

(2018) 06 DEL CK 0012

In the Delhi High Court

Case No : CM No. 2839 OF 2018 (for directions) in WP(C)No. 7334 OF 2015

RELIANCE POWER LTD. & ORS

APPELLANT

Vs

UNION OF INDIA & ORS

RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Citation : (2018) 06 DEL CK 0012

Hon'ble Judges : GITA MITTAL;CJ, C.HARI SHANKA

Bench : Division Bench

Final Decision : Dismissed

Judgement

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1. This application, seeking directions, has been filed by the Petitioner No. 2 - Sasan Power Ltd. (hereinafter referred to as "SPL").

2. The factual narration, as per the writ petition, is that the Petitioner No. 1 - Reliance Power Ltd.(hereinafter referred to as "Reliance") is a

leading private sector power generation and coal resources company.

3. It is averred that SPL was incorporated as a 100% subsidiary of the Power Finance Corporation for the purpose of setting up and developing a

3960 MW Ultra Mega Power Project i.e. the Sasan Ultra Mega Power Project (hereinafter referred to as "UMPP" or "Sasan UMPP"),

in Madhya Pradesh, India.

4. Pursuant to an International Tariff Based Competitive Bidding, Reliance was selected as the successful bidder. The entire shareholding of the

Power Finance Corporation in SPL stood transferred to Reliance.

5. SPL "petitioner no.2 is stated to be supplying power at the most competitive levelized tariff of Rs. 1.196 per kWh to 14 Distribution

Companies,,,,,,,,

(Discoms) in 7 states with a population of nearly 42 Crore people,,,,,,,,

6. It appears that pursuant to a notification issued by the Respondent No.3 - Ministry of Coal, Union of India, being notification no. 956 [S.O. 1230" ,,,,,,

(E)] dated 7th May, 2015, the respondents inter alia withdrew/cancelled the Allocation Letter No. 13016/04/2006-CA-I dated 26th October, 2006" ,,,,,,

allocating the Chhatrasal coal block to SPL for the Sasan UMPP as well as Gazette Notification No. 335 [S.O. No. 397(E)] dated 17th February," ,,,,,,

2010 which permitted the surplus quantity of coal upto a maximum of 9 Million Metric Tons per annum (hereinafter -MMTA-) from the coal ,,,,,,

mines of Moher, Moher-Amlohri and Chhatrasal for the 3960 MW thermal plant owned and managed by Chitrangi Power Pvt. Ltd, a wholly owned" ,,,,,,

subsidiary of Reliance. ,,,,,,

7. As a consequence, the respondent no. 3 vide a subsequent letter dated 3rd June, 2015 inter alia directed SPL to submit a revised mining plan for" ,,,,,,

Moher and Moher-Amlohri Extension coal mines. ,,,,,,

8. It is submitted that before the submission of RFP bids, there was a clear representation by the respondents that 100% equity of SPL would be" ,,,,,,

transferred to the successful bidder. It is averred that at such time, SPL had allocation of three coal blocks: Moher, Moher-Amlohri Extension and" ,,,,,,

Chhatrasal, having total reserves of 760 Million MT and that the bid was based on these representations that these mines have been allocated to SPL" ,,,,,,

and will be available for the UMPP. A sum of Rs. 25,172 Crore (as on 31st March, 2015) is stated to have been invested by Reliance in setting up the" ,,,,,,

project. ,,,,,,

9. The writ petition makes the following prayers: ,,,,,,

a) Issue a Writ of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 2, the entity which sold the entire" ,,,,,,

equity shareholding of Petitioner No. 2 to Petitioner No. 1, to purchase the entire shareholding in Petitioner No. 2, along with all its assets and" ,,,,,,

liabilities, from Petitioner No. 1 for an amount equal to aggregate of: (i) the investments, loaned and advances made by Petitioner No. 1 in/to Petitioner" ,,,,,,

No. 2 and (ii) the loss of return/profit calculated at 16% per annum on a post-tax basis, on such investments, loans and advances till their receipt in full" ,,,,,,

by Petitioner No. 1.,,,,,,,,,

In the alternative,",,,,,,,,

Issue a writ of certiorari or any other writ, order or direction to quash the Notification dated 7.5.2015 of Respondent No. 3 and letter dated 3.6.2015 of",,,,,,,,

Respondent No. 2 as being arbitrary, illegal, invalid and unsustainable in law? !â??",,,,,,,,

10. Notice was issued in the Writ Petition on 4th August, 2015 and counter affidavits have been filed by all the respondents.",,,,,,,,

11. It is apposite to advert to the order passed by this court on 12th February, 2016 which notes the purported reasoning for issuance of the impugned",,,,,,,,

notifications as well as the request by the petitioner, for enhanced requirement of Coal from the mines, which had been espoused in the form of an",,,,,,,,

application, in the following terms:",,,,,,,,

â??1. This petition has been filed aggrieved by two notifications dated issued by the Government of India, Ministry of Coal purportedly on the basis of",,,,,,,,

the decisions of the Supreme Court in W.P.(Criminal) Nos.120 of 2012 and etc. [Manohar Lal Sharma vs. Principal Secretary & Ors. (2014) 9 SCC,,,,,,,,

516; (2014) 9 SCC 614]Â,,,,,,,,

2. The said two notifications are (i) Notification dated 07.05.2015 withdrawing Chhatrasal Coal Block, which was earlier allotted in favour of the",,,,,,,,

petitioner No.2 and (ii) Notification dated 03.06.2015 deciding to reduce the mine capacity of the petitioner No.2 from 20 MTPA to 16 MTPA and,,,,,,,,

calling upon the petitioner No.2 to submit the revised mining plan of 16 MTPA making it clear that till the revised mining plan is approved by the,,,,,,,,

Ministry of Coal, the requirement shall not be beyond 16 MTPA from Moher & Moher Amlohri Extension Coal Blocks.Â",,,,,,,,

3. One of the contentions in the petition is that the impugned notification dated 03.06.2015 was issued without giving an opportunity to the petitioners to,,,,,,,,

make their representation. It is also specifically pleaded that though the petitioners submitted a detailed representation dated 10.06.2015 explaining the,,,,,,,,

rationale and necessity of maintaining the ability of the petitioner No.2 to mine coal from the Moher & Moher Amlohri Extension Coal Blocks as per,,,,,,,,

the approved mine plan and requesting to withdraw the notification dated

03.06.2015 followed by another representation dated 16.06.2015, the",,,,,,,
respondents failed to consider.Â",,,,,,,

4. During the course of hearing, it is suggested by Sh.Sanjay Jain, the learned
ASG that since the representations of the petitioners are yet to be",,,,,,,

considered, instead of this Court going into the various technical issues involved
in the case, it would be appropriate to allow the respondents to",,,,,,,

consider the representations of the petitioners and take an appropriate decision.
Sh.P.Chidambaram, the learned senior counsel appearing for the",,,,,,,

petitioners has also consented for the same, however requested that the
consideration by the respondents may be within a time frame since Sasan",,,,,,,

Ultra Mega Power Project has already consumed 12.21 MT of coal till 31.12.2015
and it is likely to exceed 16 MT coal requirement by the end of",,,,,,,

February, 2016.Â",,,,,,,

5. In the circumstances, we consider it appropriate to direct as under:Â",,,,,,,

(i) The petitioners are permitted to submit a compendium of documents together
with additional documents if any before the respondents 1 & 3 within",,,,,,,

three days from today. The learned senior counsel appearing for the petitioners
undertakes that the same would be submitted on or before 16.02.2016",,,,,,,

without fail.",,,,,,,

(ii) Thereafter, the Ministry of Coal/respondent No.3 in consultation with the
Ministry of Power/respondent No.1 shall consider the request of the",,,,,,,

petitioners vide their representations dated 10.06.2015 and 16.06.2015 and take
an appropriate decision in accordance with law on or before",,,,,,,

15.03.2016 after giving an opportunity of being heard to the petitioners.",,,,,,,

(iii) Such decision shall be communicated to the petitioners on or before
18.03.2016.Â",,,,,,,

(iv) The consideration of the representations of the petitioners shall be confined
only to two coal blocks, viz. Moher & Moher Amlohri Extension.",,,,,,,

(v) The consideration by the respondent Nos.1 and 3 in terms of this order shall
be without having regard to the pendency of the present writ petition",,,,,,,

and without prejudice to the rights and contentions of both the parties.Â",,,,,,,

(vi) The petitioners are at liberty to approach this Court for appropriate
directions in the meanwhile, in case necessity thereof arises.Â",,,,,,,

RENOTIFY ON 21.03.2016.Â",,,,,,,

xxx xxxÂ Â Â Â Â Â xxxâ??,,,,,,,,

12. It appears that, pursuant to the above order, vide a letter No. 13016/16/2008-CA-I (Part-III) dated 15th March, 2016 the Ministry of Coal, inter",,,,,,,,,

alia, permitted SPL to produce upto 17.2 MMTA of Coal from Moher & Moher-Amlohri Extension coal blocks for the year 2015-16 and stipulated",,,,,,,,,

that for the year 2016-17 onwards any permission for producing more than 16 MMTA of coal would be considered after verification of figures.Â,,,,,,,,

13. Objections were filed by SPL to the decision and seeking removal of the conditions imposed on production beyond 16 MTA of Coal from the,,,,,,,,

Moher & Moher-Amlohri Extension coal mines.,,,,,,,,,

14. TheÂ MinistryÂ ofÂ Coal,Â videÂ OMÂ No.Â F.No.CA-",,,,,,,,,

13016/08/2016-CA-I dated 27th April, 2016 formed an InterMinisterial Committee under the Chairmanship of Chairman, Central Electricity Authority",,,,,,,,,

to examine and recommend on the issue of requirement of coal for the Sasan UMPP.,,,,,,,,,

15. Thereafter, vide its letter no. 13016/08/2016-CA-I dated 3rd November, 2016, the Ministry of Coal informed SPL as follows:",,,,,,,,,

â??4. The recommendation of the Committee has been accepted by the Competent Authority in the Government. Accordingly, M/s Sasan Power",,,,,,,,,

Ltd. is directed to meet the coal requirement of 16 MTPA as base case and cap to 17 Million Tonnes in the year depending on highest PLF from the,,,,,,,,

coal produced from Moher and Moher Amlohri Extn. coal blocks allocated for Sasan UMPPâ??.,,,,,,,,,

(Emphasis in Original),,,,,,,,,

16. SPL thereafter, wrote a letter dated 20th December, 2016, replying to letter dated 3rd November, 2016 pointing out inter aliaÂ (i) that the Sasan",,,,,,,,,

UMPP required 19-20 MMTA based on relevant parameters; (ii) that the restriction in coal production from captive blocks allocated to UMPPs was,,,,,,,,

in violation of judgment rendered on 25th August, 2014 by the Supreme Court of India as well as the governing legal framework; (iii) that the",,,,,,,,,

imposition on such restriction not only destroyed the basis of allocation of captive coal mines but also hindered the ease of doing business. SPL,,,,,,,,

subsequently wrote letters requesting the respondent to allow coal production up

to 17.8 MMTA in 2017-2018 to ensure continuity of coal production,,,,,,,,

and to have reasonable coal stock to meet exigencies of the monsoon season.,,,,,,,,,

17. Vide a letter dated 9th February, 2017 the Ministry of Coal reiterated its stand made on 3rd November, 2016. Consequently, having reached the",,,,,,,,,

coal production level of 17 MMTA, on 17th March, 2017, SPL stopped coal production from Moher and Moher-Amlohri Extension coal blocks. As the",,,,,,,,,

production stopped, it is contended that SPL had to meet the coal requirement for the Sasan UMPP from its coal stock for the remaining period in",,,,,,,,,

201617, as a result of which the closing stock of coal in 2016-17 stood at only 0.73 MMT as against 1.25 MT which was the reasonable level of coal",,,,,,,,,

stock required to meet any exigencies.Â,,,,,,,,

18. On 6th& 28th December, 2017, SPL apprised the Ministry of the requirements of the Sasan UMPP for 2017-18 and requested to allow coal",,,,,,,,,

production upto atleast 19 MMT in 2017-18 to ensure continuity of operations of coal production and generation of power by the Sasan UMPP and to,,,,,,,,

maintain the level of coal stock.,,,,,,,,,

19. On 3rd January, 2018 the Central Electricity Authority sent a letter to SPL seeking data on certain parameters for 2015-16, 201617 and 2017-18 to",,,,,,,,,

evaluate coal requirements of the Sasan UMPP.,,,,,,,,,

The letter was replied to by SPL on 12th January, 2018.",,,,,,,,,

20. Thereafter, the present application was moved on 19th January, 2018 by SPL submitting that, as on 18th January, 2018, the coal production from",,,,,,,,,

the two mines had reached 14.48 MMT; at that rate the cap of 17 MMT as imposed by the letter dated 3rd November, 2016 would be reached by end",,,,,,,,,

of February, 2018; therefore, for the remainder of the period in the year 2017-18 (which expires on 31st March, 2018), SPL would have to shut down",,,,,,,,,

the Sasan UMPP leaving 14 Discoms in 7 states serving 42 Crore people without round the clock power for 10 days and would result in generation,,,,,,,,

loss of almost 850 Million Units (MUs) impacting revenues of SPL by almost Rs. 130 Crores.Â It was also submitted that this would also force the,,,,,,,,

14 Discoms to buy power 2-3 times costlier rates which would entail a loss of almost Rs. 200 Crores to them which would be adverse to public,,,,,,,,

interest.,,,,,,,,,

In view of the above averments, it was prayed that SPL be permitted to produce atleast 18 MMTA for 2017-18 for the Sasan UMPP.Â",,,,,,,,,

21. We had issued notice on this application on 30th January, 2018. In the hearing fixed on 7th February, 2018Â we were informed that a meeting",,,,,,,,,

stood convened under the Chairmanship of the Chairman, Central Electricity Authority regarding the prayer of SPL for extraction of additional",,,,,,,,,

quantity of coal and that the petitioners had been invited to participate in this meeting.,,,,,,,,,

22. On 27th February, 2018, we were informed by Mr. Sanjeev Narula, Id. CGSC that the Ministry of Coal had taken an interim decision dated 26th",,,,,,,,,

February, 2018 allowing SPL to produce 18 MMT of Coal for 2017-18. A copy of the order dated 26th February, 2018 bearing No. CA1-",,,,,,,,,

13016/8/2016-CA1 was handed over, relevant portion whereof reads thus:",,,,,,,,,

â??3. To resolve the issue, the above said request of RPL was placed before the Committee constituted under the chairmanship of Chairperson,",,,,,,,,

Central Electricity Authority having members from Ministry of Power, Ministry of Coal, Coal Controllerâ??s Organization and CMPDIL, for",,,,,,,,,

formulation of policy on use of coal by M/s Sasan Power Ltd. from the allocated coal blocks. The Committee held meetings on 07.02.2018 and,,,,,,,,

13.02.2018 wherein representatives of RPL were also invited. The committee after and due deliberations of the issue furnished its recommendations,,,,,,,,

to the Government. The committee, inter alia, has recommended that an upper cap of 18 MT may be kept on production of coal by SPL for the year",,,,,,,,,

2017-18 and this would be only a temporary dispensation granted for the year 2017-18 only, as a one-time exception, and would not be quoted as a",,,,,,,,,

precedence for the year 2018-19 or thereafter. The committee also directed SPL to make all out efforts to reduce the moisture content. Data on,,,,,,,,

moisture content would be shared on monthly basis with CEA. The committee will review the facts on moisture content on issue of SPL after 6,,,,,,,,

months.,,,,,,,,,

4. The recommendations of the committee were submitted to the competent authority in the Government. Accordingly, one time permission is granted",,,,,,,,,

to M/s Sasan Power Limited to produce up to 18 MT of coal for the year 2017-18 as an exception. M/s SPL is also directed to improve the quality of,,,,,,,,

mining as pointed out by CMPDIL during deliberations of IMC.â??,,,,,,,,,

(Emphasis supplied),,,,,,,,,,

S.N,Month,"Opening

Coal

Stock on

first Â Â

day of

Â Â Â Â Â

the month

(Million

Tonnes)","Coat

Production

(Million

Tonnes)","Coal

Consumption

at

Â Â Â Â Â Â

Power

Plant

(Million

Tonnes)","Closing

Coal

Stock on

the last

day of

the

months

(Million

Tonnes)","Gross

Generation

(Million

Units)", "PLF

(%)", "Specific

Coal

Consumption

(Kg/KWh)

1, Apr-17, 0.73, 1.25, 1.55, 0.43, "2,734", 95.9%, 0.57

2, May-17, 0.43, 1.68, 1.39, 0.72, "2,516", 85.4%, 0.55

3, Jun-17, 0.72, 1.46, 1.32, 0.85, "2,281", 80.0%, 0.58

4, Jul-17, 0.85, 1.47, 1.63, 0.69, "2,646", 89.8%, 0.61

5, Aug-17, 0.69, 1.67, 1.39, 0.98, "2,363", 80.2%, 0.59

6, Sep-17, 0.98, 1.34, 1.52, 0.80, "2,626", 92.1%, 0.58

7, Oct-17, 0.80, 1.54, 1.51, "2,669", 90.6%, 0.56

8, Nov-17, 0.83, 1.17, 1.56, 0.45, "2,842", 99.7%, 0.55

9, Dec-17, 0.45, 1.91, 1.49, 0.87, "2,763", 93.8%, 0.54

10, Jan-17, 0.87, 1.65, 1.66, 0.86, "2,941", 99.8%, 0.57

11, Feb-17, 0.86, 1.66, 1.39, 1.14, "2,517", 94.6%, 0.55

12, "Mar-18

(Till

20th

Mar

2018)", 1.14, 1.19, 1.04, "1.29

(As on

20th

Mar 2018)", "1,888", 99.3%, 0.55

Â, "Total

FY

2017-

18

(Till

20thÂ

Mar

2018)", 18.00, 17.44, 30,786", 91.5%, 0.57

are not stationary and vary. The requests of the petitioner are therefore, being considered by the experts in the government premised on the above",

variable statistics.

41. The respondents have severely criticized the mining being conducted by SPL pointing out that there is high moisture content in the coal due to,

water not being properly pumped out. By the letter dated 20th February, 2018, SPL has been called upon to improve the quality of mining."

42. Inasmuch as the prayer in the application had worked itself out before arguments in the application were made, the prayer therein really stands",

infructuous. No relief as prayed for can be granted.

43. In any case, the respondents are examining the requests for increase in the variations in the mining cap on behalf of the petitioner on the basis of",

factual disclosures made by them.

44. The application is therefore, dismissed as infructuous."

32. For SPL, Mr. P. Chidambaram, Id. Senior Counsel has argued at great length that there is no allegation at all against the petitioners that the coal",

mined from the mine in question is being misused. It has also been contended that the figures of the previous year show that so far as closing stock,

is concerned, for the year 2015-16, only 0.66 MMT of coal remained while for the year 2016-17, only 0.73 MMT had remained. It was therefore,"

submitted that the available coal supply for power generation was being permitted to reach critical stages so much so that there was a good chance,

that the power production may have to be shut down for want of coal. Fortunately, such a situation did not come in the present year."

33. Another grievance expressed on behalf of the petitioner is that the present is the only instance of a mine with a cap of the maximum coal, which",

could be mined. ,

This is a matter which has to be considered on the main writ petition. It is not a matter which could be considered for grant of the interim prayer.

34. On behalf of the respondents, Ms. Maninder Acharya, Id. Additional Solicitor General has made detailed submissions. So far as desired",

requirement of closing coal stocks requirement of 1.25 metric tones is

concerned, it has been pointed out that, it has been submitted as follows :",,,,,,,,,
â??About â??desired requirement of closing coal stock requirement of 1.25 MT,,,,,,,,

(i) Revised Norms for Stocking of Coal at Thermal Power Plants have been issued vide CEA's letter no.CEA/Yojna/FM/1/42/20176055-6113,,,,,,,,

dated 08.11.2017 (copy enclosed).,,,,,,,,

(ii) As per the norms, the normative coal stock that is required to be kept at pit head thermal power plants is 15 days's worth of coal consumption.",,,,,,,,

(iii) As per consumption data provided by SPL for the year 2017-18 (April 2017 to January 2018), the average coal consumption is 1.502 MT per",,,,,,,,,

month.Â This translates to total normative stock requirement of 0.751 MT (for 15 days) as per CEA norms. Since this is a pithead power plant with,,,,,,,,

dedicated mine, and plant is supplied coal by a dedicated conveyor belt, this norm would apply.",,,,,,,,

(iv) It may be seen that the normative requirement of coal stock comes around 0.75 MT and as per the petitioner themselves, they will have a closing",,,,,,,,,

stock of 0.70 MT. So there is no need to permit production of any additional quantity of coal.,,,,,,,,,

(v) Thus, the plea of stocking 1.25 MT by SPL is not only unreasonable and not supported by its genuine requirement, but it also goes much above the",,,,,,,,,

norms stipulated by CEA for all power plants in the country.Â More so, SPL has never carried 1.25 MT as closing stock in any month.Â SPL's",,,,,,,,,

closing stock has been in the range of 0.2 to 0.3 MT at the end of each month, which is sufficient.â?"",,,,,,,,,

35. The respondents have further explained that the Sasan UMPP is a pithead power plant and has a dedicated coal mine.Â Norms for coal stocks at,,,,,,,,

power plant for which coal is supplied by the Coal India Ltd./SCCL through linkage have been prescribed.Â As there could be uncertainty in the,,,,,,,,

supply of coal from the power plant from CIL/SCCL due to various factors, power plants have been advised to stock coal with them, to avoid shutting",,,,,,,,,

down of plants.,,,,,,,,,

The respondents submit that inasmuch as Sasan UMPP has a dedicated mine where mining is done and the plant has a pithead itself, there is no such",,,,,,,,,

uncertainty.,,,,,,,,,

36. The respondents also oppose the request of the petitioner for coal stocking,

pointing out the property of spontaneous combustion in coal stocks due" ,,,,,,,
to oxidation and heating, which has been one of the major hazardous industry,
especially keeping in view the ongoing summers." ,,,,,,,

37. Additionally, the respondents have submitted that as per the daily production
data for March, 2018, the petitioner has produced 1.19 MMT in 15" ,,,,,,,
days of March, 2018 itself.Â As against average monthly production of 1.528
MMT carried out between April, 2017 to February, 2018.Â The" ,,,,,,,
respondents submit that the petitioner has capabilities to increase the production
up to level of around 2.4 MMT of coal per month.Â The respondents, ,,,,,,,
would submit that any stock building can be done in a month prior to the
monsoon and that there was therefore, no requirement to build any coal
stock" ,,,,,,,
at the present itself. ,,,,,,,

38. So far as the capping at 16 MMT is concerned, the respondents submit that
their decision is premised on the petitionerâ??s representation.Â On" ,,,,,,,
representations for subsequent years, the petitioner stands permitted to produce
17.2 MMT for 2015; 16-17 MMT for the year 2017-18 and 18 MMT" ,,,,,,,
for the year 2017-18. ,,,,,,,

39. Other than the grievance that the request are being considered on yearly
basis, premised on data and information submitted by the petitioner, and" ,,,,,,,
blanket permission as has been sought has not been granted by the government,
there is no contention that the action and any decision of the" ,,,,,,,
respondents are mala fide in nature.Â Â ,,,,,,,

40. The above tabulation submitted by the petitioner reflects that the figures of
coal production as well as coal consumption and the PLF percentage, ,,,,,,,
are not stationary and vary.Â The requests of the petitioner are therefore, being
considered by the experts in the government premised on the above" ,,,,,,,
variable statistics. ,,,,,,,

41. The respondents have severely criticized the mining being conducted by SPL
pointing out that there is high moisture content in the coal due to, ,,,,,,,
water not being properly pumped out.Â By the letter dated 20th February, 2018,
SPL has been called upon to improve the quality of mining." ,,,,,,,

42. Inasmuch as the prayer in the application had worked itself out before
arguments in the application were made, the prayer therein really stands" ,,,,,,,
infructuous. No relief as prayed for can be granted. ,,,,,,,

43. In any case, the respondents are examining the requests for increase in the variations in the mining cap on behalf of the petitioner on the basis of" ,,,,,,,
factual disclosures made by them.,,,,,,,
44. The application is therefore, dismissed as infructuous." ,,,,,,,