(1999) 05 MP CK 0028

In the Madhya Pradesh High Court

Case No : M.P. No''s. 314 and 4484 of 1991 and 554, 1535, 2803, 2864 and 3826 of 1992

Gujarat Ambuja Cement and Others etc. APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 16(2)

Citation : AIR 2000 MP 194 : (2001) ILR (MP) 593 : (2001) 1 JLJ 127 : (2000) 2 MPHT 112 : (2000) 1 MPJR 354

Hon'ble Judges : Dipak Misra, J;D.P.S. Chauhan, J

Bench : Division Bench

Advocate : Anindya Kumar Mitra, M.L. Jaiswal and B.L. Nema, L.K. Poddar, Kishore Shrivastava, H.S. Shrivastava, V.P. Verma, Ajit Singh, Neeraj Vegad, P.K. Jaiswal, D.S. Thakur, Mohan Tamaskar and Seema Agrawal, for the Appellant; Abhay Gohil, Dy. A.G., Dipankar Gupta and P.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Coal is sometimes called black diamond, of course, contextu-ally. Euphemistically it is also called ''Dark Diamond''. Archeological evidence indicates that coal was burnt in funeral pyres during the Bronz Age (3000-4000). Great philosopher and thinker Aristotle refers to coal in his book ''Mateorology''. In the modern context the term ''coal'' has gained immense significance and importance as far as industrial world is concerned. Classification is sometimes viewed as a controversy in perpetuity for some reason or the other. It creates a stir in the atmosphere and gathers momentum to knock at the doors of justice for proper estimation. The authorities deal with the coal as their monopoly by prescribing grades and fixing the rates as they feel just but the dissatisfaction among the consumers arises because they feel that injury has been caused to justice which requires to be remedied by the Courts.

The moot question that arises for consideration in this batch of writ applications is whether imposition of 10% premium of the price given in Table-II of the notification dated 1-1-89 issued under the provisions of the Colliery Control Order as promulgated u/s 16 of the Essential Commodities Act, 1955 under Item No. 20 is justified by the collieries supplying coal to the consumers in the country in connection with A, B, C and D grades of coal sold to them ?

Before we proceed to answer the core question, we may hasten to state here that the matter was decided by this Court on earlier occasion whereby this Court had dismissed the writ petitions. But the matter is before us again as the Supreme Court in Civil Appeal No. 2245/96 and other connected matters Gujarat Ambuja Cement Ltd. and Another Vs. Union of India and Others, remanded the matter for reconsideration.

We shall now proceed to state the facts to understand the background. For the sake of convenience and clarity we may state the fact situation in M. P. No. 4484/91. The writ petitioners are manufacturers of cement having their plants in different places of the country. The coal is their essential raw-material. According to the petitioners the petitioner No. 1, is a company incorporated under the Companies Act, 1956 having its registered office at Ambuja Nagar in the District of Amrailly, Gujarat State. It has also its business in Calcutta. The petitioner No. 2, is the Manager (Co-ordination) in the said Company and serves at Calcutta and is also a shareholder.

The facts as have been adumbrated are that the petitioner-Company has got a cement manufacturing plant at Ambuja Nagar and for the purpose of manufacture of cement coal is an essential raw-material. It is pleaded that coal is required for burning lime stone into clinkers whereafter clinkers are grounds into powder for manufacture of cement. The price of coal is controlled under the Colliery Control Order, 1945 (hereinafter referred to as ''the Control Order'') by the appropriate authority, functioning therein. Till December 1988 there was no difficulty for the manufacturers as far as the rate of coal was concerned. The grievance against the City Halls arose when the notification dated 1-1-89 was issued whereby premium of 10% of price given in Table-11 of the notification was imposed by the collieries supplying coal to the consumers in the country in connection with the A, B, C and D grades of coal. It is setforth in the petition that the petitioner-company requires coal of A, B, C, and D grades. According to the petitioner-company it produces 10.5 lacs tonnes of cement per annum and it requires 22000 tonnes of coal per month in its factory. It is putforth that the usual practice and custom for bulk consumers of the coal is to apply to the appropriate authority for a linkage and upon consideration of such application the coal company grants such linkage to such consumers to a particular group of collieries wherefrom regular supply of coal can be obtained. There is a Standing Linkage Committee which determines the link. As pleaded, for the last two years the supply of the coal to the petitioner-Company has been made from the collieries which have been set forth in Annexure-B. They are, namely, Govinda, Bijuri. Churcha, NCPH, Chirimiri, Codaria, Korea-1, Korea-II, Bishrampur, Manuna Uji, Jamuna Ocean, Kotma, Duman Hill, Burhar and West Jakadi. After the linkages were informed the petitioner-company made appropriate arrangement for taking delivery of the coal. This arrangement was in continuance. The petitioner-company received a copy of the letter dated 1-1-1989 addressed to the Area General Manager of the Company informing the revision in the price of coal including the premium of 10% over and above the prices given in Table-II of the notification in respect of certain grades of coal of certain collieries. This gave rise to the grievance for which the petitioner and many others approached this Court invoking its extra-ordinary jurisdiction. At the final hearing of the writ petitions this Court took note of the statement made by the learned counsel appearing for the coalfields that there was no compulsion on the part of the writ petitioners to lift from those collieries which were premium collieries and they were free to purchase coal from any other collieries which were not charging 10% extra price by way of premium. It is apposite to reproduce the relevant paragraph from the earlier judgment;

"..... In view of the categorical statement made by the learned counsel for the respondents, it is no longer necessary for ua to go to this question. It was contended by the petitioners that premium is not a price and Central Government has no power to impose premium. Various dictionaries were referred to us so as to bring home the meaning of the word ''premium''. And this Court''s interim order dated 16-3-1992, was also brought to our notice. We would like to make it clear that since it is not necessary to dwell at length on this point, in view of the statement made at the Bar by the respondent''s counsel, Shri Nair contention on this point as raised by the petitioners are virtually rendered pure academics."

Being of this view this Court did not decide the question and held that the controversy involved in the case need not be dealt with and accordingly refused to interfere and dismissed the writ petitions.

Being dissatisfied some of the writ petitioners went before the Apex Court. The Apex Court had observed and directed as follows :

"Having given our anxious consideration to the rival contentions, we have reached the conclusion that the High Court simply assumed that the main grievance of the writ petitioners against 10% hike in price by way of premium was only of academic nature. The High Court had also not gone into the question whether the said grievance was really academic in view of the difficulties tried to be projected by the writ petitioners in that connection and which were highlighted before us by the aforesaid additional affidavit of the appellants in the leading appeal. Similar grievances were voiced before us by learned counsel of the other appellants whose writ petitions were also disposed of by the common judgment. Therefore, it was for the High Court to consider whether the grievance of the writ petitioners had become really academic in nature and if it was not of academic nature, then the question regarding the merits of the pricing policy in the light of the limited inquiry which was required to be undertaken on the touchstone of Article 14 of the Constitution of India had to be gone into by the High Court on a consideration of the voluminous evidence produced before it by the respective parties in support of their rival contentions.

Consequently, without expressing any opinion on the merits of the controversy between the parties, we deem it fit to set aside the impugned common Judgment and restore all the writ petitions filed by the writ petitioners before the High Court in their original numbers for decision of the High Court on merits. The High Court is requested to consider the questions whether the impugned premium of 10% as charged by the respondents from the writ petitioners is, in any way, violative of guarantee under Article 14 of the Constitution of India and also to go into the question whether the said grievance of the writ petitioners was really academic in nature or was subsisting one on requiring adjudication by the Court. All these questions will have to be considered by the High Court in the remanded proceedings. We would also request the High Court to decide all these questions including the main controversy on merits, even if after hearing the parties concerned, the High Court is once again inclined to take the view that the grievance of the petitioners were of academic nature. In that case the High Court may examine the said main grievance in the alternative. This request is made to the High Court in order to avoid any future possibility of further remand to the High Court in case its decision on the academic nature of writ petitioner''s grievance gets upset in the hierarchy of proceedings.

In the result, the appeals are allowed, the common judgment and orders of the High Court are set aside. All the writ petitions are restored to the files of the High Court with a request to proceed with the same in accordance with law and in the light of observations made herein. Whatever evidence was led by the respective parties in support of their cases in the High Court in these writ petitions and whatever further evidence and material may be led by the respective parties in the amended proceedings will of course, examined by the High Court. It will also be open to the contesting parties to produce the material adduced in these appeals for the consideration of the High Court in the remanded proceedings. We may also make it clear that all legally permissible contentions will be open for being canvassed by the respective contesting parties for consideration of the High Court. As the writ petitions of 1991 are being restored to the files of the High Court, we request the High Court to make it convenient to decide these writ petitions at the earliest, preferably within a period of six months from the receipt of the copy of this order. The Registry of this Court is directed to communicate this order to the Registrar of the High Court for bringing it to the notice of the Hon''ble Chief Justice of the High Court for doing the needful".

Now we may state the respective stand of the parties before us. Many aground were urged in the writ petition. The essential grounds of challenge are that the fixation of premium is arbitrary; choice imposed on the petitioners has no justifiable basis; imposition of premium is discriminatory and is without authority; and it creates two classes of collieries without any rational basis and also affects the right of the petitioners to carry on their trade and business.

A return is filed before us by the respondent South Eastern Coalfield Limited wherein it has been pleaded that the authority has the competency to fix such a premium and the same does not suffer from any legal vice. It is putforth that there is no discrimination and there are circumstances to justify such fixation. It is pleaded that the higher quality of coal which falls under grades A, B, C and D are found in coal mines in the specified collieries and as they have special properties they are distinguishable from the coal of the similar grades extracted from other collieries, and hence there is no discrimination for imposition of premium. It is also putforth that the coal from these collieries are of better quality. It gives free burning characteristics to these coals. The rate of heat releases from these coals and its re-activity produce ignition and combustion and also influence the utility of that coal for proper use. The case of combustion and rate of heat release are associated with the inherent chemical structure of coal. The consumers are benefitted by re-activity and free burning characteristics which are distinguishing feature of the coal extracted from these collieries. Coal from these collieries are mostly high volatile coal and it adds to the benefit of the consumers particularly where combustion space is limited. It is also stated that the coal from these collieries has high reflectance value (0.51% to 7.70%). It is also set forth that ash percentage in such coal is less compared to the same grade of coal from other coalfields. This minimises arrangement for ash handling and its disposal and also assists in lower environmental pollution on this count. It is also stated that ash from this coal is reflectory in nature. Its initial deformation temperature is high and usually is more than 1150?C. This quality in the coal gives benefit to the consumers and makes it a distinctive one. There is also less pollution while it is being burnt. Because of these and many other special qualities the imposition of premium is justified. Apart from these, other justifications have also been given for imposition of 10% of premium. Locus standi of the petitioner''s is questioned and the use of the word ''premium'' has also been clarified.

A rejoinder affidavit has been filed by the petitioner controverting the averments made in the return. The petitioner has specifically pleaded that the fixation being arbitrary comes within the scope of judicial review of this Court and the petitioner is an aggrieved party and it has the locus standi to challenge the same. It has also been putforth that once a price has been fixed on the basis of gradation of coal the authority has no competency to charge premium or any other extra amount above the price. The potentiality, the use or utility has been totally denied and the high qualities which have been pleaded by the coalfield have been controverted on the ground that they have no special property as alleged. It is also stated that the special properties are special characteristics in the coal which forms the basis for gradation of the coal and revision of price, and hence charging of premium on the ground of special quality is impermissible. The petitioner has also disputed the stand of the coalfield with regard to re-activity and other grounds justifying for imposition of the premium. It is also pleaded that once price has been fixed the question of adding a premium is not allowable. Apart from stating so, the petitioner in detail has controverted the parawise stand taken in the return,

An additional return has been filed by the coalfield indicating the allegations by the petitioner that they have no choice in the matter for purchase of coal and they are bound by the allotment made by the Stand-ing Linkage Committee is an erroneous statement inasmuch as the petitioners have a choice for obtaining coal and they are not bound to take coal from the collieries in which 10% premium is charged. Apart from stating so, it has also been putforth that the grading of coal from A to D is done for heat value; increase and decrease of ash and moisture contents and other benefits are not considered while grading in support of the stand an affidavit filed by the petitioner of one Shri C.S. Rao, Superintendent Geologist is relied upon. To this a reply has also been filed by the petitioners controverting the same.

We may hasten to add here that apart from the pleadings which were made and the documents which were filed before this Court, voluminous documents were filed before the Apex Court by the contesting parties. But as this Court had not decided the matter the Apex Court has remanded the same for reconsideration, keeping in view the documents filed by the respective parties in support of their case and whatever, evidence and material to be made available in the remanded proceedings. It was also mentioned that the parties were also granted liberty to produce the material adduced before the Apex Court for consideration of this Court in the remanded proceedings. In view of this we will be referring to all the documents in detail while dealing with the respective contentions of the parties.

Before we advert ourselves to deal with the matter on merits, we may again refer to the direction contained in the order of remand whereby, it has been stated that the High Court should decide whether grievance of the writ petitioners is really academic in nature or of a different type that requires adjudication by the Court. At the commencement of the hearing we asked the learned counsel for the parties and it was fairly conpeded before us by Mr. Dipankar Gupta that the controversy is not merely academic. Apart from the concession given we have also appreciated the factual matrix in our considered view when the petitioners had challenged the justifiability, validity, legality and propriety of imposition of the 10% premium in respect of coals of certain grades from certain collieries, it cannot be said that this does not require to be answered because a concession is given by the counsel for the coalfields that the petitioners were not bound to lift the coal from the said collieries. Accordingly we answer this point in favour of the petitioners.

Now we shall proceed to deal with the contentions raised by the learned counsel for the parties whether imposition of premium on certain grades of coal in respect of certain collieries is permissible in law and whether it withstands close scrutiny.

Mr. Anindya Mitra, learned senior counsel for the petitioners in W.P. No. 4484/ 91 has raised the following contentions :--

(a) Under Clause 3 of the Control Order the Central Government has prescribed the grades in which coal has been categorised and specification of each grade has been prescribed. The four classes of coals have been categorised and grades of each of the four classes with respective specification have been prescribed. When the notification has not specified sub-grade within a grade there is no warrant for creating a sub-grade within a grade.

(b) Different criteria have been specified by the Central Government for prescribing grades of coals and for fixation of sale price of coal at pit-head. When the objective standards have been fixed for each category of coal other factors cannot be taken into consideration to create a different grade.

(e) Once the Central Government has decided the sale price for different grades of coals under Clause 4 (1) of the Control Order and not sale price for different collieries, the fixation of price of colliery-wise is not permissible.

(d) Clause 20 which deals with imposition of premium gives special treatment to some collieries without any rational basis and the same has been done without any expert opinion or recommendation by an expert body and that vitiates the entire action.

(e) While premium has been imposed only in respect of certain class of coal and that too in respect of only four grades out of seven grades of non-coking coal and no reason has been ascribed, there is discrimination between the grades of E, F and G and grades A, B, C and D of same class of coal which makes Clause 20 ex facie arbitrary.

(f) The justification given by the coal company and the Government relying on low ash and high moisture contents is of no consequence as they have been taken into consideration for determination of grade and fixation of sale price which are extraneous to the purpose. The stand of the SECL that high reflectance value indicates comparatively more mature coal is of no significance inasmuch as it is not stated that high reflectance value has an effect of increasing UHV (Useful Heat Value) which is the sine qua non for fixing the grade and the price. Plea taken by the coalfields that initial deformation temperature is high and sulphur content is less extraneous to the context and are irrelevant for the price fixation as the object/ criteria for price fixation of non-coking coal is UHV as is apparent from Clause 9 of the notification.

(g) The Government has fixed the sale price at pit head and, therefore, coal after having left pit-head and they have been used by the consumers the reasons that it gives additional advantage is totally alien to the criteria for fixation of price, and hence arbitrary.

(h) Assuming the factors pointed out by the coalfields are relevant then the equals are sought to be treated as unequals inasmuch as in each of the six grades substantial margin and range of flexibility of approximately 15% has been provided.

(i) In the coal Atlas of Coal India Limited the ash, moisture, sulphur contents and reflectance value of the premature collieries as also collieries or non-coaking coal are mentioned. On a perusal of the said Atlas it is graphically clear that there is no difference between the specified and non-specified collieries in so far as ash, moisture, sulpher contents, reflectance value, ash fusion and temperature are concerned. Thus these factors which have been taken into consideration are virtually non-existent which vitiate the Clause 20 of the notification.

(j) Premium is not price and it is something apart from the price and, therefore, the same could not have been fixed under the authority of Control Order which enables the Government to fix the sale price.

(k) Within the parameter of a particular grade of coal as and when it was felt there should be some price variation, it has been so provided in the notification itself as per Clauses 8, 9, 16. 17, 18 and 19. If the Government intended that the premium would be a part of the price the similar price variation in respect of the specific grade of non-coking coal would have been provided on the basis of the higher and lower UHV but the same having not been done the imposition of premium is unreasonable.

Mr. Abhay Sapre, learned counsel for the petitioners has submitted a written note wherein he has called in question the power of the Central Government for fixation of the price. His contention in essence is that the Central Government has invoked the power conferred under Clauses 3 and 4 of the Control Order, and by the date of issuance of the notification 30-12-88 the said order stood repealed by virtue of Section 16 of the Essential Commodities Act and that having not been saved the Central Government could not have issued such a notification. Apart from these he has referred to lack of guidelines and lack of provision for review. Apart from this he has also contended that the imposition of 10% premium is without authority as nothing can be added over and above the price. It is also canvassed in the written note that without a proper inquiry the imposition of the premium could not have been done. Thus, he has called in question the virus of the Clause 4 of the order. Mr. M. L. Jaiswal learned counsel appearing in M.P. No. 1440/91 has also filed a written note. It has been contended therein that the Control Order is a complete code on the subject and the Government cannot in its whim and fancy impose a premium of 10% as the same is not a part of the price. His grounds are almost similar to those which have been canvassed by Mr. Mitra. It is also his submission that high moisture along with the low ash do not make any change in Useful Heat Value of coal because of presence of high moisture. In fact, it is stated that the heat value because of the presence of high moisture is diluted and, therefore, it cannot be called a premium coal.

Mr. Dipankar Gupta along with Mr. P. S. Nair, learned counsel for the respondent

Nos. 2 and 3 have raised the following submissions :

(i) The coal being a complex substance there is no single criterian to measure its quality. Different quality of coal may have different burning characteristics and these may include the time it takes to ignite the rate of release of heat; total quantity of heat released the length of flame and so on. The coal consists of many impurities such as ash, moisture and sulphur contents which may affect its quality and its suitability. It is difficult to assign labels to different varieties of coals.

(ii) Premium is a part of a price fixed. The notification dated 30-12-88 shows six tables. Table-I specifies the classes and grades in which the coal and coke are categorised and the other tables fix the sale-price. Under Item No. 1 of Table-I seven broad categories, dependent upon Useful Heat Value (UHV) have been created but for certain states of coal mentioned under Item No. 2 there is no gradation. For coking coal steel grade, under Item No. 3 of Table-I, it is not the UHV which is adopted for classification but only the ash contents. In Item No. 2 of the Table-I, ash moisture contained is taken. Thus, UHV formula used to create seven grades define the broad bands based on UHV. For the same heat value there may be different characteristics with the same grade. In Table-II different prices have been fixed for the same grades of coal depending upon whether it is long flame coal or not. In essence the submission of the learned counsel is that UHV is not the sole controlling factor.

(iii) Notes appended under Table-VI would show that there are adjustment to be made to the prices appearing in the tables in certain eventualities and circumstances and, therefore, the tables are not self contained. The imposition of premium provided under Note 20 in the case of coals of grades A, B, C and D supplied from the specified/listed collieries has effect of increasing the price in specified cases and, therefore, is a part of the price fixation process and cannot be taken exception to. The word ''premium'' means price in different context and, therefore, it is like the word ''surcharge'' which means an additional charge. When the power is there to fix the price an imposition of premium cannot be held to be beyond the competency of the authority. The judicial review as far as price fixation is concerned is very restricted and if a rational basis is provided by the competent authority the same is to be accepted. In the case at hand, both the parties have filed their affidavits and the respondents have clearly shown the backdrop in which the premium was imposed. As the factors which are relevant have been taken into consideration the Court should be slow to interfere,

(iv) The writ petition has been filed after three years after issuance of the notification and the petitioner in W.P. No. 3244/91 even during the pendency of the proceeding expressed the preference to continue to receive supply from specific collieries which is indicative of the fact that there is something different and preferable in the said coal than the coal of other collieries.

(v) The respondents have filed the affidavits of Mr. R. B. Sen, General Manager

(Sales & Mktg.) of SECL, Mr. A. K. Singh. Mr. C. S. Rao, Geologist and Mr. K. P. Singh which clearly support the stand of the respondents and clarify the technical aspect. From their report it is quite clear that the coal of the specified collieries is of superior quality and there is nothing erroneous in charging of a premium. The prices of coal have been de- controlled from 1-4-1996. After de-controlling the price is fixed by Coal India Limited and even after the de-control the price of coal of these premium collieries is 10% more than the price of similar grade of other collieries and most of the collieries are purchasing coal by paying this additional price, (vi) Before the Linkage Committee the petitioners themselves asked for the coal from these collieries which shows that there is some difference in the said coal.

(vii) The, petitioners and their association. The Cement Manufacturing Association participated in the said Linkage Committee and most of them objected or protested for 10% increase. The submission of the petitioners that premium is charged only in respect of coal of A, B, C and D grades but there is no similar increase in the price of E, F and G grades. It is because in the premium collieries there is no lower grade. There are several thousand purchasers of coal from premium colliery. Premium colliery is distributed in the State of West Bengal and Madhya Pradesh. About 75 MT of coal is released from each State every year. From amongst of them many consumers are only handful of cement manufacturers have challenged this premium after three years. It is open to them to avail coal from other collieries in Maharashtra, and districts of Chhindwara and Betul in Madhya Pradesh.

(viii) As far the submission of M/s. J. K. Synthetics and 12 others are concerned, the points were not argued in Court, however, the point raised that the Collieries Control Order does not survive is erroneous as the same remains by virtue of Section 16(2) of the Essential Commodities Act.

Mr. Dipankar Gupta in support of his contention has placed reliance on the decisions rendered in the cases of M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; Gupta Sugar Works Vs. State of U.P. and Ors, ; Indian Aluminium Company Limited and another Vs. Karnataka Electricity Board and others, ; Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, ; Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others, ; Tata Iron and Steel Co. Limited v. State of Bihar 1989 (Suppl) 2 SCC 413; and Bharat Coking Coal Ltd. Vs. Steel Abrasers and Allied Products Ltd., .

Before we advert to deal with any of the contentions raised by the learned counsel for the parties, we feel presently advised to deal with the contention raised by Mr. Sapre whether Control Order survives after coming into force the provisions of Essential Commodities Act. Section 16 of the Act deals with the repeals and savings. It stipulates that all Ordinance, Acts, Laws and Orders including the Control Order dealing with supply control and distribution of the trade and commerce of essential commodities including coal stood repealed after the Act came into force. It is contended by Mr. Sapre, in his written note, that what has been saved is the only action taken or/and direction issued prior to 1-4-1955. Submission of Mr. Sapre is that the impugned notification having been issued on 30-12-1998 after repeal of Control Order it is ultra vires and has no authority in law. We may state here that the entire written note of Mr. Sapre is replete with repetition of this submission. We are conscious that such ground was taken in the writ petition but in course of hearing this was not argued but was put forth as a contention in the written submission and this fact has also been highlighted by the contesting respondents in their written notes. However, they have clarified that the Control Order remains in force because of the language postulated u/s 16(2) of the Essential Commodities Act. They have commended us to two decisions rendered in the cases of Tata Iron and Steel Co. Ltd. Vs. State of Bihar and Others, , Bharat Coking Coal Ltd. Vs. Steel Abrasers and Allied Products Ltd., . In the case of Bharat Coking Coal Ltd. (supra) the Apex Court stated thus (para 3) :--

"The production and disposal of coal and coke are controlled and regulated by Colliery Control Order, 1945 (''Order'' for short), initially framed by the Central Government under Rule 31 (2) of the Defence of India Rules and being continued in force by Section 16(2) of the Essential Commodities Act, 1955".

In view of the aforesaid we have no hesitation in holding that the Control Order remains in force by virtue of Section 16(2) of the Act. We accordingly repel, the contention of Mr. Sapre.

Now we shall proceed to deal with the respective contentions raised by the respective learned counsel for the parties. But prior to that we find it necessary, nay obligatory to highlight the nature of Jurisdiction of Courts while dealing with the price fixation. In the case of Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., wherein their Lordships have held as under :--

"Price fixation is neither the function nor the forte of the Court. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to inquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant consideration kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, inquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of the price fixation are the concern of the executive and we leave it to them. And, we will not revaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different ''cup of tea'' altogether".

Whenever the price fixation of any essential sommodity is called into question the Court does not act like an Income Tax Officer. The Court is not concerned with any individual case or any particular problem. The Court only examines whether the price determined is with due regard to considerations provided by the statute. And whether extraneous matters have been excluded from determination."

In the case of Bihar State Electricity Board and another Vs. M/s. Usha Martin Industries and another, the Apex Court registered the view as under (at p. 2490 of AIR) :--

"3. Pricing is a matter of policy. It is for the Board and the State to decide the rate at which electricity will be supplied. Under no circumstances can the Court lay down what should be the proper price and direct the Board to reduce its tariff fixed u/s 49. In effect what the High Court has done is to direct a loss-making public undertaking to incur further losses by lowering its tariff. By giving this direction, the High Court clearly exceeded its jurisdiction and lost sight of the statutory provisions."

At this juncture, we may refer to an unreported judgment of this Court in the case of Steel Furnace Association of India v. The Madhya Pradesh Electricity Board. (M.P. No. 408/92) wherein the Division Bench of this Court held as under :--

"The offshoot of the entire discussion aforesaid is that the MPEB has ample powers to fix tariff, to increase tariff, to fix the rate of fuel surcharge for fuel cost adjustment. The only rider is that the revision and the increase must have nexus with the objects set out in Section 49 of the Act, it is not necessary that the entire material should be put up before the consumer for scrutiny. But it is essential that the increase is made on some rational data to which authorities fixing the rate has applied their mind. In the cases before us, the MPEB has put the materials on record to show that the fixation of fuel cost adjustment rates was not arbitrary but was based on proper material. It was contended on behalf of the MPEB that as per Clause 20 read with Clause 25 of the H.T. Agreement fuel cost adjustment charges were fixed provisionally and thereafter, finally. The Board did not make surplus more than the specified percentage. The surplus was also not generated with the profit motive but for the purpose of better discharge of its obligation. It has also been contended that most of the electricity generated by the MPEB is Thermal Power and only a very small part of it is Hydro Electric Power. As there has been abnormal rise in the price of coal and petroleum which are required in generation of electricity in thermal plants, the cost of generating electricity has gone up. The MPEB has also filed details of the fuel cost in annexure to the return. We have perused the chart produced. The petitioners could not point out that the calculations are totally erroneous or perverse. In view of the position of law as discussed above, there is no case for interference with the fixation of fuel cost adjustment charges."

In this context, we may profitably refer to a recent decision of Gujarat High Court rendered in the case of South Gujarat Chamber of Commerce and Industry and Others Vs. Gujarat Electricity Board and Others, wherein their Lordships have ruled thus (para 5) :--

"It is settled law that the mechanics of price fixation has necessarily to be left to the Judgment of the executive (vide Constitution Bench decision in the case of Prag Ice and Oil Mills and Another Vs. Union of India (UOI), . Speaking on behalf of another Constitution Bench of the Apex Court, Sanatan Gauda Vs. Berhampur University and others, judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views when the legislature acts within the sphere of its authority and delegates power to an agent it may empower the agent to make findings of the fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases judicial enquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such finding are consistent with the law of the land". From the above mentioned decisions and a galaxy of other decisions of various Courts it can safely be concluded that price fixation is not within the province of Court. The Court has only to examine whether there is a rational basis for the fixation of the price."

Imposition of premium has to be tested on the anvil of the aforesaid principles. At this juncture, it becomes a question of an utmost significance whether the premium is additional price or it is something which is totally alien to the price in its conceptual eventuality, etymological quientescence and denotative dimensions and cannotative expansions. Mr. Mitra, learned senior counsel for the petitioner has taken us to the Black''s Law Dictionary which defines the price. We may profitably quote :

"Price : Something which one ordinarily accepts voluntarily in exchange for something else."

Submission of Mr. Mitra is that as in different grades variations have been made to indicate a variation in price, the same procedure could have been adopted instead of adopting to a note for fixation of price. Mr. Dipankar Gupta has compared this premium to a surcharge and for that purpose he has commended us to the decisions rendered in the case of Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another, and Sarojini Tea Co. (P.) Ltd. Vs. Collector of Dibrugarh, Assam and another, .

Per contra, Mr. Mitra has submitted that surcharge is a super added charge and therefore, it cannot be equated with price. Mr. Verma for some of the writ petitions has placed reliance on case of The Chief Controlling Revenue Authority, Madras v. S. M. AbdulJammal. AIR 1970 Mad 288 (FB) to indicate that premium is not price. In this context Mr. Gupta has drawn our attention to the definition of the term price in the Collins English Dictionary which means "an amount to be repaid in addition to a standard rate, price, wage etc." It is unequivocal that the premium has a different concept and meaning when it is used in the context of lease. The word ''surcharge'' has been interpreted by the Apex Court in the case of Bisra Lime Stone Co. (supra) as an additional charge. We may profitably-quote a passage from the Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another, :-

"11. The word surcharge is not defined in the Act, but etymologlcally, inter alia, surcharge stands for an additional or extra charge or payment (See Shorter Oxford English Dictionary). Surcharge is thus a super-added charge, a charge over and above the usual or current dues. Although, therefore, in the present case it is in the form of a surcharge, it is in substance an addition to the stipulated rates of tariff. The nomenclature, therefore, does not alter the position. Enhancement of the rates by way of surcharge is well within the power of the Board to fix or revise the rates of tarrif under the provisions of the Act. The first submission of Counsel is, therefore, of no avail."

In the case of Sarojini Tea Co. (P.) Ltd. Vs. Collector of Dibrugarh, Assam and another, while interpreting the term ''surcharge'' their Lordships of the Apex Court held that surcharge on land revenue levied under the Surcharge Act being an enhancement of the land revenue, is a part of the land revenue and has to be treated as such for the purpose of assessment of compensation u/s 12 of the Ceiling Act. Their Lordships have laid down as under (para 15, at p. 1269 of AIR) :

"16. From the aforesaid decisions, it is, amply clear that the expression ''surcharge'' in the context of taxation means an additional imposition which results in enhancement of the tax and the nature of the additional imposition is the same as the tax on which it is imposed as surcharge. A surcharge on land revenue is an enhancement of the land revenue to the extent of the imposition of surcharge. The nature of such imposition is the same viz., land revenue on which it is a surcharge."

The meaning given in the dictionary as far as the premium is concerned sometimes includes a price. It has a different cannotation in the context of a lease when used within the ambit and sweep of Transfer of Property Act or The Stamp Act. But in the present case, we are inclined to interpret and explain the meaning of the word ''premium'' as a part of additional price. Mr. Dipankar Gupta has also submitted that even if a wrong word is mentioned that would not make a difference. Without dilating further on the said aspect we are satisfied to note that whether it is a price or premium if is something extra which is charged and the extra may be an extra price or a premium because of some difference in the nature or quality of the product. That being the crux of the matter, we leave this controversy at this stage without pilling off the onion. Nothing comes out of nothing being conscious of the principle "Ex-Nihilo-Nihilo fit".

The heart of the matter is whether the respondents have taken into consideration the extraneous matters while fixing the additional premium and whether they have transgressed in doing so after postulating a price structure. Mr. Mitra, learned senior counsel for the petitioner has urged that for non-coking coal useful heat value (UHV) is the sine qua non'' in the fixation of the price. His further submission is that sale price is fixed is commensurate with the grade and not the quality. To appreciate the aforesaid submission we may usefully refer to the notification dated 8-1-1986. The non-coking coal has been described in Table II. Which reads as under :--

TABLE-II

Non - coking Coal

Grade of Coal

Useful heat Value in kilo-Calorie per kg

Sale price per tonne of

Steam Coal & Rubble

Slack Coal and Washery middlings

Run of Mine Coal

(1)

(2)

(3)

(4)

(5)

Long flame coal produced in all States excepting Assam, Meghalaya. Nagaland Union Territory of Arunachal Pradesh and Singareni Collieries

Rs. P.

Rs. P.

Rs. P.

Grade A.

Exceeding 6200

00

00

00

Grade B.

Exceeding 6500 but not exceeding 6200

00

00

00

Grade C.

Exceeding 4940 but not exceeding 5600

00

00

00

Grade D.

Exceeding 4200 but not exceeding 4940

00

00

00

Coat (other than long name coal) produced in all States excepting Assam. Meghalaya. Nagaland, Union Territory of Arunachal Pradesh

(1)

(2)

(3)

(4)

(5)

Grade A.

Exceeding 6200

00

00

00

Grade B.

Exceeding 5600 but not exceeding 6200

00

00

00

Grade C.

Exceeding 4940 but not exceeding 5600

00

00

00

Grade D.

Exceeding 4200 but not exceeding 4940

00

00

00

Grade E.

Exceeding 3360 but not exceeding 4200

00

00

00

Grade F.

Exceeding 2400 but not exceeding 3360

00

00

00

Grade G.

Exceeding 1300 but not exceeding 2400

00

00

00

Coal produced in the State of Andhra Pradesh (Singareni Coalfields).

(1)

(2)

(3)

(4)

(5)

Grade C.

Exceeding 4940 but not exceeding 5600

00

00

00

Grade D.

Exceeding 4200 but not exceeding 4940

00

00

00

Grade E.

Exceeding 3360 but not exceeding 4200

00

00

00

Grade F.

Exceeding 2400 but not exceeding 3360

00

00

00

Grade G.

Exceeding 1300 but not exceeding 2400

00

00

00

Coal produced in the States of Assam. (Meghalaya. Nagaland and Union Territory of Arunachal Pradesh)

Upgraded (Ash content not exceeding 25%) 460.00

At this Juncture, it is apposite to refer Clause 20 which is the centre of controversy it reads as under :

"20. A premium of 10% over and above the prices given in Table-II of this notification will be charges by coal companies on coals of Grades A, B, C and D supplied from the collieries listed in the Annexure to this notification."

Submision of Mr. Mitra is that the imposition of premium in respect of coals of grades A, B, C and D from the collieries annexed to the notification has no rational basis inasmuch the coal price has already been fixed on taking into consideration the Useful Heat Value in Kilo Calory per Kilogram. He has highlighted the criteria fixed for non-coking coal is Useful Heat Value for coking coal as contained, for semi coking coal, ash plus moisture contents and for hard coak ash and moisture contents and when these factors had already been taken into consideration for determination of grade and fixation of sale price, they cannot be taken into consideration for second time for the purpose of adding premium upon the price so fixed. In essence, submits the learned counsel, this is extraneous to the purpose. It has also been highlighted that ash and moisture contents of coal are not conducive to increase the UHV of the non-coking coal and, therefore, that is beyond the criteria fixed in the notification. Per contra, on behalf of the respondent-Coalfield, it has been contended that UHV formula has been utilised to create seven grades but that does not conclusively engulf all the characteristics of coal within the same grade. It has been emphasised that in Table-II different prices have been fixed in the same grades of coal depending upon whether this is long flame coal or not. In Table-I the characteristics such as presence of volatile matters and grades calorific value are also taken into account for the purpose of classification and price fixation. Thus, submission of Mr. Gupta is that there are areas of adjustment and certain factors are beyond the UHV and they cannot be regarded as extranuous or irrelevant. It has been highlighted that the premium has been fixed by taking certain characteristics into consideration and the same purpose could have been achieved by providing a separate table but because a separate table has not been provided, it does not necessarily nullify the imposition of premium if it is otherwise justifiable.

To appreciate the rival submissions raised at the Bar, in this regard, it is necessary to refer to affidavits filed by various experts on behalf of both the sides. Ordinarily, we would not have quoted verbatim but to keep a clear picture in view, we will the need, nay the necessity. We are not going to refer to the affidavits in entirety but the relevant paragraphs to be reproduced, so that the essence surfaces. First of all we may refer to the affidavit of Mr. C. S. Rao, the qualified Geologist working in SECL at Bilaspur. The relevant portions of the affidavit are as follows :

"4. Coal is graded on the basis of Useful Heat Value (UHV). The useful heat value is being arrived at on the basis of energy (Heat) liberated by the coal for the consumer. The UHV will be calculated on the basis of UHV-8900-138 (Ash + Moisture) - The Coal from the CIC are of high moisture with low ash content. Due to presence of high moisture the coal burns at early stage (within smaller time) and gives the energy for a longer time. The ash percentage is considerably low when compared with the similar grade of the coals of other coalfields. Due to the low ash percentage, Ash disposal, maintenance of Ash dumps as well as the problem of maintaining the fly ash is easier for the customers i.e. the ash obtained from the boiler has to be carried to a longer distance for disposal purpose and the dumps are to be maintained for avoiding the atmospheric pollution. For completing the above activity, the customer is required to deploy huge men-power i.e. number of engineering days as well as the freight charges. Indirectly the customer is getting help for maintaining the Boilers as well as helping the nation by avoiding atmospheric pollution due to the less ash percentage.

The coal as per the Geological studies is formed by a process called collification. The wooden matter converts into peat and by further pressure and temperature conditions the peat turns into ignite. During the course of geological time because of the high pressure and temperature condition the lignite turned into coal. The above process as per the geological studies took about 2.000 million years. Based on the petrographic analysis of the coal, the coal is differentiated into sub-bitumins, bitumins and an anthresite. Petrographic analysis is of the CIC coal indicate that the coal of CIC are of Bitumins type and therefore, it can be treated as a more mature coal.

Coal petrography is essential mlscroscopic study of coal. In the same way as inorganic rock is composed of minerals, coals consisted of macerals. But there is a different whereas, mineral is characterised by a fairly well defined chemical composition and physical proportion. At a basis level macerals are divided into three main maceral groups : Virtinite, exinite (liptinite) and intertinite.

The vitrinite group is commonly the most abundment group is coals. The mecerals have been deprived from woody tissues and bark of trees. The vitrinite consists of mainly telinite, (Cell Walls) and collinite (Cell filings) type of macerals.

The exinite (liptinite) group comprises mainly of coalfields exines of pollen and spore (sporinite). resins (resinite), cuticles (cuttinite), algeo (alginite) and suberlnite, a liptinitic cell wall material typically found in bark tissue.

The intertinite group comprises macerals which in general are characterised by higher reflectance than the corresponding vitrintte of the same rank. The macerals are micrinite and sclerotinite.

Coal rank :-- Coal rank can be defined as a position of coal in the series peat-brown coal (lignite) bituminous coal anthracite. Coal rank is a response to the burial metamorphism.

A number of indices are used to indicate coal rank. Some of the more commonly used of these indices are volatile matter, carban content, moisture content, calorific value of the coal and reflectance of vitrinite."

In reply to this affidavit, the petitioner had got the affidavit sworn to by Mr. T. R. Rajshekhar who is a qualified Geologist. The relevant portions of the said affidavit are as under :

"3 (a) : Annexed hereto and marked as Annexure-A is a true copy of the "Petro-graphic Characteristics of some. Indian Coals" published by the Coal India Limited in its Coal Atlas showing that the reflectance values of coal both from the 10% premium colliery and non-10% colliery are in the same range.

(c) Annexed hereto and marked as Annexure-C is an extract from the Coal Atlas published by the Coal India Limited showing the "Chemical Properties of coal from different coalfields of India". This shows that the sulphur content and the volatile matter of coal from both the 10% premium and colliery and non-10% premium colliery are the same.

(d) Annexed hereto and marked as Annexure-C is a true copy of the extract from "Information on India Coal" published by the Coal India Limited showing the "Quality Characterstics of Indian Coal". This shows that the Initial Deformation Temperature of coal both from the 10% premium colliery and non-10% premium colliery are not less than 1150 degrees Celsius and are the same."

Mr. T. R. Rajshekhar had also filed another affidavit before the Apex Court. The relevant portions of which are as under :

"3. That the gradation of coal for the purpose of pricing under the Colliery Control Order, 1945 is done on the basis of the Useful Heat Value. The useful heat value is arrived at on the basis of the following formula :

"HU -- 8900 -- 138 x (A plus M) Where HU = Useful Heat Value in Kilo calories per kilogram.

A = Ash content in percentage M = Moisture content in percentage While fixing the Useful Heat Value the factor of each content and moisture content is taken into consideration. In other words while grading the coal on the basis of Useful Heat Value the elements of ash and moisture have already been taken into consideration and no additional factor of moisture and ash can be attributed to coal for any further classification. It, therefore, follows that the advantages are disadvantages of higher moisture content and lower ash content are already reflected in the Useful Heat Value of coal on the basis of which gradation of coal has already been done.

The above statement is incorrect. It is stated that the average reflectance value of coal of non 10% premium colliery is in the same range as that of 10% premium colliery. This is evident from the "Petrographic characteristics of some Indian Coals" published by the Coal India Limited in the Coal India Atlas true copy whereof is annexed hereto and marked as Annexure-A. The 10% premium collieries are shown in green whereas non 10% premium collieries are shown in red. It will be seen by way of illustration that Talchar and Panch-Kanhan collieries (non 10% collieries) have reflectance value between 0.5% -- 0.60% which is approximate to the reflectance value of Korea Rewa Coalfield, namely, Chirimiri Bisrampur and Suhagpur (10% colliery). It also shows that the statement of Shri Rao that the reflectance value of coal from Korea Rewa collieries is in the range of 0.51% - 0.70% is incorrect."

In this context, we may refer to the affidavit of Mr. K. P. Singh, another qualified Geologist of SECL who has filed an affidavit controverting the view expressed by Mr. T. R. Rajshekhar the relevant portions of which read as under :

"3. As already stated in the affidavit of Shri C. S. Rao, dated 23-3-1993, "Coal is graded on the basis of Useful Heat Value (UHV). The Useful Heat Value is being arrived at on the basis of energy (Heat) liberated by the coal for the consumer. The UHV will be calculated on the basis of UHV = 8900 -- 138 x (Ash + Moisture). The coal from the CIC are of high moisture with low ash content. Due to presence of high moisture the coal burns at early stage (within smaller time) and gives the energy for longer time. The ash percentage is considerably low when compared with the similar grade of the coals of other coalfields. Due to the low ash percentage, ash disposal maintenance of ash dumps as well as the problem of maintaining the fly ash is easier for the customers, i.e. ash obtaining from the boiler has to be carried to a longer distance for disposal purpose and the dumps are to be maintained for avoiding the atmospheric pollution. For completing the above activity, the customer is required to deploy huge manpower. i.e. number of engineering days as well as the freight charges. Indirectly the customer is getting help for maintaining the Boilers as well as helping the Nation by avoiding atmospheric pollution due to the less ash percentage." The said statement of Shri C. S. Rao is correct.

4, To elaborate, gradation of non-coking coal into A to G categories follows, broad bands of UHV values. These ranges are arrived by taking into account a factor which is the addition of the ash and moisture percentage. Thus a particular range of UHV will accommodate wide variations in moisture and ash percentage individually. Hence within the same grade of coal as formulated in the relevant notifications one can find coal having less moisture and more moisture percentages and correspondingly more ash and less ash percentages. It is scientific fact that for different samples of coal having the same UHV, release of heat and hence combustion would start quicker and at lower initial temperatures for the sample having more moisture percentage. In this connection I repeat the (26 3, statements made in the affidavit of Shri K. K. Rathod dated 27-7-93 which are true and correct. In this connection I refer to and rely upon extract from "Coal Characteristics and Their impact on Utilisation" by S/Shri C. K. Basu and R. K. Chakrabarty of Central Mine Planning and Design Institute, Ranchi, published in Coal Exploration 94 :--

"Moisture content of coal being dependent on its porosity, also reflects the reactivity of the coal. Generally, coals with high moisture content exhibit high reactivity and as such reflects its combustion characteristies." (An extract is annexed as Annexure-1).

Further an extract supporting the above views are given from "A proposal for grading of Indian Coals on the basis of Useful Heat Value" by a study group consisted of (1) Dr. A. Lahiri, Director, Central Fuel Research Institute, Dhanbad (Bihar), (11) Mr. Lh. D. Hughes, Deputy Chief Mining Engineer, Andrew Yule & Co. Dishergarh (West Bengal), (iii) Mr. S. C. Dey, Director (Planning), National Coal Development Corporation, Ranchi (Bihar); and (iv) Mr. S. K. Ghosh, Chief Mining Engineer, Coal Board, Calcutta, published in Quarterly bulletin of Central Fuel Research Institute, India in Vol. 17 No. 2 of June, 1967 :

"(a) The case of combustion and the rate of heat release are associated with the inherent chemical structure of coal, and coals, most reactive from this point of view, are likely to have an open structure. Such coals are characterised by high moisture and high oxygen contents. Thus, there are two opposing factors which have to be taken into consideration in a fuel for combustion, viz., the inherent heat value of the coal and its ability to release the heat content in a given unit of time. i.e. at a particular rate.

(b) It is also true that these coals are also most reactive towards combustion and, due to the presence of high volatile matter, are also most suitable for combustion purposes.

Thus, if coals have to be distinguished by their inherent heat value alone, an injustice would be done towards these lower rank coals, as no credit will then be given for their free burning characteristics (a lay term which encompasses the scientific arguments given above). We, therefore, feel that some method should be devised in order to give a premium to coals having these characteristics." (An extract is annexed as Annexure-2).

The coal of the collieries which were categorised as premium coal have comparatively high moisture and low ash content as compared to coal of the same range of UHV found in non-premium collieries. Coal of premium collieries also have other characteristics more beneficial to consumers as already explained in the affidavit of Shri C. S. Rao.

From the details of the Petrographlc characteristics of coals of Chirimiri, Bisrampur, Sohagpur, it can be seen that the reflectance of vitrinlte ranges between 0.55% to 0.65% which is comparatively higher to Talcher and Pench-Kanhan coal where maximum vitrinite reflectance is up to 0.60%. It is further submitted that coal of Rajmahal, Singrauli and Umrer where vitrinite reflectance is only up to 0.55% has not been included into 10% premium coals, though the UHV of coal may be the same. There may be a few exceptions where vitrinite reflectance may be higher, even then the collieries are not declared as 10% premium collieries due to lack of other properties like initial deformation temperature, proportion between ash and moisture content and presence of excess sulphur content. Therefore, the averment made and the conclusions drawn by the deponent Shri Rajsekhar to the effect that from non 10% premium collieries are equally matured and thus have same combustion properties, is not correct and hence denied.

Whereas it is admitted that the high moisture content in coal would reduce the useful heat value, provided the ash content in coal remains the same but it is not true, in case of Korea Rewa coal having 10% premium characteristics. In fact, in such coals, Moisture being high, percentage of ash is less as compared to the same grade and same UHV of coal having non 10% premium characteristics. The advantage of high moisture in 10% premium coal is illustrated hereunder :

1. That the high moisture content behaves as a catalyst in the initiation of combustion in the coal at lower temperature when compared with coal of same grade having low moisture content. As a result, it increases the rate of combustion and release of heat. Such coals are also found to contain high percentage of hydrogen as compared to non 10% premium collieries. The percentage of Hydrogen in Korea Rewa field is about 4.8 to 5% as against 4.5% In non 10% premium collieries of Chordewa I & III seems of Bank & Surakachhar in Korba coalfield. High percentage of Hydrogen in Korea Rewa coalfield add to the free burning characteristics and give rise high activity.

2. The moisture content of coal, being dependant on its porosity, also reflects the reactivity of the coal. Generally, coal with high moisture content exhibit high reactivity and as such reflects its combustion characteristics.

The contention of Sri T. R. Rajsekhar at para-6 that the high moisture content increases the distance of flame from burner and reduces the flame temperature is incorrect, misleading and viewed in isolation. Higher percentage of moisture for the same UHV results into lower ash percentage of coal because UHV is proportionate to ash plus moisture. Hence, this resultant decrease in ash due to higher moisture is premium collieries for maintaining the same UHV that of non-premium collieries is advantageous. Therefore, the contentions that the distance of flame increase and temperature reduces is misleading. The advantages of low ash in 10% premium collieries for the same UHV is depicted hereunder :

1. That the main advantage of low percentage of ash leads to less ash disposal and maintenance of ash dump as well as controlling fly ash apart from the less damage to the equipments. This helps customers in saving money on account of less transportation of ash, maintenance of equipments and controlling of atmospheric pollution etc.

To make the point more clear, it is worthwhile to submit a few examples, particularly where 10% premium and non 10% premium collieries have the same UHV and grade. The table below containing hypothetical figures would illustrate the position:

Quality Parameters

10% Premium Colliery

Non 10% Premium Colliery

Mositure

9%

4%

Ash

25%

30%

UHV

4208

4208

Grade

D

D

The above UHV and thereby the grade has been determined based on the following formula stipulated under the Price notification and as quoted by Sri T. R. Rajsekhar. UHV = 8900 -- 138 x (A plus M) Where UHV = Useful Heat Value in K.Cal/Kg A = Ash content in percentage M = Moisture content in percentage.

It is also worth mentioning that coal having same UHV/grade would have different gross calorific value depending upon the proportion between moisture and ash content present in the coal, lower the ash percentage and higher the moisture. Gross C .V. would be higher for the coal having same UHV and grade.

The contention set out by Shri Rajsekhar at para - 7 of his affidavit that sulphur content in coal of both categories is within the same range is nothing but distortion/falsification of facts. This is corroborated from the Exhibit-C annexed to the affidavit of Sri T.R. Raqjsekhar, from which it could be seen that sulphur content in coals of Chirimiri, Sohagpur and Bisrampur which are 10% premium collieries ranges between o.3 to 0.6% whereas in case of Korba, IB Valley, Talcher, Pench-Kanhan and Wardha which are non 10% premium collieries, it ranges from 0.5% to as high as 1.0%. The effect of even marginally high sulphur is very injurious to the equipments due into its carrosive nature. It is also detrimental from the environmental point of view as it generates Toxic gases. The statement of Sri Rajsekhar is. therefore, far from the reality and denied.

In relation to above subject, it is submitted that the petitioner along with others have been taking coal through Standing Committee (SLC) under Ministry of Coal, from 10% premium collieries rather than the other non 10% premium collieries knowing fully that 10% premium unless the petitioners and others are benefitted. from 10% premium coal by more than 10% of the charges levied on such coal. They had an option through SLC for revision of linkage to non-premium collieries, but it is for the extra benefit which prompted them to continue to use 10% premium coal and no reference made by them to S.L.C."

We have taken recourse to the unusual procedure by reproducing the affidavits because these affidavits are by qualified geologists and do substantively put their respective cases. Keeping in view the concept of price fixation which is legislative function, we have to see whether the premium so charged is justified or not. At this juncture, we must make one thing absolutely clear that we are not really much concerned whether it is a premium. We accept the submission of Mr. Dipankar Gupta that it is an extra price which is charged on the coal which has been loosely termed as premium. Be that as it may, if there is something in addition to the coals of earmarked collieries which are called the premium collieries that would not detain us to deal with about the concept of premium or price. Though number of submissions have been made by Mr. Anindya Mitra and other counsel the question is essence is whether there is any benefit for the consumer who purchases the coal from the premium calo lieries and whether while charging premium any irrelevant or extraneous factors have been taken into consideration. On a close scrutiny of the affidavits it is clearly discernible that it has some extra quality which is not in the other collieries. It has the different characteristics, like cumbustlbility, less ash content, less pollution at the time of use of the coal and hence, more advantageous to the consumers. Mr. Dipankar Gupta, learned senior counsel has pyramided his argument by emphasising that while fixing the extra premium the authorities have concentrated on various attributes of coal and no attribute can be regarded or treated as foreign or alien to the concept of fixation of price. Per contra. Mr. Anindya Mitra has urged giving stress on the logicality that once Useful Heat Value has been considered as a yardstick or a parameter or standard for fixing a grade which determines the price any deviation therefrom has to attract the concept of extraneous or irrelevant in its basic eventuality. We are not persuaded by the submission of Mr. Anindya Mitra for the simple reason, we are of the considered view that a particu- lar grade of coal has different things to offer and its characteristics become useful to the consumers. It cannot be said that it is irrelevant or extraneous because it becomes useful at a later stage. The stage is not the base. Time Is not the criteria. Moment is not the logical foundation but the essence is the attribute of a particular coal which in its usefulness engulfs various qualities which eventually helps a consumer. As Mr. Gupta would like to put it if that would have not been so, users like the petitioners and others would not have insisted to purchase from the premium collieries in spite of clear linkage made available to them from other collieries. The fact remains that the quality of the coal from the premier collieries is quite different, and we are satisfied that it has something extra to offer."

We are conscious, we are not experts. We are conscious about subtle technicalities are to be appreciated but simultaneously the concept the Court is expert of experts cannot be ostracised. We might not be able to spell out in detail or in technical terms used in various affidavits but indubitably, it is inferable that the coals from the premium collieries have certain better attributes/ characteristics, At this Juncture, we may profitably refer to two passages from Encyclopadea Britanlca in regard to ''coal'':

"Clearly, coals with a high ash contents are undesirable for making solid products of low ash contents unless the coal can be cleaned first. The behaviour of the coal on heating (in particular; whether it becomes plastic and can make a good coke) determines its suitability for carbonization and the type of oven or retart that can be used. In general, coals with a volatile contents of 15 to 35 per cent, often as blends, are used to make metallurgical coke, while coals with 30 to 45 per cent volatile content are used to make town gas. Coals of medium rank are used for low temperature corbonlzation because they yield reactive cokes. Coals of very low or very high volatile matter content will hot form strong coke merely by heating. When such coal is not in lump form, briquetting at some stage is necessary if satisfactory metallurgical fuels and smokeless fuels are to be made from, for example, small anthracite, low rank bituminous coal fines, or brown coal."

And again,

"The reflecting power of coal surfaces is one of its principle optical properties. Reflectance increases sharply with increasing rank, and a measuring technique of rank is based on this property. Electrical properties are of interest because coal becomes a semi conductor with increasing rank. The magnetic properties are even more interesting Measurement show that free radicals (molecules in which one of the atoms exhibits a valence one unit less than normal - e.g. C 3 + rather than C 4 +) are present in coal. Their maximum concentration occurs at a carban content of 92 per cent (one free radical per 1,000 carbon atoms)".

We have referred to the aforesaid two passages because the respondents have given emphasis, as contained on the reflectance value.

Before we partwith the case,we may quote a passage from the case of Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others, :

The Court is not well equipped to adjudge crudities and inequities emerging from economic legislation. The legislature is empowered to experiment on economic legislation in its attempt to remove inequalities in income or status or to provide facilities and opportunities to improve economic status or to provide social and economic justice to the society or a particular discernible segment of society or to remove the defect where the legislature felt most acute. There is always presumption in favour of constitutionality. The legislature appreciates the needs of the people and directs the laws to the problems made manifest by experience and discrimination is based on adequate grounds. The Court does not supplant the feel and experiment of the expert by its own views. Court is diference to legislative judgment, imposes self-restraint in adjudging crudities and experiment and concentrates on core consti-tutionaliry."

We accordingly refrain ourselves and setforth our ultimate conclusions in seriatim :

A. The issue is not academic as agreed to by the learned counsel for the parties as well as discussed by us.

B. The Useful Heat Value (UHV) is not the sole criteria for fixation of the price.

C. The grading of coal is not the sine qua non for determination of price fixation.

D. Imposition of premium is to be con- strued as realisation of an additional price. E. The other factors or attributes which are highlighted by the respondents are not irrelevant or extraneous.

F. Attributes of coal, namely, less of ash percentage, ignition value, reflectance value are also requisite attributes which are causative of the difference between the coals of premium collieries and coals of other collieries.

G. The factor ofless pollution, though a subsequent advantage to the consumer is also a contributory factor for imposition of premium.

H. The distinction made between the two categories of collieries are neither discrimantory nor arbitrary and it does not treat the unequals as equals.

The gross calorific value is an attribute which has to be taken cognizance of.

J. The discrimination pleaded does not offend the conscience of Article 14 of the Constitution as the respondents are able to show that it comes within the flexibility zone of the aforesaid Article.

K. The delay in filing the writ petitions goes a long way to show that the petitioners were satisfied with the price fixed and there is something special in the coal pertaining to the premium collieries.

L. After increase of the price the insistence of the consumers to buy from the premium collieries is also a factor to be taken into consideration.

In view of our preceding analysis, we arrive at the conclusion that the writ petitions are devoid of any substance. Consequently, they are dismissed. However, there shall be no order as to costs.

