

(2010) 05 DEL CK 0339

In the Delhi High Court

Case No : Writ Petition (C) No. 7135 of 2008 and CMs 13784/08, 5035 and 13945 of 2009

Prakash Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 DEL CK 0339

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : A. Sharan, B.R. Menon, Alok Singh, Divya Kesar and Ashwini Kumar, for the Appellant; Anjana Gosain, S. Fatima for UOI, Atul Jha, for Respondent No. 3, Kailash Vasdev Manoj Sharma, Kapil Kaushik, Sumit Bhardwaj for Respondent No. 4, Arvind Nigam S.K. Mishra, Adil Ali and Ashutosh, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The challenge in this petition under Article 226 of the Constitution by Prakash Industries Ltd. ("PIL") is to a letter dated 6th February, 2008 issued by the Government of India, Ministry of Coal allocating 73.85 MT of coal reserves to M/s S.K.S. Ispat & Power Ltd. ("SKS"), Respondent No. 4 herein. The further prayer is for a direction to the Ministry of Coal to allocate the non-coking coal block to both the Petitioner, PIL and Respondent No. 4 (on the basis of the capacity of the proposed power plant) as recommended by the Government of Chhattisgarh (Respondent No. 3) on 18th June, 2007.

Background Facts

2. The background facts are that on 6th November, 2006, Respondent No. 1 through Ministry of Coal advertised a list of 38 coal blocks for captive coal mining for allocation to companies engaged in the generation of power, production of iron and steel and production of cement. 15 out of the 38 coal blocks were earmarked for power generation. The remaining 23 blocks were to be made

available for other specified end-uses like production of iron and steel and production of cement.

3. PIL states that it was incorporated in the year 1980, and is engaged in the business of manufacturing sponge iron, power co-generation, steel (blooms and billets) etc. PIL states that it has developed a fully integrated Steel Plant at Champa in Chhattisgarh which commenced production in 1993. The original installed capacity was 4 LTPA of sponge iron, 1.6 LTPA of liquid steel, 1.5 LTPA of structural steel along with 12 MW power co-generation.

4. On 7th January, 2005, PIL entered into a Memorandum of Understanding (MOU) with the Government of Chhattisgarh (Respondent No. 3) for setting up of a 190 MW coal based captive power plant with a proposed investment of Rs. 1017 crores.

5. Pursuant to an advertisement issued by Respondent No. 1, the Petitioner on 12th January 2007 applied for allocation of non-coking coal block for its proposed power plant at Fatehpur, in Chhattisgarh. In its application PIL indicated that the coal was required for meeting its part requirement for the power plant of 625 MW capacity. The power plant project was to be executed in phases. The first phase of 250 MW was to be commissioned in April 2010 and second phase of 250 MW in April 2011.

6. On 12th January, 2007 Respondent No. 4 SKS also applied pursuant to the same advertisement dated 6th November 2006 for allocation of a non-coking coal block. It was indicated in the application that the power generation capacity of its proposed power plant was 1000 MW+100 MW, i.e., 1100 MW.

7. PIL planned to expand its facilities in Chhattisgarh where it proposed to set up a coal based thermal power plant having a power generation capacity of 500 MW thus having a combined capacity of 690 MW at an approximate project cost of Rs. 3,218.75 crores. Accordingly, another MOU was entered into by PIL with Respondent No. 3 on 18th June, 2007 for an integrated steel plant with additional annual capacity/unit of 1.2 mTPA at a cost of Rs. 440 crores and a captive power plant (thermal) of 500 MW at a cost of Rs. 1625 crores.

8. In the meanwhile on 24th January 2007, Respondent No. 4 entered into an MOU with Respondent No. 3 for setting up of a power plant having a capacity of 600 MW.

9. Respondent No. 1 appointed a Screening Committee, Respondent No. 2 herein, to examine the applications made pursuant to the advertisement dated 6th November 2006. It held meetings between June and September 2007 and considered the applications filed by the both the Petitioner as well as Respondent No. 4. On 6th November, 2007 the Respondent No. 1 wrote to both the Petitioner as well as Respondent No. 4 informing them that the central government was contemplating a joint allocation of the Fatehpur non-coking coal block in Chhattisgarh in favour of both the Petitioner as well as Respondent No. 4 for

meeting their proportionate requirement of coal. It was stated that based on mineable capacity of the total geological reserves and requirement of coal as assessed by the Central Mine Planning and Design Institute Ltd. (CMPDIL), the tentative proportionate share of the reserves was as indicated in the form of a table a copy of which read:

Blocks

Geological Reserve(Mt)

Tentative Mine Capacity (Mtpa)

Proposed for Company

Coal Requirement For 30 yrs (Mt)

Proportionate share of reserves of coal MT

Fatehpur

120

3/0

M/s SKS Ispat Power Ltd.

$4.6 \times 30 = 138$ For 1000 MW (IPP)

73.85

M/s Prakash Industries Ltd.

$2.875 \times 30 = 86.25$ for 625 MW (CPP)

46.15

Total

224.25

10. The first option indicated in the said letter was that mining could be carried out:

in consortium of two or more allocatees in any given block by Constituting a joint venture/special purpose vehicle company wherein there would be equity stake and management participation from all the consortium partners. The production from the mine could be distributed among the consortium partners in proportion to their assessed requirement at the time of allocation, net of linkages, if any. The equity shares should be held in proportion to the assessed requirement of all the consortium partners.

11. The second option was that one of the allocatee companies be designated as the leader for the block and the other allocatees be treated as associates. In such event, the mining operation would be carried out by the leader and the

production from the mine would be shared between the leader and the associates in the ratio of their respective requirements at the time of allocation.

12. The third option was that for each block, one allocattee was chosen as the leader and other allocattees as associates. The CIL would have to arrange the transfer of coal from the leader to the associates as per the ratio determined at the time of allocation.

13. It was stated in the letter dated 6th November 2007 that the Petitioner and Respondent No. 4 should discuss the modalities mutually acceptable to them and finalise a legally binding and enforceable agreement opting for any one of the three alternatives. It was stated that the agreement was required to be in conformity with the provisions of the Coal Mines (Nationalisation) Act, 1973 [CMNA] and the guidelines issued in this regard. The options were directed to be exercised within thirty days.

14. On 13th November, 2007 PIL wrote to Respondent No. 1 drawing the latter's attention to the fact that the ratio of share of coal reserves has not been specified by the Screening Committee (Respondent No. 2) while deciding the allocation of the Fatehpur coal block. Secondly, PIL had proposed to set up a thermal power Plant of 625 MW capacity whereas Respondent No. 4 had proposed to set up a power plant of 600 MW and not 1000 MW. It was stated that coal reserves should be allocated to PIL and the Respondent No. 4 in the ratio of the proposed capacity of their respective power plants. It was pointed out that any allocation of share on the basis of 1000 MW capacity of Respondent No. 4 would amount to excess allocation of coal beyond the consumption of 600 MW and, therefore, would also not be in consonance with the policy and purpose of captive mining for which the coal block was being allocated. Reference was also made by the PIL to the correspondence between Chhattisgarh Government and the Chhattisgarh State Electricity Board (CSEB) with Respondent No. 4 on 1st April, 2007, 10th July, 2007 and 5th September, 2007 which showed that the power plant of Respondent No. 4 as proposed was only of 600 MW capacity. The Petitioner wrote another letter on 15th November, 2007 followed by various personal visits to Respondent No. 1.

15. On 22nd January, 2008 Respondent No. 1 asked the Petitioner and Respondent No. 4 to attend a meeting on 30th January, 2008 in the office of the Joint Secretary, (Coal) "to discuss the issue relating to formation of Joint Venture Agreement and for taking final decision relating to allocation of Coal Block". Thereafter on 29th January, 2008 the Petitioner and Respondent No. 4 entered into a Joint Venture Agreement (JVA) with a view to complying with the directions of Respondent No. 1. According to the Petitioner, this was done on the assurance given over to it "that a necessary correction shall be made and proportionate allocation should also be made in favour of the parties on the basis of actual proposed power generation capacity of their plants." Thereafter on 6th February 2008, the impugned letter was issued by the Respondent No. 1 in the manner indicated hereinbefore.

16. The Petitioner waited for several months and thereafter on 28th August, 2008 wrote to Respondent No. 1 seeking redressal of its grievance, for necessary correction to be made and a revised allocation letter to be issued. Thereafter the present petition was filed. On 3rd October 2008, an interim order was passed by this Court to the effect that the "case of the Petitioner pursuant to the communication dated 06.02. 2008 shall not be processed further." The said interim order has continued since.

Applications to implead Respondents 5 and 6

17. CM No. 5035 of 2009 was filed by the Petitioner on 15th April 2009 soon after the hearing of the case on 25th March, 2009. PIL by this application sought to amend the writ petition. It was stated in the said application, inter alia, as under:

3. That it has come to the knowledge of the Petitioner that the Respondent No. 4 Company is promoted by the family of Sh. Subodh Kant Sahai, Union Minister of State for Food Processing Industries (Independent Charge).

4. It is submitted that the said fact could only be confirmed when the Respondent No. 1 filed its Counter Affidavit in another case being CWP No. 6449 of 2008 wherein Sh. Sudhir K. Sahai, brother of said Sh. Subodh Kant Sahai has been shown to attend a meeting of the Screening Committee on 06.02.2008 as a Director of the Respondent No. 4 Company.

5. It is submitted that the representatives of the Respondent No. 4, with an object to avail favours to the Respondent No. 4, have been holding out before the various Governmental authorities that SKS stands for Subodh Kant Sahai.

6. That under the circumstances it is clear that the Respondent No. 1 & 2 are acting in a malafide and partisan manner and in collusion with Respondent No. 4 allocated the coal blocks to Respondent No. 4 under influence of Sh. Subodh Kant Sahai.

18. The Petitioner sought to insert paras 38a, 38b and 38c in the writ petition and add grounds P and Q which read as under:

P. Because the Respondent Nos. 1 & 2 have acted malafide in allocating coal blocks to Respondent No. 4, under political influence of Sh. Subodh Kant Sahai, the Union Minister of State for Food Processing Industries (Independent Charge)."

Q. Because the Respondent No. 4 and proposed Respondent Nos. 5 & 6 have created a corporate veil around Respondent No. 4 to mislead and defraud the general public and thereby gain an undue and illegal advantage by influencing the Respondent Nos. 1 & 2 by not showing in public documents that the proposed Respondent No. 6 is not a director of the company but at the same time before Respondent Nos. 1 and 2 holding out that he is a director of Respondent No. 4 and as such gain undue and malafide favours from the said respondents.

19. On the above basis, the Petitioner sought to implead Mr. Subodh Kant Sahai, as Respondent No. 5 and his brother Mr. Sudhir Kant Sahai, who is a Director of Respondent No. 4, as Respondent No. 6.

20. Notice was issued on the above application on 17th April, 2009. Replies have been filed by the proposed Respondent Nos. 5 and 6 to the aforementioned application.

21. CM No. 13945 of 2009 was filed by PIL for taking on record an additional affidavit dated 27th October, 2009 to include a reference to the minutes of the 36th meeting of the Screening Committee held on 7-8th February, 2008 and 3rd July, 2008 which considered the allocation of 23 coal blocks earmarked for the non-power sector. Notice was issued on this application as well on 7th November 2009.

Case of the Petitioner

22. Mr. Amarendra Sharan, learned Senior counsel for the Petitioner submits that the central question involved is the legality of the allocation made by Respondent No. 1 of a larger percentage of the coal block in favour of Respondent No. 4. The petitioner assails the decision, made by the impugned letter dated 6th February 2008, as being discriminatory, arbitrary and vitiated by malice in law and in fact. It is submitted that PIL was compelled by the circumstances into entering into a JVA reflecting the shares of the Petitioner and Respondent No. 4 as 625 MW and 1000 MW. At the time of signing the JVA the petitioner's representations dated 13th and 16th November 2007 were pending with Respondent No. 1. Therefore the signing of the JVA did not amount to waiver by PIL of its right to challenge the allocation so made. In this connection, reliance was placed on the judgments of *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, *Behram Khurshed Pesikaka Vs. The State of Bombay*, and *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*,

23. Mr. Sharan submitted that the allocation is not based on relevant materials. Importantly, it is inconsistent with the recommendation made by State Government on 16th June, 2007 in favour of the Respondent No. 4 for a thermal power plant of 600 MW capacity. It is submitted that in all the documents emanating from Respondent No. 4, the request was for allocation of a coal block for its 600 MW thermal power plant. At the presentation made by Respondent No. 4 before the Screening Committee which met on 20th and 23rd June 2007, the capacity projected of the proposed thermal power plant was of 600 MW only. Both in its letter dated 5th September, 2007 addressed to Respondent No. 1 and in the MOU entered into with Respondent No. 3 the projected capacity of the power plant of Respondent No. 4 was only 600 MW.

24. Thirdly, PIL contests the averment in the counter affidavit of Respondent No. 1 that by a letter dated 5th September 2007, Respondent No. 3 had "superseded" its earlier recommendation dated 18th June 2007 and indicated the proposed end use plant capacity of Respondent No. 4 as 1000 MW. The petitioner

relies on a response dated 22nd November 2008 received by it from Respondent No. 3 pursuant to an application made by PIL under the Right to Information Act, 2005 ("RTI Act") confirming that it had not made a further recommendation after 18th June 2007. The petitioner PIL states that in response to a query to it by Respondent No. 1 about the status of preparedness of the various projects in the State of Chhattisgarh, Respondent No. 3 had written to Respondent No. 1 on 5th September 2007 indicating inter alia the information relating to Respondent No. 4 and stating in the "remarks" column that an MOU had been signed by Respondent No. 4 and Respondent No. 3 on 24th January 2001 for a 600 MW power plant. The proceedings of the meeting of the Screening Committee, Respondent No. 2 herein, held on 13th September 2007 did not reflect that any representative of the State of Chhattisgarh was present and in any event a recommendation of such representative could not supersede the MOU signed between Respondent Nos. 3 and 4. It is submitted that by determining the proportionate share of Respondent No. 4 on the basis that the capacity of its thermal power plant was 1000 MW, Respondent No. 1 had committed a manifest error.

25. It is further submitted by Mr. Sharan that the final allocation order issued on 6th February, 2008 made no mention of the objections raised by PIL in its letters of 13th and 16th November 2007. In any event, the said order contained no reasons why the share of PIL was reduced by nearly 13%. Reliance was placed on the decisions in Union of India and another Vs. G. Ganayutham (Dead) by LRs., and Common Cause A Registered Society Vs. Union of India and others,

26. Mr. Sharan submitted that the JVA has nothing to do with the allocation of the coal block but only extraction of coal. It was in the nature of a quasi-statutory contract. It is submitted that the allocation finally made to Respondent No. 4, was contrary to the recommendations of Respondent No. 3. With Respondent No. 3 confirming that it had not reviewed its recommendation made by its letter of 18th June 2007 the very basis of the allocation made in the impugned letter dated 6th February 2008 was erroneous. It is submitted that on account of the illegal excess allocation of non-coking coal block by Respondent No. 1 to Respondent No. 4 the rightful share of the petitioner in non-coking coal block has been illegally curtailed. This would result in its power plant not being operated to its optimal capacity and might result in the failure of its project.

27. Lastly, in support of the plea of malafides both in law as well as fact, it is pointed out by Mr. Sharan that Mr. Subodh Kant Sahai (proposed Respondent No. 5), a Union Minister for State in the Ministry of Food Processing Industries (Independent Charge) wrote a letter dated 5th February 2008 to the Prime Minister asking for his personal intervention as regards the application made by Respondent No. 4 for two coal blocks. Immediately on the next day, i.e., 6th February 2008, the Prime Minister's Office (PMO) forwarded the said letter to the Respondent No. 1 "for action as appropriate." It is submitted that the speed with which on 6th February, 2008 itself the final letter of allocation was issued

indicated the extent to which Respondent No. 4 could bring influence to have the allocation made in its favour. The Respondent No. 4 admitted that the Minister's brother Mr. Sudhir Kant Sahai (proposed Respondent No. 6) was a Director in the company and had in that capacity attended the meeting of the Screening Committee on 7th February 2008. In support of the plea of legal and factual malafides, reliance was placed on the decisions in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, and *Dr. S.P. Kapoor Vs. State of Himachal Pradesh and Others*,

28. In the additional written submissions of the Petitioner, it is contended that "SKS was imposed upon the Petitioner by the Respondent No. 1." It is also said that "Respondent No. 1 threatened the Petitioner that if it did not sign the JVA it will cancel the allocation as such the Petitioner had no choice but to sign the JVA to avail its quota of coal." It is further submitted as under:

Sh. Sudhir K Sahai who has been designated as a Director of Respondent No. 4 though his name does not appear in the returns filed before the ROC, has been holding out to public at large and Government authorities that SKS stands for Subodh Kant Sahai.

29. The contention of Respondent No. 4 that SKS stands for "Shree Krishna Structures" is dismissed of as "no good inasmuch as that being so there was no need to change the name to SKS in the year 2000. It is apparent that the said change was effected only with a view to avail political benefits by holding out that SKS stands for Subodh Kant Sahai."

Case of the Respondents

30. On behalf of Respondent No. 4, Mr. Kailash Vasdev, learned Senior counsel submitted that as per the Mega Power Policy of the Ministry of Power, Government of India, any independent power project of 1000 MW and above would be considered for exemption from customs duty. It is with this view that Respondent No. 4 submitted a proposal to Respondent No. 3 Government of Chhatisgarh on 24th October, 2006 for setting up of a thermal power plant of that capacity, much before the advertisement inviting bids for the coal blocks. Reference is made to the proposal dated 24th October, 2006 and the letter dated 11th December, 2006 of the Ministry of Commerce and Industry, Government of India issuing an IEM Code to Respondent No. 4 for 1000 MW coal based thermal power plant. On 13th December, 2006 Respondent No. 4 informed the Principal Secretary (Energy) of Respondent No. 3 that it had completed the preparation of the detailed project report for setting up a power plant with a capacity of 500 x 2 MW (i.e 1000 MW). This was acknowledged on 6th January 2007 by Respondent No. 3.

31. Mr. Vasdev referred to the application of Respondent No. 4 in which it was indicated that an extent of 500 MW capacity would be completed in the first phase within 24 months and the remaining 500 MW within 24 months of the

commissioning of the first phase. It is pointed out that Clause 27 of the MOU dated 24th January, 2007 entered into between Respondents No. 3 and 4 states:

In the event of any increase in the installed capacity as mentioned above or any expanded capacity to the existing unit(s) under the Project, a fresh MOU shall be signed for such increase in the capacity as per prevailing policies of the Government, at that time.

32. Further, in a power point representation made on 17th August, 2007 to the Screening Committee, Respondent No. 4 stated that "600 MW IPP shall be expanded to 1100 MW in II Phase."

33. It is submitted by Mr. Vasdev that the Petitioner had accepted the offer made by Respondent No. 1 in the allocation letter dated 6th February, 2008 and consequent thereto on 19th May, 2008 a Joint Venture Company in the name of Fatehpur Coal Mining Company Ltd. (FCMCL) was incorporated jointly by the Petitioner and the Respondent No. 4. Two board meetings of the Directors of FCMCL were held on 28th May and 31st July, 2008. Reference was made to the several steps taken by Respondent No. 4 including inviting tenders for an EPC contract, getting land allotted by the Respondent No. 3 and allocation of water on 4th October, 2008. It is pointed out that Respondent No. 4 has accepted such allotment and invested several crores of rupees for executing the power plant project. It is pointed out that PIL has already been declared a willful defaulter in a list prepared by the Reserve Bank of India (RBI). PIL was refusing to provide bank guarantee to the Joint Venture Company.

34. Mr. Vasdev refers to the statement made by the Auditors of PIL in their report for the period ended 31st March 2007 to the effect that PIL "has defaulted in repayment of dues to financial institutions, banks and debenture holders aggregating to Rs. 40,533 lakhs (excluding interest). The annexure to the report also lists out the amounts due on account of excise duty, entry tax, income tax and energy cess. It is contended that PIL can "never raise the required resources in view of their past track record and financial position of the company. Hence, they are trying to garner more and more coal blocks and at the same time resorting to unfair practices to stall the process of allotment to other industries."

35. Finally, it is pointed out that the JVA was executed on 29th January, 2008, the final allotment letter was issued on 6th February, 2008 and the present writ petition was filed only on 29th September, 2008. The allegation of malafides is denied.

36. Mr. Arvind Nigam, Senior Advocate appeared on behalf of the proposed Respondent No. 5 vehemently denied the allegations stating that the very basis of the inference that the initial SKS stand for Subodh Kant Sahai was false since those initials stood for Shree Krishna Structures which had initially been promoted as a private limited company in April, 1995 by Sri Anil Gupta and Deepak Gupta, both of whom were devotees of Lord Krishna. Respondent No. 5 categorically stated that he had nothing to do with the Respondent No. 4

company. As regards the letter dated 5th February, 2008 written by the proposed Respondent No. 5 and the letter dated 6th February, 2008 from the PMO to Respondent No. 1 it is stated as under:

It is most respectfully submitted that replying Respondent being a public figure and representative from Parliament Constituency in the State of Jharkhand is naturally concerned with development of his constituency. SKS Ispat & Power Ltd. proposed to establish Steel Plants in the State of Jharkhand and Chhattisgarh. The replying Respondent on considering of potential development and scope of generation of employment in the State had requested that the application filed by the SKS Ispat & Power for allotment of Coal Blocks for proposed Steel Plant in the State of Jharkhand be duly considered.

37. Mr. Nigam pointed out that in view of the fact that the recommendation was not for allocation of coal blocks for the power project of SKS in Chhattisgarh but for its steel plant in Jharkhand, the allegations made by PIL were wholly misconceived. The letter written on 5th February, 2008 was considered by the 36th Screening Committee which was considering allocation of coal blocks for non-power sectors. The decision to jointly allocate the Fatehpur coal block to both PIL and Respondent No. 4 had already been taken by the Screening Committee at the meeting held on 13th September, 2007 and this was communicated to both of them on 6th November, 2007 long before the letter dated 6th February, 2008. It is reiterated that PIL's allegation that Respondent No. 4 was promoted by the family of Respondent No. 5 was baseless and malicious and the petition ought to be rejected with exemplary costs.

38. Appearing for Respondent No. 1, Ms. Anjana Gosain, learned Counsel referred to the detailed affidavit filed by it. She also referred to a subsequent additional affidavit dated 27th October 2009, in which it was clarified by Respondent No. 1 that the statement that Respondent No. 3 had by its letter dated 5th September 2007 "superseded" its earlier decision dated 18th June 2007 was an error. It was clarified that Respondent No. 3 had by its letter dated 5th September 2007 furnished a status of preparedness of the end use projects of applicants and "the decision to recommend 1000 MW for the end use plant of Respondent No. 4 is based on the recommendations made by the State Govt. and the capacity indicated in the application of Respondent No. 4." Ms. Gosain submitted that no illegality had been committed as the joint allocation was strictly in terms of the policy. PIL and Respondent No. 4 had formed a joint venture company preceded by a JVA incorporating the very percentages of allocation that had been offered to them jointly by the letter dated 6th November 2007. The impugned letter dated 6th February 2008 was merely consequential and did not suffer from any illegality. She denied that any pressure was brought upon PIL to agree to the JVA as alleged.

39. Respondent No. 3 has filed a counter affidavit reiterating that its representative was present at the meeting of the Screening Committee on 13th September 2007. It confirmed having sent the letter dated 5th September 2007

giving the status of preparedness of the end use projects as requested by Respondent No. 1 on 2nd August 2007.

PIL under no compulsion to enter into JVA with SKS

40. The entire thrust of PIL's argument has been that it was arm-twisted into signing a JVA with Respondent No. 4 and that it was compelled to follow that up with forming a joint venture company with Respondent No. 4. Yet, till date PIL has not withdrawn from the joint venture and the joint venture company FCMCL continues with both PIL and Respondent No. 4 holding the same equity shareholding which mirrors the share of their coal allocation. This factor is significant in evaluating PIL's submissions about the unfairness of the coal allocation made by the impugned letter dated 6th February 2008.

41. The second factor is that the basis on which a joint allocation was made by Respondent No. 1 to both PIL and Respondent No. 4 is the guidelines issued by Respondent No. 1 for allocation of captive coal blocks. Para 7 of the guidelines which are relevant for the present case reads as under:

7. Allotment of Captive blocks to consortium of group of companies

(i) If requirement of coal by an applicant does not match with the reserves in a natural block then clubbing of requirements may be resorted to and in case a number of applicant companies form a consortium for utilization of a block for their captive use, the same may be considered for allocation under a legally tenable arrangement.

(ii) More than one eligible and deserving companies will be allowed to do captive mining of coal by forming a joint venture coal mining company. The constituent applicant companies would hold equity in the joint venture company in proportion to their assessed requirement of coal and the coal produced would be exclusively consumed in their respective end use projects. Distribution of coal would be in proportion to their respective assessed requirements.

(iii) One or more companies (to be called leader companies) from amongst the selected, could be allowed to do mining of coal in one or more captive blocks and the other companies (to be called associate companies) would get coal from the captive block in proportion to their assessed requirements. The local Coal India subsidiary could facilitate this arrangement by taking a nominal service charge. Leader companies will deliver coal to associate companies at a transfer prices to be determined by the Central Government.

42. The above guidelines have not been challenged by PIL. On the other hand, when PIL applied on 12th January 2007 for allocation of a captive coal block pursuant to the advertisement issued by Respondent No. 1 on 6th November 2006, it was aware that the guidelines would apply. Consistent with the above guidelines both Respondent No. 4 and PIL were informed by Respondent No. 1 on 6th November 2007 that it was proposed to make a joint allocation to both of them. The letter dated 6th November, 2007 clearly indicated the proposed

capacity of the thermal power plant of Respondent No. 4 as 1000 MW and that of PIL as 625 MW. It also clearly indicated the proportional share of coal reserves as 73.85 MT for Respondent No. 4 and 46.15 MT for PIL.

43. PIL wrote two letters dated 13th and 16th November 2007 raising the plea that Respondent No. 4 was proposing to set up a 600 MW Power Plant and that it was on that basis that the Screening Committee and Respondent No. 3 had proceeded. It asked that the coal allocation be made in the ratio of 625 MW: 600 MW. Having taken that stand, when it was called by Respondent No. 1 by the letter dated 22nd January 2008 to the negotiating table PIL gave up its opposition. This is apparent from the fact that it entered into the JVA on 29th January 2008. On that basis the joint allocation was made on 6th February 2008.

44. A copy of the Joint Venture Agreement dated 29th January, 2008 entered into between PIL and Respondent No. 4 was placed on record. In the preamble, it is clearly stated as under:

The mineable capacity of the total geological reserves as assessed by CMPDIL, the proportionate share of reserves allocated to the parties is indicated under:

Block

Fatehpur

Geological Reserve

120 Million Tons

Tentative Mine Capacity

3 Million Tons per Annum

Name of the Company

Coal requirement for 30 Years (Mill Tons)

Proportionate Share of Reserves of Coal (Mill Tons)

SKS Ispat and Power Limited

4.6X30=138 Mill Tons for 1000 MW Independent Power Plant

73.85

Prakash Industries Limited

2.875X30=86.25 Mill Tons for 625 MW Captive Power Plant.

46.15

In case of any amendment/change in sharing of coal ratio, by Ministry of Coal in future, in such case the JVA shall be amended accordingly.

45. The above table is a virtual reproduction what was contended in the letter

dated 6th November, 2007. For good measure in Clause 1 (A) it was stated as under:

1 (A) AGREEMENT ON OPTION TO CARRY OUT MINING: The parties have agreed to chose the Option-I as stated in the annexure-I, whereby the mining of allotted block shall be carried out in a joint venture by the parties through a special purpose vehicle company (hereinafter referred to as "Joint Venture Company" and/or "JVC") wherein both the parties shall hold equity stake and management participation. The production from the mine shall be shared in proportion to the assessed requirements at the time of allocation or amended from time to time by the Ministry of Coal, Govt. of India as stated above. The equity shares shall also be held in proportion to the assessed requirement.

46. PIL did not protest at all at that stage. It is impossible to believe that there was compulsion on PIL to enter into the above JVA. On the basis of the said JVA a letter was addressed jointly by PIL and Respondent No. 4 to Respondent No. 1 on 29th January 2008 enclosing a copy of the said agreement. The said letter, signed by both PIL and SKS, reads as under:

The Under Secretary CA-1 29th January, 2008 Government of India Ministry of Coal Shastri Bhawan New Delhi 110001.

Sub: Allotment of Fatehpur Non-Coking Coal Block in the State of Chhattisgarh-Joint Venture Agreement thereof

Dear Sir,

This is with reference to your letter No. 38011/2007-CA-I dated 22nd January, 2008 vide which you have called a meeting on 30th January, 2008 at 11.00 a.m. in the Chamber of Joint Secretary (Coal) to discuss the issue relating to formation of Joint Venture Agreement for the allotted coal block.

In this regard, we would like to inform your goodself that a Joint Venture Agreement has been executed on 29th January, 2008 as per the copy of Joint Venture Agreement in original is enclosed herewith for your kind perusal and further action please.

Thanking you, Yours Truly For Prakash Industries Ltd. for SKS Ispat & Power Ltd.

Sd. Sd. (G.L. Mohta) (Ravindranath Ratho) Director Director

47. On the basis of the above JVA, the coal block allocation was made by Respondent No. 1 jointly to PIL and SKS by the impugned letter dated 6th February 2008, the contents of which have already been extracted. Not only did PIL not protest at that stage but it went ahead and formed the joint venture company with SKS on 19th May 2008. The questioning of the allocation was done much later on 28th August 2008.

48. In the circumstances, this Court holds that there is absolutely no basis for

the challenge by PIL to the validity of the coal block allocation made by Respondent No. 1 by the impugned letter dated 6th February 2008. There is no merit in the submission regarding PIL having been compelled to enter into the JVA. No illegality was committed by Respondent No. 1 in issuing the above letter. It was consistent with policy and guidelines which were known to both PIL and Respondent No. 4. The series of subsequent events completely demolishes the case of PIL that it was arm-twisted into entering into a JVA with Respondent No. 4.

Proceedings before the Screening Committee

49. This Court is also not impressed with the submission on behalf of PIL that the 35th Screening Committee which considered the applications of the Petitioner and Respondent No. 4 on 13th September 2007 did not have the full facts before it. In the counter affidavit filed by the Respondent No. 1 in para 10, it is stated as under:

10. Based on the data furnished by the applicants, and the feedback received from the State Governments and the Ministry of Power and CMPDIL, the Screening Committee assessed the applications having regard to matters such as techno-economic feasibility of end-use plant, past track record in execution of projects, financial and technical capabilities of applicant companies, recommendations of the State Governments and the Administrative Ministry concerned. Taking cognizance of the advice given by the Ministry of Power that in view of the capacity constraints in transmission network, power producers should limit plant capacity to 500 to 1000 MW, the Committee agreed that this should be taken as the guiding principle. Therefore, 1000 MW was taken as the maximum limit for allocation of coal blocks and the shares of geological reserves in the block, in case the capacity indicate in the application is higher than the maximum limit suggested by Ministry of Power. In view of large number of applications and limited number of blocks on offer, the Committee felt that it would be reasonable to have a satisfaction level in the range of around 40 to 70% to the extent feasible.

50. This Court is unable to find any basis for the criticism of the manner in which the Screening Committee processed the applications and took its decisions. There was nothing arbitrary or irrational about the decision to make a joint allocation to PIL and SKS in the ratio of their respective power plant capacities. A careful examination of the chart enclosed with the letter dated 5th September 2007 from Respondent No. 3 to Respondent No. 1 shows that in Column No. 3 which is titled "proposed capacity of end use plant" the figure mentioned against the name of SKS at Sl. No. 173 is 1100 MW. In Column No. 7 titled "Total requirement (as per feedback form)" the figure indicated is 1000 MW. The last Column Remarks no doubt mentions only the MOU dated 24th January 2007 but what is not mentioned there is that by that date the Respondent No. 4 had submitted a proposal (on 24th October 2006) to Respondent No. 3 for a 1200 MW power plant and it had on 11th December 2006 been issued an IEM Code by

the Ministry of Commerce for a 1000 MW coal based thermal power plant. In addition Respondent No. 3 confirms that its representative was present at the meeting of the 35th Screening Committee on 13th September 2007.

51. Therefore, no fault can be found with the decision of the Screening Committee to make a joint allocation to PIL and Respondent No. 4 in the ratio of their respective power plant capacities. The parties have acted upon the said decision and taken several steps pursuant thereto. It is now not possible to accept the case of PIL to issue directions to the Respondents to go back to an anterior stage and make allocation of the coal blocks on the basis of recommendation made by the Respondent No. 3 on 18th June, 2007.

No basis for the case of malafides

52. The above two being the only prayers made in the writ petition even after its amendment, there is no scope for examining any other issue. However, since extensive arguments were advanced by Mr. Sharan learned senior counsel for the Petitioner that the allocation in favour of Respondent No. 4 was malafide, this Court is required to deal with that issue as well.

53. The basis for the claim of malafides is that according to PIL, Respondent No. 4 has been promoted by the family of proposed Respondent No. 5 who is a Minister of State in the Union Cabinet and that Respondent No. 5 went out of his way to get a decision in favour Respondent No. 4 in which his brother, the proposed Respondent No. 6, was a Director.

54. After examining the records and considering the submissions of the learned Senior counsel for the Petitioner, this Court is of the view that PIL has proceeded on a wholly erroneous premise. It is clear that the initials "SKS" in the name of Respondent No. 4 do not stand for Subodh Kant Sahai. With Respondent No. 4 itself explaining the history of its formation, this allegation can only be termed a product of the fanciful imagination of PIL. Further, not a scrap of paper has been produced by PIL to prove its claim that Respondent No. 4 was promoted by the family of Respondent No. 5. This has turned out to be a preposterous claim made on affidavit by PIL without any sensible responsibility.

55. The other plank of the plea of malafides is the letter dated 5th February 2008 written by the proposed Respondent No. 5 to the Prime Minister, the complete text of which reads as under:

05th February, 2008

Respected Dr. Sahab

I would like to bring to your kind notice that M/s SKS Ispat and Power Limited have applied for two Coal Blocks for their Steel Plants in the State of Chattisgarh and Jharkhand. A brief note in this regard is enclosed.

I shall be grateful for your personal intervention in this matter.

Yours sincerely,

Sd./- (Subodh Kant Sahai)

56. It does not take much to realize that the above letter has nothing to do with the allocation of coal blocks for a power project. It specifically mentions allocation of coal blocks for steel plants to Respondent No. 4. Therefore, nothing also turns on the subsequent letter dated 6th February 2008 written by the PMO to the Coal Ministry. The decision to make the allocation to PIL and Respondent No. 4 jointly was made at the 35th meeting of the Screening Committee on 13th September 2007 long before the above letter dated 5th February 2008.

57. The presence of proposed Respondent No. 6 at the meeting of the 36th Screening Committee held on 7th February 2008 is made much of by PIL. But that meeting was not about making allocations to the power sector at all. The minutes of the said meeting show that it was concerned with allocations to the non-power sectors. It could not have influenced the decision to allocate coal blocks jointly to PIL and Respondent No. 4, which decision in any event was already taken at the previous meeting of the Screening Committee held on 13th September 2007.

58. The above facts show that PIL has set itself on a hopeless task of trying to join completely unconnected events to bring about a story of malafides. Not willing to accept that it has nothing to show for its allegations PIL has desperately persisted with this misconceived line even in its written submissions. PIL has needlessly dragged Respondent Nos. 5 and 6 into this litigation knowing fully well that it would be unable to substantiate its case against them.

59. What is also a matter for concern is that PIL has managed to have an interim order in its favour for over eighteen months on the basis of averments which it has been unable to prove. The inescapable conclusion is that this petition is nothing but an abuse of the process of law. This case has consumed several extended hearing days thus resulting in wastage of valuable time of the court.

Conclusion

60. For the above reasons, this Court concludes that the present petition is an instance of a vexatious litigation that has wasted the precious time of the court. It should be dismissed with exemplary costs.

61. Accordingly, the writ petition and pending applications are dismissed with costs of Rs. 2.5 lakhs out of which Rs. 50,000/- will be paid by the Petitioner to Respondent Nos. 1 & 2 jointly and Rs. 50,000/- each to Respondent Nos. 3, 4 and proposed Respondent Nos. 5 and 6 respectively within a period of four weeks from today. The interim order stands vacated.