge to the E-auction system introduced by
the Coal Companies. Since there is substance in the argument that mere
furnishing of security or bank guarantee would not enable Coal India Ltd. and
its subsidiaries to carry on their business which it was necessary to do in the
F interests of the whole Nation, we feel that a direction to pay at least a part
of the enhanced price by the petitioners could be justified in the circumstances.

8. It is pointed out that in respect of some entities, coal was being
supplied at the notified price enhanced by 20% thereof and this would be a
guide for fixing the percentage of the excess price to be paid by the petitioners.
G It is pointed out that enhancement of the notified price only by 20% was in
respect of very small consumers and in respect of Central and State Agencies
and that cannot form the basis for supply of coal to the petitioners herein
having a coal linkage with the coal companies. Taking note of the circumstances
as a whole we feel that it would be just and proper to direct the petitioner
H companies/firms, having coal linkage, to pay in addition to the notified price,

33 1/3 % of the enhanced price, each time they claim supply of coal to them based on the linkage and by furnishing security for the balance 66 2/3% of the enhanced price with an undertaking filed in this Court that the said part of the price will also be paid within 6 weeks of the decision of this Court in the writ petitions in case the writ petitions are decided against the petitioners. To protect the interest of the petitioners and to ensure that no permanent harm is caused to them we also think it proper to record the undertaking given on behalf of the Coal India Ltd. and its subsidiaries that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to the petitioners within 6 weeks of the judgment of this Court with interest thereon at 12% per annum from the date of payment till the date of return to the concerned petitioner.

9. There is a complaint on behalf of the petitioners that coal was not being supplied in spite of interim orders passed by this Court earlier. Of course, this submission is disputed by counsel for the respondents. All the same, we think it appropriate to direct that on the concerned petitioner paying the notified price plus 33 1/3% of the enhanced price as per the E-auction and furnishing security for the balance 66 2/3% of the enhanced E-auction price, and filing the undertaking in this Court within four weeks from today, the coal as per the linkage will be supplied to the concerned petitioner within a period of 3 weeks from the date of such payment. It is clarified that there will be no obligation on the part of the Coal India Ltd. and its subsidiaries to supply the coal as per this interim order in the case of those who have not complied with the order for payment of 33 1/3% of the difference in price in addition to the notified price and for furnishing of security for the balance 66 2/3% of the enhanced price, and filing the undertaking in this Court to pay the entire amount if they do not succeed in their challenge. It is directed that this interim order will enure until these writ petitions are finally heard and disposed of by this Court.

10. So far as transfer petitions filed by Coal India Limited and its subsidiaries are concerned, the same having not been opposed, are allowed. All the writ petitions pending before different High Courts as stated in the respective transfer applications shall stand withdrawn to this Court. The records of the High Court be summoned through special messenger at the cost of the Coal India Limited, which may be deposited within one week from date. It is clarified that the present interim order will govern the transferred cases also.

A 11. Let all the ready Transferred cases and other Special Leave Petitions including Special Leave Petition (Civil) No. 23034 of 2005 and Civil Appeal No. 2972 of 2005 be posted for final disposal on 10.01.2006 at the top of the list. The learned counsel appearing for the parties agreed that detailed written submissions would be filed on or before 09.01.2006. It is stated at the Bar that each side would take about three hours in completing their oral submissions.

B 12. The learned counsel for the parties agree that no prayer for adjournment will be made and the cases of those who would make such a prayer, may be disposed of only on the basis of the written submissions.

R.P.

Matter adjourned.