(2025) 07 JH CK 1257

In the Jharkhand High Court

Case No : Civil Review No. 20 Of 2025

Industries & Commerce Association — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 17-07-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 39(b), 77, 226
Code of Civil Procedure, 1908 — Section 114, 151, Order 47 Rule 1
Companies Act, 1956 — Section 25
Colliery Control Rules, 2004 — Rule 6, 8

Citation : (2025) 07 JH CK 1257

Hon'ble Judges : Rongon Mukhopadhyay, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Sunil Kumar, Deepak Kr. Sinha, Janak Kr. Mishra, Piyush Poddar, Anil Kumar, Abhijeet Kr. Singh, Anoop Kr. Mehta, Manish Kumar

Final Decision : Dismissed

Judgement

Deepal Roshan, J.

1. The Petitioner in this Review Application is seeking for review of the judgment dated 31.08.2024 passed in LPA No. 587 of 2019. The Petitioner has urged that although a number of points were pressed at the time of hearing of the Appeal but the same have not been dealt with in the judgment under review.

2. The Petitioner, an association of Hard Coke Manufacturers, registered under Section 25 of the Companies Act, 1956 having altogether 74 members owning and possessing their hard coke plants, filed a Writ Application being WPC No. 2267 of 2018 for the following reliefs:

(a) For a declaration that the new e-auction policy introduced by the Respondents for auctioning the coal linkage/LOAs through competitive bidding is arbitrary.. illegal, null and void as the same is detrimental and shall severally affect the interest of the business of the members of the Petitioner Association resulting into closure of almost 90% of the units.

(b) For quashing and setting aside the Letter dated 19.01.2017 (Annexure-11) issued by the Respondent No.2 to the Respondent no. 3 directing it to identify the source-wise/grade-wise quantity on the basis of market assessment for conducting the e-auction successfully including the proposal of the Respondent No. 1 contained in Letter dated 15.02.2016 (Annexure-10) regarding competitive bidding for auction of coal linkage/LOAs to non-regulated sector.

(c) For issuance of direction upon the concerned Respondents to release coal to the petitioners under the existing Fuel Supply Agreement (FSA) and may further. be pleased to extend the tenure of such Fuel Supply Agreements of the members of the Petitioner Association for further period after completion of tenure of the same, in order to save them from their extinction.

(d) For restraining the Respondents from acting in pursuance of the said new e auction policy during the pendency of this writ petition.

3. The Petitioner Association submitted that its members were receiving Coking Coal under Fuel Supply Agreement (FSA) entered with Respondents No. 3 to 8 through linkage orders being Non-Core Sector consumers of coal for manufacture of Hard Coke.

Subsequently, Respondent BCCL, a subsidiary of Coal India Limited and other subsidiary coal companies issued notices proposing to sell coal to Non-Core Sectors of Respondent BCCL through e-auction scheme.

4. Challenge was thrown to the said scheme of e-auction before different High Courts. These Writ Petitions were transferred from different High Courts and the matters were finally heard and disposed of by the Hon'ble Apex Court in the case of Ashoka Smokeless Coal India Pvt. Ltd. & Ors. Vs. Union of India & Ors (2007) 2 SCC 640.

The Apex Court by the said Judgment held that the Central Government and the Coal Companies are not profit earning concerns but are extended arms of a Welfare State. They are different from private sectors which thrive only on profit motive while the coal companies are under a constitutional obligation to fix reasonable price of coal. While rendering the said judgment, the Apex Court took into consideration the implications of Article 39(b) of the Constitution of India for ensuring equitable distribution of natural resources.

Coal India Limited and its subsidiary companies accordingly were directed to distribute coal equitably and at a fair and reasonable price.

5. The Central Government thereafter came out with a policy decision vide its Memorandum dated 18.10.2007 namely 'New Coal Distribution Policy' superseding the existing Coal Distribution Policy, 2007; whereby consumers of NRS including members of the Petitioner Association were to receive 75% of their requirement of coal through Fuel Supply Agreement (FSA) at Notified Prices to be

fixed/declared by Respondent Coal India Limited and balance 25% of their requirement through e-auction/import.

The NRS Consumers of Coal including Members of the Petitioner Association were required to enter into Fuel Supply Agreement (FSA) to maintain monthly supply of coal and as such the members of the Petitioner Association entered into Fuel Supply Agreement with Respondent Nos. 3 to 8.

6. The Respondent Union of India thereafter proposed to devise the sale and distribution of coal through auction for which representations were sought from stakeholders. Objections were submitted by the Association as to how auction would be held and quota would be fixed for each category and sub category of NRS Consumers.

7. The Ministry of Coal thereafter by its Notification dated 15.02.2016 took a policy decision for holding auction of linkage of Non-Regulated Sector (NRS) Consumers. It was also decided that FSAs of Non-Regulated Sector maturing in 2015-16 onwards will not be renewed and any consumer willing to continue supply of coal will have to secure linkage through transparent auction of linkages wherein a consumer was eligible to secure linkage quantity up to 100% of their normative requirement after implementation of Linkage Auction Policy.

Thereafter, auction of linkage of NRS Consumers held since 2016 and four Phases of Linkage Auction were at the verge of conclusion.

8. The issue for consideration before the Learned Single Judge was with regards to correctness, legality and validity of auction of linkage of Non-Regulated Sector (NRS) Consumers introduced by Respondent Union of India in its Notification dated 15.02.2016.

The Learned Single Judge after hearing the parties and taking into consideration the Judgments rendered by the Hon'ble Apex Court in the case of State of Jharkhand & Ors. Vs. Ashok Kumar Dangi & Ors. (2011) 13 SCC 383 and Manohar Lal Sharma Vs. Principal Secretary & Ors. (2014) 9 SCC 516 held, that Policy Guideline formulated by Central Government needs no interference by the Court exercising jurisdiction under Article 226 of the Constitution of India as the Writ Petitioner has failed to establish its case of suffering from said policy guideline from the vice of arbitrariness, unfairness and non-transparency.

9. The Petitioner Association being aggrieved by the Judgment dated 25.06.2019 preferred an Intra Court Appeal being LPA No. 587 of 2019 submitting that the Members of the Appellant Association have entered into Fuel Supply Agreement under New Coal Distribution Policy pursuant to Memorandum dated 18.10.2007 and were also receiving coal. The action of the Ministry of Coal, Government of India to come out with a draft policy for supply of coal through Linkage Auction was against the Judgment rendered in Ashoka Smokeless Coal India Pvt. Ltd. & Ors. Vs. Union of India & Ors. (2007) 2 SCC 640.

10. At this stage, it is pertinent to mention here that the Appellant Association

raised fresh and new grounds questioning the correctness of Linkage Auction, for the first time in the Appeal to the effect that if the decision of the Central Government to supply coal through Linkage Auction is allowed to continue, the members of the Appellant Association would be deprived of receiving requisite quantity of coal and by Linkage Auction the Respondents would be fetching profit contrary to the observations of the Apex Court in the case of Ashoka Smokeless Fuel (supra).

11. Submission was also made to the effect that auction for Tranche – IV was held between 25.06.2019 to 29.06.2019 to Cookery / Hard Coke manufacturing units and auction of Tranche – V was held between 18.11.2022 to 25.11.2022 offering coal to all SSF CMPDIL Technology, Mini SSF CMPDIL Technology, Cookery / Hard Coke Manufacturing Units and CFRI Technology based plants of which only 1,90,000.00 tons of Coal were offered to Hard Coke Plant / Units. The Appellant submitted that due to less quantity of Coal offered, price of coal increased tremendously and there being no separate auction exclusively for Hard Coke Manufacturing Units, only 59 Units out of 110 Units could participate.

12. Submission was also made to the effect that clubbing of different categories of NRS Consumers has resulted in unequal being treated on equal footing resulting in violation of Article 14 of the Constitution of India. Even the Coking coal offered for auction was substandard being not suitable for manufacturing of Hard Coke.

13. Further, grievance was also raised with regards to having included members of Appellant Association in 'others' Sub Sector of Non-Regulated Sector of consumers for the purposes of Linkage Auction.

14. In response to the arguments advanced by the Appellant, Respondent No. 1 & 2 represented by the Learned ASGI submitted that Economic Policies are dynamic in nature and are subject to change and it is settled Principle of Law that Policy Decisions relating to Economic Policies of Government are not amenable to judicial review. The Government has competence to make, amend and cancel Policy while parliament has unfettered powers to enact, amend or repeal any law to provide enabling Statutory Framework to Economic Policies.

15. Submissions were also made by Respondents BCCL No. 3 to 8 through their Counsel that appeal is based upon incomplete, incorrect and misplaced understanding of the Policy Decision for auction of Coal Linkages for NRS Consumers introduced by the Government of India on 15.02.2016. The comparison drawn by the Appellant between e-auction scheme quashed by the Apex Court in the year 2006 and Auction of Linkages pursuant to Notification dated 15.02.2016 are completely distinct to each other and therefore no comparison could have been drawn.

16. Submission was also made by the Respondents that the Policy of Linkage Auction is to be tested in the light of the recent Judgment of the Hon'ble Apex Court in the Case of Centre for Public Interest Litigation Vs. Union of India

(2012) 3 SCC 1 since clarified in its Advisory Jurisdiction in the Special Reference No. 1 of 2012 (2012) 10 SCC 1 wherein it has been held that in matters relating to distribution of natural resources by the Government, the Public Authority must adopt a Transparent and Fair Method for making selection so that all eligible persons get a fair opportunity of competition and the state and its agencies/ instrumentalities must always adopt a rational method for disposal of Public Property.

In other words, while transferring or alienating natural resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process.

17. The Division Bench of the High Court after giving detailed hearing to the learned Senior Counsels appearing for the Appellant, the Respondents No. 1 and the Counsel appearing for Respondents No. 3 to 8 by its judgment dated 31.08.2024 dismissed the Appeal holding that Policy Guideline formulated by the Central Government needs no interference by the Court.

18. The Writ Petitioner-Appellant has thereafter preferred this Review Application under Order XLVII Rule 1 read with Section 114 and 151 of the CPC to review the Judgment dated 31.08.2024 passed in LPA No. 587 of 2019.

19. Mr. Sunil Kumar, Ld. Sr. Counsel appearing for the Review Petitioner referring to the Judgment of the Hon’ble Supreme Court of India in the case of Md. Akram Ansari Vs. Chief Election Officers & Ors. (2008) 2 SCC 95 has questioned the correctness of the Judgment and Order dated 31.08.2024 passed in LPA No. 587 of 2019 on the ground that while rendering its judgment dated 31.08.2024, the Division Bench has not recorded and considered six (6) nos. of arguments advanced during course of hearing of the Appeal and therefore prayer is to recall the Judgment and Order dated 31.08.2024 passed in LPA No. 587 of 2019.

Learned Senior Counsel appearing for the Review Petitioner has submitted as under:

(i) The arguments advanced by him in respect to “Ascending Clock Auction” and “Algorithmic Iteration” in respect to auction for distribution of coal through Linkage Auction under NRS regarding its justification and legality does not find mention in the Judgment.

(ii) Although arguments were advanced to the effect that Policy Decision of the Executive under Article 77 of the Constitution of India has not been expressed to have been taken in the name of the President and has also not been authenticated in the manner prescribed under the said article therefore the Division Bench has erred in not noticing the said submissions which otherwise would have impact on the issue under consideration.

(iii) The argument that coal being a scarce material resource of the community being regulated under the Colliery Control Rules, 2004 framed under the MMDR Act, 1957 and therefore the Central Government should have exercised its powers under Rule 6 read with Rule 8 of the Colliery Control Rules, 2004 regarding mode, period, source, quantity of supply of coal and to whom supply is to be made has been completely overlooked. The argument therefore was that the Ministry of Coal could not have usurped jurisdiction not vested in it otherwise to frame policy decision based on Linkage Auction for NRS Consumers by completely overlooking the provisions of the Colliery Control Rules, 2004.

(iv) The fourth submission of the Ld. Sr. Counsel for the Review Petitioner was in respect to the effect of repealing Coking Coal Mines (Nationalization) Act, 1972 and the Coal Mines (Nationalization) Act, 1973 which under no circumstances would have any impact on the validity of the Policy Decision of the year 2016 in as much as the Coal Companies namely Coal India Limited and its Subsidiary Companies upon their constitutional obligations under Article 39(b) read with Article 14 of the Constitution of India.

(v) The Learned Senior Counsel for the Review Petitioners has also advanced his argument that Appellant's challenge was on the ground of violation of Article 39(b) read with Article 14 of the Constitution of India in as much as non-renewal of Fuel Supply Agreement was an unreasonable restriction on the Fundamental Right to carry out Trade and Business guaranteed under Article 19(1)(g) of the Constitution of India in as much as supply lines being cut in short has led to shutting down some of the Plants of Members of the Association.

(vi) The last argument advanced by the Ld. Sr. Counsel appearing for the Review Petitioners was that the Units of the Members of the Petitioner Association could not have been treated with unequal in matter relating to Linkage Auction for NRS Consumers in as much as the policy of the Government was only profiteering to fill the coffers of Coal India Limited, which is no longer a government company.

20. Mr. Anil Kumar, learned ASGI for UOI and Mr. Anup Kr. Mehta, learned counsel appearing for the Respondents coal-company has accepted the notice of Review Petition. The Review Application has thereafter been heard and the learned Counsels appearing for the parties have been given full opportunity to advance their arguments. They have seriously opposed the prayer for review of the Judgment by submitting that neither the provisions of Section 114; nor the grounds on which review of a judgment is tenable under Order XLVII Rule 1 CPC, is attracted for interference of this Court.

21. The Learned Counsels have also submitted that the Division Bench while deciding LPA No. 587 of 2019 has taken into consideration the pleadings of the parties before the Learned Single Judge in WPC No. 2267 of 2018 as also the pleadings in LPA No. 587 of 2019.

Submissions have also been made that pleadings setting out jurisdictional facts in respect to arguments of the Appellant are lacking in the Writ Petition as also in the Memo of Appeal. As a matter of fact, the Writ Petitioner-Appellant is precluded from introducing new facts in the Memo of Appeal. Further, before the Learned Single Judge the only argument advanced on behalf of the Writ

Petitioner – Appellant was with regards to legality and validity of the policy of the Government of India relating to Linkage Auction of NRS Consumers. The Learned Single Judge has decided the issue raised by the Writ Petitioner holding that Policy of Auction for distribution of Natural Resources cannot be subject matter of Judicial Review in the light of the Judgment rendered by the Apex Court in the case of Manohar Lal Sharma (supra) and in the case of State of Jharkhand Vs. Ashok Kumar Dangi (supra).

22. Before answering the points raised by the Petitioner, this Court takes notice of the fact that while deciding Intra Court Appeal under Clause 10 of the Letters Patent, Issues have not been framed as contemplated under Order 14 of the Code of Civil Procedure as Appeal arose out of a Writ Proceeding under Article 226 of the Constitution of India.

The only question that fell for consideration before the Learned Single Judge was with regards to legality and validity of the Policy Decision of the Ministry of Coal, Government of India dated 15.02.2016.

23. As regards the 1st Point raised by the Review Petitioner, the Division Bench of the High Court has noticed in paragraph 13 of its judgment that had the Appellant Association been interested in formulation of a reasonable policy that would have excluded "ascending clock auction" and "algorithmic iteration", the Association ought to have participated in the Public Consultation and should have submitted their comments and views sought by the Ministry of Coal.

The Petitioner has failed to demonstrate that suggestions relating to "ascending clock auction" and "algorithmic iteration" was opposed by the Petitioner before formulation of scheme in their representation but their objections were not discussed and illegally rejected in the 6th Meeting of IMC held on 21.08.2015 at the stage of formulation of Linkage Auction Scheme.

This Court has noticed the submissions that extensive and inclusive exercise was taken by UOI while formulating the policy of e-auction of linkages after considering views of stakeholders. The Division Bench has also noticed that contentions raised are based on conjectures, surmises and false assumptions without any actual proof of loss. The Division Bench while testing the legality and validity of the policy has again reiterated this aspect of the matter in Paragraph 22 and 23 of the Judgment. The Division Bench has also considered the contention of the Counsel for the Petitioner that in the Linkage Auction 59 Hard Coke Units of the Petitioner Association also participated in the Linkage Auction.

24. As regards the 2nd Point raised by the Ld. Sr. Counsel for the Review Petitioner, the same relates to the correctness of the Policy Decision being not in conformity with Article 77 of the Constitution of India as it is not in the name of the President.

Admittedly, there is no such pleading in the entire Writ Application. The Memo of Appeal and the Pleadings also do not contain the Jurisdictional facts to support such ground taken in the Review Application.

Learned ASGI has submitted that had such a pleading been taken with regards to procedural error in the Writ Petition, suitable replies thereto would have been submitted. In absence of such pleadings there does not appear to be any error apparent on the face of the record or any sufficient reasons to review the Judgment.

25. As regards the 3rd Point also there is no specific pleading in the Writ Application on this issue. No arguments were advanced before the Writ Court. Even in the Division Bench there is no pleading with regards to Rule 6 and Rule 8 of the Colliery Control Rules, 2004.

Moreover, during course of hearing, this Court was examining the correctness of the Policy Decision for holding auction for distribution of natural resources, namely coal. During course of argument, judgments rendered by the Hon’ble Apex Court in respect to distribution of Natural Resources / State Largesse was considered taking into account the Judgments of the Apex Court in the case of Manohar Lal Sharma (supra), State of Jharkhand Vs. Ashok Kumar Dangi (supra) and the clarification given by the Apex Court exercising Advisory Jurisdiction in the matter of Special Reference No. 1 of 2012 reported in (2012) 10 SCC 1.

This Court has therefore not committed any error of record.

26. So far as the 4th Point raised by Ld. Sr. Counsel appearing for the Petitioner regarding equitable distribution of resources under Article 39(b) read with Article 14 of the Constitution of India, the Division Bench has noticed the argument of the Learned Advocate as also the Respondents and reference of Article 39(b) finds mention in the Judgment. So far as plea of arbitrariness of the Policy has been noticed by the Division Bench in different paragraphs of the Judgment and therefore there has been no error of record while deciding the appeal by this Court. Paragraph 20 of the Judgment would also reflect that arguments on this issue have been noticed.

27. As regards the 5th Point for reviewing the Judgment, the plea raised by the Ld. Sr. Counsel is not at all justified. There has been no unreasonable restriction on Fundamental Right to carry business upon the Petitioner. The Ld. Sr. Counsel for the Petitioner has himself submitted that 59 Hard Coke Units out of 110 Units participated in Linkage Auction.

This submission itself demonstrates the fact that there has been no unreasonable restriction imposed. All the members of the Petitioner Association were free to participate in the Linkage Auction of Coking Coal and Units interested have participated.

28. The last argument of the Ld. Sr. Counsel for the Petitioner with regards to Point No. 6 is also not tenable as perusal of paragraphs 22 and 23 of the Judgment would reveal that consumers of different industries falling under the same category of the Appellant have been allowed. The contention of the

Appellant that there should have been exclusive category for Hard Coke Units only cannot be accepted being a policy decision of Government of India.

29. We have carefully examined the plea raised by the Ld. Sr. Counsel for the Petitioner in the light of the provisions contained in Section 114 read with Order 47 Rule 1 of the CPC for which the application has been made and this Court is of the opinion that there being no error apparent on the face of the record in the Judgment under review.

30. The judgment cited by the Ld. Sr. Counsel for the Petitioner is not applicable in view of the discussions made hereinabove.

31. Recently, the Hon’ble Apex Court in the case of Sanjay Kumar Agarwal v. State Tax Officer, (2024) 2 SCC 362, has reiterated the principles to be applied in Review. For brevity, Para-16 of the same is quoted hereinbelow:

“16. The gist of the aforestated decisions is that:

16.1. A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

16.2. A judgment pronounced by the court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

16.3. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

16.4. In exercise of the jurisdiction under Order 47 Rule 1CPC, it is not permissible for an erroneous decision to be “reheard and corrected”.

16.5. A review petition has a limited purpose and cannot be allowed to be “an appeal in disguise”.

16.6. Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided

16.7. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

16.8. Even the change in law or subsequent decision/judgment of a coordinate or larger Bench by itself cannot be regarded as a ground for review.”

32. Having regard to the aforesaid discussions and the principles laid down by the Hon’ble Apex Court, we don’t find any error apparent on the face of the record in the Judgment under review; accordingly, the same is liable to be, and, is hereby, dismissed.

33. However, there shall be no order to cost. Pending I.A., if any, is also closed.