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**(2004) 05 JH CK 0035**

**In the Jharkhand High Court**

**Case No : Writ Petition (PIL) No. 4246 of 2003**

Praveen Kumar Agrawal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision : 21-05-2004**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation : (2004) 4 JCR 354**

**Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J**

**Bench : Division Bench**

**Advocate : D. Jerath, S.N. Prasad and M. Tandon, for the Appellant; A.K. Sinha, AG, A.K. Singh and B. Podder, R.K. Samarendra, A.K. Mehta, I. Sinha and R.K. Verma for the respondent 2, 3, 5, 7 and 8 and P.K. Prasad, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

P.K. Balasubramanyan, C.J.—The writ petitioner claims to be a social worker working for the benefit of the labourers in Sikni Colliery Area within the State of Jharkhand. The Bihar State Mineral Development Corporation was a Corporation controlled by the State of Bihar. On the reorganisation of the State under the Bihar Reorganisation Act, 2000, the Jharkhand State Mineral Development Corporation (hereinafter referred to as the JSMD) was formed and according to it, it is playing the role of a successor to the Bihar State Mineral Development Corporation, in so far as it relates to the State of Jharkhand. On 8.8.2002, the Department of Mines and Geology, Government of Jharkhand, issued a Global Notice inviting Expression of interest in mineral exploration, mineral development, mining and mineral based industries in the State of Jharkhand. The invitation for Expression of interest was in order to develop the mineral resources of Jharkhand on sustainable basis. The minerals/ores for which the Expression of interest was invited, were short listed in the notice as under :

"I. Iron Ore group, including BHJ/ BhQ/Blue Dust, Manganese, Chromite;

- II. Base metals (copper, lead and zinc).
- III. Industrial Minerals-Limestone, Dolomite and related minerals.
- IV. Diamond, Precious and Semiprecious Stones/Rocks/Minerals.
- V. Precious Metals/Ores.
- VI. Bauxite, Barytes. Kyanite. Fireclays and lithomarge.
- VII. Other Minerals/Rocks occurring in the State.
- VIII. Decorative, dimensional, building and ornamental stones.

Such other minerals not specified above subject to provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and other related enactments."

2. It is to be noted that the clause relating to other minerals not specified, was specifically made subject to the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and other related enactments. The broad framework of the scope of work/investment, including private investment and foreign direct investment routes, included as "item (X) " Mining and beneficiation of coal from the blocks/mines, which are likely to be allocated to the Jharkhand State Mineral Development Corporation Limited." Jharkhand State Mineral Development Corporation Limited, according to the writ petitioner, did not have any right to run a joint venture in coal. To put the matter beyond doubt, in a meeting of the Cabinet on 13.9.2002. the cabinet decided that coal should not be included in the notice inviting Expression of interest. The decision of the cabinet marked annexure-2 in the writ petition clearly specified that coal was excepted. The global tender in the light of the decision of the cabinet was published in various dailies and clause XII of that notice stated, "joint venture in mining sector (except coal) in different projects for execution/construction/operation/ marketing (anyone or combination of activities)". Yet another notice was published by the Jharkhand State Mineral Development Corporation offering to collaborate in development of captive coal mines and called upon interested persons to contact the Managing Director of Jharkhand State Mineral Development Corporation. Pursuant to this notice, the Jharkhand State Mineral Development Corporation entered into an agreement with respondent No. 7 on 23.7.2003. In the agreement, it was stated that Jharkhand State Mineral Development Corporation owned three coal mines and it further expected to get more mines from the Government of India/Coal India Limited. The Government of India, Ministry of Coal and Mines, Department of Coal, vide letter dated 12.12.2001, have allowed the State Government Companies or undertakings to do mining of coking and non-coking coal or lignite and research, either by open cast or underground methods anywhere in the country. The agreement proceeded to say that whereas the Jharkhand State Mineral Development Corporation through the Government of Jharkhand invited "Expression of Interest" for collaboration in the development of captive coal mines in a joint venture and pursuant to this, respondent No.7 had submitted a proposal to the

Jharkhand State Mineral Development Corporation for setting up a joint venture company for coal mining and marketing of coal, among other things. According to clause IV of Article 2 of the Agreement, the joint venture company to be formed by the Jharkhand State Mineral Development Corporation and respondent No, 7, the joint venture company .was to take up various activities with regard to coal mines and one of them was in respect of raw coal as and when permitted. According to the joint venture agreement, Jharkhand State Mineral Development Corporation was to hold only shares not exceeding 49 percent. The petitioner has approached this Court with the writ petition contending that the joint venture company in the circumstances, could not be allotted the right to exploit and market coal; that the joint venture agreement entered into was against the provisions of the Coal Mines Nationalization Act, 1973 and also against the decision of the Cabinet dated 13.9.2002 excluding coal. The further contention raised is that the agreement was bad for not having the required consent or permission from the State of Jharkhand or the Union of India. The petitioner further submits that the agreement entered into is against public interest and it was an attempt to exploit the State wealth for private gains. It was on this basis that the petitioner Piled the writ petition praying for the issue of an appropriate writ, order or direction commanding the Union of India and the State of Jharkhand to intervene and to take appropriate steps so that the agreement entered into between Jharkhand State Mineral Development Corporation and respondent No. 7 on 23.7.2003. is not given effect to. In short. the contention of the petitioner is that the agreement was against the national coal policy, against the provisions of the Nationalisation Act and against the decision of the Cabinet to exclude coal from the purview of such an agreement and hence the direction of this Court as prayed for is warranted.

3. On behalf of the State of Jharkhand, no formal counter affidavit was filed. But learned Advocate General appearing on behalf of the State submitted that the impugned agreement was entered into by the Jharkhand State Mineral Development Corporation without the consent or approval of the State Government and that, in fact, the State Government was not aware of the agreement. He argued that the cabinet decision dated 13.9.2002 did exclude coal from the purview of such a joint venture agreement and to the extent the joint venture agreement deals with exploitation of coal, and marketing of coal by respondent No. 7. the same was bad and could not be enforced.

4. On behalf of the Union of India, a counter affidavit is filed. It is submitted that u/s 3(3) of the Coal Mines Nationalisation Act. 1973, commercial coal mining is permitted only by the Central Government, the State Government, a Government Company and a Corporation owned, managed or controlled by the Central Government. A Government Company included a Central Government company and a State Government Company. The State Government company could also do commercial coal mining. Jharkhand State Mineral Development Corporation, being a Government of Jharkhand undertaking was a Government Company and was entitled to do commercial coal mining. The declaration of expediency by the

Union Government in the matter of Control, Regulation and Development of Coal Mines in terms of section 1 (A) and Section 2 of the Coal Mines Nationalisation Act, 1973 are relied on. It is pleaded that a State Government company like the Jharkhand State Mineral Development Corporation can form a joint venture with a private sector or public sector company for working a coal mine and as such a joint venture company can do commercial coal mining, if the joint venture is a Government company and the joint venture company obtains a mining lease in its name, A joint venture company can be held to be a Government company only if the State Government held 51 percent equity in the joint venture company or the joint venture company is a subsidiary of a Government Company. The holding company has to hold at least 51 percent equity in the company to consider the latter to be a subsidiary of the holding company. The Jharkhand State Mineral Development Corporation can form a joint venture company with respondent No. 7. but such a joint venture company can be held to be a Government company only if the Jharkhand State Mineral Development Corporation holds at least 51 percent equity of the joint venture company. In the present agreement entered into by the Jharkhand State Mineral Development Corporation with respondent No.7, the Jharkhand State Mineral Development Corporation was not holding 51 percent of the equity. The Jharkhand State Mineral Development Corporation, on the terms of the joint venture agreement, can hold only up to 49 percent of the equity and the balance 51 percent equity is to be held by respondent No. 7. Therefore, this joint venture company cannot mine coal for selling it in the market. This joint venture company cannot do commercial mining of coal.

It is submitted that the joint venture company thus formed could not take up mining and selling of coal in the market as per the provisions of law and the policy of the Government. Therefore, the joint venture company formed by the Jharkhand State Mineral Development Corporation and respondent No. 7. cannot obtain lease of blocks or mines, which may be allotted to the Jharkhand State Mineral Development Corporation in its name and it cannot mine coal from such blocks for selling it to respondent No. 7 or to others in the market. The agreement entered into is not in consonance with the provisions of the Coal Mines Nationalisation Act, 1973 and the policy of the Central Government. Neither the Jharkhand State Mineral Development Corporation nor the joint venture company can do coal mining without a valid mining lease. The Central Government has to be approached in terms of Section 5(1) of the Mines and Minerals (Regulation and Development) Act. 1957 and without the previous approval as contemplated therein, no mining lease can be granted by the State Government. The Central Government will necessarily consider the legality of the entire proposal as and when the State Government seeks the grant of prior approval u/s 5(1) of that Act. It is submitted that the Central Government will take necessary action and ensure that any illegal term in the agreement or illegal Implementation of any. clause in the agreement is prevented.

5. Jharkhand State Mineral Development Corporation has filed three counter

affidavits. In the first counter affidavit, it adopted the stand that the cabinet decision excluding coal from the notice inviting Expression of Interest, did not cover the Corporation, in view of paragraph X of Appendix I of the Expression of Interest, There was therefore no violation of the cabinet decision. The joint venture agreement provided for Jharkhand State Mineral Development Corporation holding not less than 26% equity in the joint venture company and that was enough to validate the joint venture agreement. The relevant statutory provisions were referred to. it was also submitted that the writ petition was not in public interest since the exploitation of coal resources of the State through any agency was beneficial to the State. In the supplementary counter affidavit after setting out the chronology of events, it was submitted that the joint venture agreement was supportable In view of the changing policy regarding coal, the development of mines and the need to make optimum use of coal, especially in the State of Jharkhand. The financial crunch faced by the Jharkhand State Mineral Development Corporation and Its lack of resources are projected. The plea that the Government was not making available adequate funds is also put forward. The details had to be worked out only after the final allotment of Mines to the Jharkhand State Mineral Development Corporation. But care has been taken to stipulate in the joint venture agreement that Jharkhand State Mineral Development Corporation would hold equity shares or allowed to profit sharing upto 26% in the joint venture without any investment and thereafter it was optional on the part of the Jharkhand State Mineral Development Corporation, to hold equity or to share profit in the joint venture upto 49%. It, is pleaded that any State Government company like the Jharkhand State Mineral Development Corporation, is entitled to deal In coal even as per the relevant statutory provisions. It is also asserted that the writ petitioner was not a social worker. but was Interested in one of the contractors to whom coal was earlier being supplied. In its second supplementary counter affidavit, it is submitted that the development of power sector has been given importance by the Jharkhand Government in its Industrial Policy, 2001 and to achieve that goal. it was necessary to provide the necessary funds to the Jharkhand State Mineral Development Corporation and also to permit it to generate funds by entering into such joint venture agreements which are not per se illegal. Jharkhand State Mineral Development Corporation was an autonomous Government company and the State Government had no role to play and had no right to interfere in the affairs of the Jharkhand State Mineral Development Corporation.

6. On behalf of respondent No. 7. it is pleaded that the agreement, has specified that the agreement was subject to obtaining permission from the appropriate Government under the appropriate enactment and that the writ petition was premature. Mere entering into an agreement for a joint venture company did not enable respondent No. 7 either to exploit coal mines or to market coal. Respondent No. 7 itself was a consumer of coal and the marketing envisaged is only of coal in excess of the requirement of respondent No. 7 and such marketing can be done only if permitted by the Central Government. There was no need for

this Court to interfere at this stage especially since in its counter affidavit the Union of India has indicated that it will take the appropriate decision at the appropriate time.

7. On behalf of respondent No. 6. the Chief of Finance of Jharkhand State Mineral Development Corporation, certain facts have been pleaded contradicting what is asserted in the counter affidavit filed on behalf of the Jharkhand State Mineral Development Corporation, its Managing Director and the Chief of Finance. Except that, the said affidavit tends to indicate that the facts stated in the counter affidavit filed on behalf of the Jharkhand State Mineral Development Corporation may not be correct, it has no particular relevance to the issue involved in this public interest litigation.

8. On behalf of the Jharkhand State Mineral Development Corporation its senior counsel did not dispute the position adopted by the Central Government. What the counsel contended was that the Jharkhand State Mineral Development Corporation had not been provided with any finance or infrastructure facilities to exploit the mines on its own and in such a situation, to make the Corporation viable. the Jharkhand State Development Corporation had to enter into an agreement like the one with respondent No. 7. Counsel submitted that in this public interest litigation, this Court must play the role of a Court of construction and should issue a direction to the State Government to provide adequate working capital to the Jharkhand State Mineral Development Corporation, so as to enable it to exploit and carry on mining operations, including in coal by even limiting the equity to be held by the Jharkhand State Mineral Development Corporation at 49 percent and not to preclude the joint venture company from exploiting coal and selling it in market. The provision in that behalf in the joint venture agreement could not be looked at in isolation but should be looked at in the context of the struggle for survival by the Jharkhand State Mineral Development Corporation. Counsel further submitted that the nationalisation of coal industries was taken up in the year 1973 in the situation then prevailing that things have now changed; that private enterprises have a dominant role to play in the developing Indian economy and the joint venture agreement involved in this case must be looked at from that angle. It was submitted that the Government must be directed to make the Jharkhand State Mineral Development Corporation viable so as to enable it to achieve the object for which the Corporation itself was formed. Counsel submitted that while interpreting any provision in a contract like the one in question the Court must have regard to all provisions of law as obtaining and the clauses in the agreement should not be looked at in isolation or divorced from the settled principles of law and usage. Ultimately, what is contended is that it was a bonafide decision taken in the interests of exploitation of the mineral wealth in the State and in the interests of the Jharkhand State Mineral Development Corporation and interference with the joint venture agreement was not called for. Alternatively, even if the agreement in so far as it relates to exploiting and marketing of coal is to be struck down, an appropriate direction should be issued to the State Government for providing

adequate funds to the Jharkhand State Mineral Development Corporation so as to enable it to fulfill its role as a developer of the mineral wealth of the State.

9. At the end of a long argument, ultimately, there was no dispute that in terms of the cabinet decision on 13.9.2002, coal was outside the purview of the expression of interest for which bids were to be invited. The stand of the Jharkhand State Mineral Development Corporation that in view of the existence of paragraph 10 in Appendix 1 to the Expression of Interest, the Corporation was entitled to enter into an agreement for exploitation of coal and that the bar was only against the Government or Governmental agencies, cannot be accepted—obviously, the exploitation, consumption and marketing of coal was governed by the relevant statutes and rules in the context of the Coal Nationalisation Act, 1973 and the monopoly of the Government. May be a dismantling of that policy (sic) as indicated by the JSMD in its third supplementary counter affidavit when it points out that a bill has been introduced in that regard. So long as the Coal Mines Nationalisation (Amendment) Bill, 2000 is not an Act of Parliament, no right can flow from the contemplated bill. Therefore, it is clear that the joint venture agreement to the extent it permits respondent No. 7 to exploit coal and sell it, no doubt, the excess, after its consumption is seen to be impermissible.

10. The argument that the writ petition is premature, that various permissions have to be obtained from the Central Government, that leases of mines have to be obtained from the State Government and there is no reason to interfere at this stage cannot be accepted. Obviously, if the joint venture agreement were to stand as it is, respondent No. 7, the other party to the agreement with Jharkhand State Mineral Development Corporation, would necessarily incur substantial expenditure or make substantial investment, which may give rise to arguments based on equity and which may unnecessarily put respondent No. 7 in a difficult situation. No doubt, there cannot be any estoppel against a statute like the Coal Nationalisation Act, but even then, it appears to us that in a case of this nature prevention is better than cure and in that view when the legal position appears to be clear, it is for the Court to interfere and set right things or clarify the position. It is seen that a State Government company, like the Jharkhand State Mineral Development Corporation, may be entitled to enter into a joint venture agreement under the National Policy. The joint venture company may even be able to exploit coal and market it, but provided the Government Company held at least 51 percent of the shares in the joint venture company. In other words, the Government Company should have a dominant role and voting power in the joint venture enterprise. The same cannot be conceded to, a private company or a private person as the policy now stands. In the joint venture agreement in question, the right of Jharkhand State Mineral Development Corporation is limited to it being in a position to hold only up to 49 percent of the equity and nothing more and at the present moment, it is only holding 26 percent of the equity. Therefore, the provision in the joint venture agreement for respondent No. 7 to utilize the coal extracted for its own purpose and to deal with the balance in the market, is clearly against the statutory prescription and

the policy of the Government. When the position is thus clear, we think that it will be improper to allow the joint venture agreement to be worked as it is, in so far as it relates to coal.

11. The argument on behalf of respondent No. 7 that the agreement is one for the future and that the Central Government can always restrict its operation is again an argument of the same feather. It will be inequitable to stand by and watch respondent No, 7 making substantial investments and ultimately to inform it that it is not entitled to exploit coal in terms of the joint venture agreement it has entered into with the Jharkhand State Mineral Development Corporation. It may be true that the mines had not been leased out to the Jharkhand State Mineral Development Corporation and the permission of the Central Government would be required at appropriate stages and then only the problems now projected would really arise for decision. But now that the matter has come to this Court and we have seen the relevant provisions of the Act, the Regulations and the Rules, the decision of the State Government and the nature of the agreement entered into by the Jharkhand State Mineral Development Corporation with respondent No. 7 and the submission of the Advocate General, we think that it is necessary and proper even at this stage to declare that this part of the joint venture agreement could not be given effect to. This will be in the interests of all concerned. No doubt, if there is any change in the policy in future, things may change. But that is not something the Court can venture into at this stage.

12. As regards the argument of the learned Senior Counsel for the Jharkhand State Mineral Development Corporation that this Court must act as a Court of construction and compel the State Government to make available necessary funds for meeting the infra-structural needs of the Corporation and also for enabling it to make investments in the matter of mineral development, the purpose for which it was incorporated, we can only say that it is for the Corporation to instill confidence in the State Government about its working and to convince the State Government that Governmental help is necessary in the interests of the State and the Corporation. We have also to observe, especially in the light of the experience gained that Corporations like Jharkhand State Mineral Development Corporation are not doing well or not making a fair attempt to achieve the objectives for which they were constituted. We had occasion to refer to the creation of Corporations and the manner in which they were functioning in another public interest litigation. But what is relevant to point out is that it is not the interests of the Jharkhand State Mineral Development Corporation and its employees that is relevant and what is relevant is the interests of the State, sought to be protected by the creation of that Corporation. Admittedly, the Jharkhand State Mineral Development Corporation is not expected or in a position to hold 51 percent shares in the joint venture company. As of now, it is holding, only 26 percent of the equity, though no doubt moreover less, gifted to it by respondent No. 7, but in the face of the stand adopted in the counter affidavit of the Union of India and the relevant statutory provisions, such a joint

venture company cannot be given the right to exploit and market coal. In that situation, we cannot undertake an act of construction or re-construction of the Jharkhand State Mineral Development Corporation as exhorted to by its Senior Counsel. Learned Advocate General appearing on behalf of the State of Jharkhand was categorical in his submission that the joint venture agreement was entered into without reference to and even without consulting the State Government and it runs counter to the cabinet decision which clearly excluded coal. Even apart from the submission of the learned Advocate General, we have come to that conclusion, but the submission of the learned Advocate General as above only reaffirms our conclusion thus come to.

13. The position adopted by the Union of India is also the same. The counter affidavit filed by the Union of India and the submission of the learned Standing Counsel clearly is that the joint venture agreement went against the policy regarding exploitation and selling of coal and to that extent the agreement could not be held to be legal or valid in relation to exploitation of coal and the marketing of coal.

14. As regards the locus standi of the writ petitioner, we find that aspects of public importance are frequently raised in so-called public interest litigations filed in this Court. Sometimes, this Court finds that it is possible that the approach to this Court was motivated. But at the same time, this Court also finds that the aspect projected before the Court in the litigation is an aspect touching on public interest or the relief prayed for is one in public interest. Once this Court finds that public interest is involved, it appears to us that it would be difficult to dismiss the writ petition on the ground that the approach to this Court by the writ petitioner might not have been pure, or that there might also have been some oblique motive in raising up the issue. In our view, whatever be the motive that might lurk behind the approach to this Court by a person claiming to be in public interest, what ultimately matters is the question whether the writ petition projects a matter of public interest: whether the relief prayed for is one that is intended to subserve public interest and if these two elements are present, it is for the Court to interfere notwithstanding the possibility that the approach to this Court was made by a person who also might have some other oblique interest in approaching this Court. After the theory of locus standi was given up and the doors were thrown open, this problem, which is perennial in nature, crops up every time a so-called public interest litigation is filed in this Court. May be, it is necessary to set parameters of interference in such litigations, but that is obviously for the Supreme Court and it is not for us to venture into. Suffice it to say that in this case, we find that an attempt is being made by the Jharkhand State Mineral Development Corporation and its joint venture partner, respondent No. 7, to by pass the restrictions placed on coal mining, exploitation of coal and its marketing. This action in the teeth of the statutory and other restrictions can only be held to be against public interest. In that view, we are satisfied that relief has to be granted in this writ petition.

15. We, therefore, allow this writ petition and direct respondents 1 and 2 not to accept the joint venture agreement entered into by the Jharkhand State Mineral Development Corporation and respondent No. 7 on 23.7.2003 in so far as it relates to the exploitation of coal. We also declare that the joint venture agreement, as it now stands is unenforceable and it does not entitle the joint venture company to undertake the exploitation of coal, its mining and its sale. In the circumstance we make no order as to costs.