

## UNEARTHING A COAL SCAM – THE MANOHAR LAL SHARMA JUDGMENT AND ITS IMPACT

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### ABSTRACT

The Manohar Lal Sharma case turned out to be a landmark judgment, and its repercussions left an indelible mark in the political domain. Having dominated the news headlines for several months at a stretch, it became popularly known as the 'Coalgate scam'. This article will attempt to analyse the case from a legal perspective, by looking at the judgment in the context of mining laws within the country.

**KEYWORDS:** Coal Scam, Mining Laws, Nationalisation, First Come First Serve Basis, Auction

### INTRODUCTION

This case pertains to a group of writ petitions filed in the form of a Public Interest Litigation, by Manohar Lal Sharma, and an NGO called Common Cause based on the charge that the allocation of a large segment of coal blocks made between ( 1993- 2010) by the Central Government were arbitrary, lacked transparency and should be deemed unconstitutional<sup>3</sup>. The coal scam dominated the national headlines for a long time following the explosive report by CAG (Comptroller and Auditor General of India) which alleged that the flawed process of coal allocation had translated into huge losses to the exchequer. Newspaper editorials deplored the whole procedure as an embodiment of crony capitalism<sup>4</sup>. To understand the intricacies in this case, it would be worthwhile to briefly look at India's Mining history.

Mining laws in India have followed a chequered history beginning with the British era, followed by nationalisation in the 1970s, and a gradual move towards privatisation in keeping with the economic liberalisation of the early 1990s. The move towards privatisation has been seen as an attempt to break away from the Nehruvian model of a Centrally Planned economy, which was inspired by the Soviet model<sup>5</sup>. India witnessed an aggressive wave of nationalisation under Indira Gandhi which was elucidated in the form of the 1973 Coal Mines Nationalisation Act (hereinafter referred to as the CMN Act).<sup>6</sup> It is pertinent to note that most provisions of the 1973 Act have been retained, with occasional amendments over the years<sup>7</sup>. Till date, private corporations are not allowed to take up coal mining for commercial purposes. As per the provisions of sec 3 of the CMN Act, private corporations can mine coal only for captive

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<sup>3</sup>Manohar Lal Sharma Case . (n.d.). Retrieved March 28, 2017, from <https://www.gnluc.ac.in/news/315/case%20note.pdf> Center For Constitutional and Administrative Law

<sup>4</sup>Mines of Scam . (2014, September 19). *Frontline* , 1-4.

<sup>5</sup>Vivoda, V. (2011). Determinants of foreign direct investment in the mining sector in Asia: A comparison between China and India. *Resources policy*, 36(1), 49-59.

<sup>6</sup>Lahiri-Dutt, K. (2007). Illegal coal mining in eastern India: Rethinking legitimacy and limits of justice.

<sup>7</sup>Singh, K., & Kalirajan, K. (2003). A decade of economic reforms in India: the mining sector. *Resources Policy*, 29(3), 139-151.

use. However, since the beginning of economic liberalisation in the early nineties private players have been actively involved in the mining industry. The winds of change have signalled ambiguity over certain provisions of the Mines and Minerals Regulation and Development Act 1957 (hereinafter referred to as the MMDR Act), which will be evident as we analyse the current case<sup>8</sup>. Additionally, the process of allotment of contracts with respect to private corporations has become controversial and come under the scanner on several occasions. The facts of the the Manohar Lal Sharma case is an important component of the popular case which became infamous as the ‘Coalgate scam’.

## ANALYSIS OF THE CASE

This case was a landmark judgment which was initiated by the clubbing together of a batch of petitions involving the allocation of coal mining contracts to private companies. The main petitioners comprised of –ML Sharma (a lawyer), and Common Cause (an NGO)<sup>9</sup>. The petition challenged the constitutional validity of the process of allocation of a large chunk of coal blocks in the period 1993-2010. Towards this end, the petitioners have invoked the provisions of the MMDR Act, as well as Sec 3 of the CMN Act. Arguing that the process of allocation of resources was driven by arbitrariness and dishonest motives, the petition seeks to convince the court that the provisions of the above mentioned statutes were violated by the government<sup>10</sup>. Thus, the prayer in the petition seeks cancellation of the mining permits whose allotment has been deemed arbitrary and unfair. The significance of this case also lies in the fact that it became a ‘political hot potato’ which contributed to the anti- incumbency sentiment against the UPA government<sup>11</sup>. Furthermore, the problems highlighted in this case laid the groundwork for the Mining Policy of 2016- under which the process of auction was made mandatory prior to allotment of contracts in mining<sup>12</sup>.

It is against this backdrop that the SC seeks the response of the Central government on the allegations. Simultaneously, the court also seeks a feedback from the concerned states (Jharkhand, Orissa, Madhya Pradesh, West Bengal, Maharashtra, and Andhra Pradesh). The Attorney General representing the Central government argues that the Centre’s role is merely confined to the granting of ‘allocation letters’ to companies which he argues is a ‘letter of intent’ and should not be perceived as an attempt to circumvent the powers of the State under the 1957 Act<sup>13</sup>. It is pertinent to note that as per the provisions of the MMDR Act (primarily sections 3 and 4) the State government is mandated to play a proactive role in the allocation of mining licenses in consultation with the Centre. However, the petition alleges that in the allocations mentioned under this report, the State government was reduced to a rubber stamp and was not consulted as per due procedure. The court observes that in all instances the applications were directly sent to the Centre, which effectively reduced the State government’s influence in decision making, and thus undermines section 5 of MMDR which states that –

<sup>8</sup>Chakrabarty, B. D. (1974). *The Coal mines (taking over of management act, 1973 (act no. 15 of 1973): with the Coal mines (nationalisation) act, 1973 (act no. 26 of 1973), the Cooking coal mines (nationalisation) act, 1972 (act no. 36 of 1972)*. Allahabad: Orient Law House.

<sup>9</sup>Manohar Lal Sharma vs The Principle Secretary & Others on 25 August, 2014  
<https://indiankanoon.org/doc/135364996/>

<sup>10</sup>Ibid.p.15

<sup>11</sup>Mines of Scam . (2014, September 19). *Frontline* , 1-4.

<sup>12</sup>Ministry of Mines Policy and Legislation Rules  
<http://www.mines.nic.in/ViewData/index?mid=1331>

<sup>13</sup>Manohar Lal Sharma vs The Principle Secretary & Others on 25 August, 2014  
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the State government ought to give out decisions after the ‘previous approval’ of the Central government<sup>14</sup>.

The current case serves to highlight the glaring inconsistency in the process of allotment of contracts. At that point, it was not clear as to what would be an ideal procedure for allotment – first come first serve, or the process of auction. It is pertinent to note that in this case most allocations had been made on a first come first serve basis<sup>15</sup>. This case was bolstered by the CAG report which contended that had the coal allocations been made efficiently, it would have generated a lot of revenue for the government. The opposition party led by the BJP (Bharatiya Janata Party) had lodged a complaint whereupon the CVC (Central Vigilance Commission) instructed the CBI to look into the issue<sup>16</sup>. This case was opened at a time when the CBI investigations were still on, and the CBI had indicated that the prospect of bribery could not be ruled out in the allocations. The court refrained from commenting on the investigation as it was still not complete, and instead analysed the processes and the procedures followed during the course of allotment of contracts<sup>17</sup>.

An important section for this case would be sec 13(2) of the MMDR Act 1957 which bestows power on the Central government to make rules vis a vis the governance and management of minerals. Thus, the Mineral Concession Rules of 1960 was derived from section 13. The petition therefore argued that Rule 35 of the Mineral Concession Rules, 1960 was violated by the Central government<sup>18</sup>. To be clear, Rule 35 lays down that the ‘State government’ should procure prior information regarding the end use of the mineral. In the instant matter, for one the State government did not choose the applicants, and secondly there was no process in place to procure prior information about the manner in which the companies would eventually use the minerals. The argument of the petitioners gained traction in the light of the role played by the multiple Screening Committees which were set up by the Ministry of Coal in 1992<sup>19</sup>. While perusing the minutes of the meeting, it became evident that the rules of the screening committee kept changing, and there was no procedure in place to vet the claims of the applicants. Thus, the court observed that the workings of the Screening Committee reflect arbitrariness and has been biased towards the companies which have procured the contract<sup>20</sup>. The apex court goes on to emphasise that the whole process undermines the spirit of Article 14 of the Constitution (which expects a level playing field for every bidder) which would thus amount to ‘largesse’ in the eyes of the court<sup>21</sup>.

The most significant bone of contention becomes the ‘letter of allotment’ which is described by the Center as a mere ‘letter of intent’<sup>22</sup>. However, the States place their resentment on record as in practise the state governments are bound by the letter of allocation. In practical terms, the grant of the ‘letter’ gives a major advantage to the company by making it easier for them to procure Reconnaissance and Prospecting Licenses<sup>23</sup>. Additionally, the court observes that since, mining has been included under both the State list as well as the Union list in the country (List 1 entry 54 and List II entry 23) – the law makers wanted the states to also have a say over their resources<sup>24</sup>. Hence, the contents of the MMDR

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<sup>14</sup>Manohar Lal Sharma Case . (n.d.). Retrieved March 28, 2017, from <https://www.gnu.ac.in/news/315/case%20note.pdf> Center For Constitutional and Administrative Law

<sup>15</sup>Mines of Scam . (2014, September 19). *Frontline* , 1-4.

<sup>16</sup>Parliament disrupted over Coal Scam . (2013, August 20). *India Today* .

<sup>17</sup>Manohar Lal Sharma vs The Principle Secretary & Others on 25 August, 2014  
<https://indiankanoon.org/doc/135364996/>

<sup>18</sup>Ibid.p.57

<sup>19</sup>Ibid.p.63

<sup>20</sup>Ibid.p.56

<sup>21</sup>Ibid.p.42

<sup>22</sup>Ibid.p.4

<sup>23</sup>Mines of Scam . (2014, September 19). *Frontline* , 1-4.

<sup>24</sup>Ibid

Act 1957 should be read along with the CMN Act – based on a minute study of the process involved in allocation it becomes clear that – the procedure followed is not derived from any of the concerned acts<sup>25</sup>. The petitioners therefore have legitimate grounds for complaints. An important observation made by the court was that the State owned PSUs had violated the provisions of the Coal Mining Nationalisation Act, 1973 by indulging in commercial mining<sup>26</sup>. In the process, private interests had contracted illegal joint ventures with State owned corporations and made unprecedented gains. Such callousness on the part of state owned bodies defeated the legislative intent behind the CMN Act under which coal was made available at cheap rates exclusively for end – use power projects<sup>27</sup>.

The petitioners bolstered their arguments by submitting details of the working of the Screening Committee from 1993 to 2010, when the committee was actually active<sup>28</sup>. The overall structure of the Committee comprised of members from the Ministries of Coal, Power, Railways, along with representatives of relevant State governments. Since 2001, allocations had been made directly by the Screening Committee in tandem with the Ministry of Coal<sup>29</sup>. In view of all the observations made and facts established the Supreme Court concurred that the role of the Screening Committee left many questions unanswered which lends credence to the allegation that the process lacked transparency and was arbitrary. Up to 214 out of 218 allegations which had been made from the year 1993 onwards was terminated, and a fine of Rs 295 per metric tonne of coal extracted was imposed<sup>30</sup>. The petitioners represented by Prashant Bhushan put forth the argument that under the scheme of sec 3 of the CMN Act – an eligible company is one which has either set up an iron or steel plant, power plant or cement plant and is involved in the production of these materials. Ironically, most companies did not even mention in their forms as to whether their power, steel or cement plants were functional. This goes to show that even the minimal conditions as laid down in the MMDR and CMN act were not met<sup>31</sup>.

## CONCLUSIONS

With reference to the case it is pertinent to remember that the current case was just one component of the ‘Coalgate scam’<sup>32</sup>. There are parts of the case which are still pending adjudication. As per the new policy the process of auction has been designated as part of the standard operating procedure for allotment of contracts<sup>33</sup>. In the current case however the observations of the court with respect to ‘auction’ is noteworthy- it was stated that auctioning is not necessarily the best procedure as it would increase the cost of input thereby triggering a cascading effect<sup>34</sup>. Furthermore, the process of auction would also favour bigger corporations which would in turn hinder the growth of smaller players in

<sup>25</sup>Ministry of Mines Policy and Legislation Rules

<http://www.mines.nic.in/ViewData/index?mid=1331>

<sup>26</sup>Manohar Lal Sharma Case . (n.d.). Retrieved March 28, 2017, from <https://www.gnu.ac.in/news/315/case%20note.pdf> Center For Constitutional and Administrative Law

<sup>27</sup>Mines of Scam . (2014, September 19). *Frontline* , 1-4.

<sup>28</sup>Manohar Lal Sharma vs The Principle Secretary & Others on 25 August, 2014

<https://indiankanoon.org/doc/135364996/>

<sup>29</sup>Mines of Scam . (2014, September 19). *Frontline* , 1-4.

<sup>30</sup>Ibid

<sup>31</sup>Ibid

<sup>32</sup>CAG Tables Coal Scam Report in Parliament. (2012, August 17). Retrieved March 30, 2017, from <http://indiatoday.intoday.in/video/three-cag-reports-tabled-in-parliament/1/213561.html>

<sup>33</sup>Ministry of Mines Policy and Legislation Rules

<http://www.mines.nic.in/ViewData/index?mid=1331>

<sup>34</sup>Manohar Lal Sharma vs The Principle Secretary & Others on 25 August, 2014

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the market<sup>35</sup>. At the crux of this case lies the latent friction between the Centre and the States, in that the States have always wanted to retain greater control over their resources. The role played by the Central government is perceived as an act of ‘overreach’ by the States, under which the State’s right to be consulted was bypassed<sup>36</sup>.

The underlying basis of this judgment lay in fact that it rejected the argument that the cancellation of licenses would weaken the economy<sup>37</sup>. The court instead reasons that many mining areas had been lying unexplored because the Screening Committee had allocated the contract to companies which lacked the expertise required for mining. Thus, it was decided that the inconvenience caused by termination of contracts would be offset by the better management of this sector in future. The judgment unleashed a nationwide debate on the need for better governance and greater transparency in the mining sector.<sup>38</sup> Additionally, it went on to act as a catalyst for the amendments to the Mining Policies of the Centre, that culminated in the 2016 Mineral Mining Policy.

## REFERENCES

1. Chakrabarty, B. D. (1974). The Coal mines (taking over of management act, 1973 (act no. 15 of 1973): with the Coal mines (nationalisation) act, 1973 (act no. 26 of 1973), the Cooking coal mines (nationalisation) act, 1972 (act no. 36 of 1972). Allahabad: Orient Law House.
2. Lahiri-Dutt, K. (2007). Illegal coal mining in eastern India: Rethinking legitimacy and limits of justice.
3. Manohar Lal Sharma Case. (n.d.). Retrieved March 28, 2017, from <https://www.gnlu.ac.in/news/315/case%20note.pdf> Center For Constitutional and Administrative Law
4. Mines of Scam. (2014, September 19). Frontline, 1-4.
5. Singh, K., & Kalirajan, K. (2003). A decade of economic reforms in India: the mining sector. Resources Policy, 29(3), 139-151.
6. Vivoda, V. (2011). Determinants of foreign direct investment in the mining sector in Asia: A comparison between China and India. Resources policy, 36(1), 49-59.

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<sup>35</sup>Ibid.p.45

<sup>36</sup>Patnaik, L. (2017, January 10). High Court Quashes Centre's Mine Order. *The Telegraphn*. Retrieved April 1, 2017, from [https://www.telegraphindia.com/1170110/jsp/frontpage/story\\_129501.jsp#.W0EoT5GXehA](https://www.telegraphindia.com/1170110/jsp/frontpage/story_129501.jsp#.W0EoT5GXehA)

<sup>37</sup>Manohar Lal Sharma vs The Principle Secretary & Others on 25 August, 2014 <https://indiankanoon.org/doc/135364996/>

<sup>38</sup>Coal Allocations Cancelled . (2014, October 16). Retrieved April 01, 2017, from [http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/newsid/2609/html/1.html?no\\_cache=1](http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/newsid/2609/html/1.html?no_cache=1)

