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CHANGING PARADIGM OF COAL BLOCK ALLOCATION: A STEP TOWARDS COOPERATIVE FEDERALISM¹

AUTHORED BY - SHIVAM AGRAWAL

Abstract:

Despite the call for renewable energy sources, India heavily depends on its coal reserves. The Union and the States are coordinating in effectively regulating coal mines and the country's scientific development of coal resources. A perusal of this paper would dictate that India can optimally utilize its natural resources through the spirit of cooperative federalism. The existing regulatory and institutional framework regarding the allocation of coal blocks suggests that India has come a long way from a preferential licensing regime. Before 2010-12, the allocation of coal blocks was happening through recommendations of the Screening Committee, which the Supreme Court in 2014 declared arbitrary and illegal; consequently, such allocations suffered cancellation. In 2015, the Coal Mines (Special Provisions) Act ensured continuousness in coal mining operations. The Act 2015 and the existing MMDR Act 1957 form the basis of the existing policy of coal block allocation through auction by competitive bidding. By adopting a fair and transparent approach in allocating coal blocks of the country to private and government entities, India has taken another step towards the boon of cooperative federalism.

Key Words: *Allocation of Coal Blocks, Preferential Licensing Regime, Competitive Bidding, MMDR Act, 1957, Cooperative Federalism*

INTRODUCTION

Coal is an essential source of energy in India. Because of its abundance, availability, and affordability, coal contributes up to 55% in meeting the country's energy requirements.² Despite the call for renewable sources, coal as an energy source will stay relevant for at least a few more

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² *COAL – INDIAN ENERGY CHOICE*, available at <https://coal.nic.in/en/major-statistics/coal-indian-energy-choice> (Last visited on October 25, 2022).

decades in the Indian context. Concerning the legal framework which regulates the utilization of coal reserves of the country, it is primarily The Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter, MMDR Act), which forms the picture. As per Schedule One of the MMDR Act, coal is a 'mineral.' After the passing of the Coal Mining Nationalization Act 1973 (hereinafter, CMN Act), only the public sector could undertake coal mining operations, and the burden of supply of coal shifted onto public sector companies. Because of the booming demand for coal as an energy source, it became essential to enable private participation in this field. It is vital to pinpoint here that the Central Government is responsible for controlling the regulation of mines and developing mineral sources. Notwithstanding, the State Governments work with their union counterparts to facilitate the functioning of mines and the development of minerals. Only through the cooperation of the Union and the States can the development and effective utilization of coal resources be done.

Axiomatically, the allocation of coal blocks of the country to different entities is of grave importance for the optimal utilization of coal reserves. The procedure for allocating coal blocks is another crucial aspect. Before the Coal-Gate Scam (2012), it was through the preferential licensing policy that coal block allocations were happening in India. The preferential licensee had the right to obtain a license under the mining law regime.³ Around 1992-93, the Central Government felt the need for a Screening Committee to scrutinize proposals/applications from private and government entities applying for ownership and operation of captive coal mines. In its 36 Meetings held from 1993-2008, the Screening Committee (first constituted on 14/07/1992⁴) made allocations of coal blocks without following the rule of law. The draft report of the Comptroller and Auditor General of India (CAG) also highlighted the infirmities and flaws in the process of coal block allocations.⁵ Later, in the case of *ML Sharma v. The Principal Secretary*⁶, wherein the constitutionality of the allocation of coal blocks was in question, the court held that allocations made by the Screening Committee were arbitrary and illegal. Post this judgment - more focus has been on the allocation of coal blocks through auction by competitive bidding to submit to the mandate of Articles 14 and 39(b) of the Constitution of India, 1950. The preferential

³ Chengappa, M. M. (2017). The Move from Preferential License/Lease Regime to Competitive Bidding through Auction: An Examination of Law Relating to Coal Block Allocation in India. *Indian Journal of Law and Justice*, 8(2), 46-58, 46.

⁴ Ministry of Coal, Office Memorandum, No. 13011/3/92-CA (July 14, 1992).

⁵ THE COMPTROLLER AND AUDITOR GENERAL (CAG), *Report No. 7 of 2012-13 – Performance Audit of Allocation of Coal Blocks and Augmentation of Coal Production, Ministry of Coal*, 22, available at <https://cag.gov.in/en/audit-report/details/1837> (Last visited on October 25, 2022).

⁶ *Manohar Lal Sharma v. The Principal Secretary*, (2014) 9 SCC 516.

licensing policy is no longer in operation because of several loopholes and systemic deficiencies in its functioning.

STATEMENT OF PROBLEM

In India, the trend concerning the allocation of coal blocks has shifted from a preferential licensing policy to an auction-based process involving competitive bidding. It is a positive change in the direction of ensuring a fair and transparent approach with respect to the allocation of coal blocks. It is crucial here to understand how this shift indicates India's move along the lines of cooperative federalism.

RESEARCH OBJECTIVES

This project aims to understand how the Union and State Governments are expected to work in unison to ensure optimal utilization of the coal reserves of the county. The material resources of the county must be optimally utilized to subserve to the common good. And for this, the only possible solution is to embrace the spirit of cooperative federalism. Furthermore, one must know how and why the Indian regime has shifted from a preferential licensing policy to an auction-based process involving competitive bidding for allocating coal blocks.

RESEARCH QUESTIONS

This project seeks to answer the following questions:

1. Why has the Indian regime shifted from a preferential licensing policy to an auction-based process involving competitive bidding for allocating coal blocks?
2. How, by taking the recourse of the process involving auction through competitive bidding for the allocation of coal blocks, has the government taken a further step towards the boon of cooperative federalism?

RESEARCH DESIGN

This paper is the result of an analysis of various journals, articles, and books. Reliance is placed on secondary sources of literature. Various legislation and court cases have come in handy during the preparation of this research paper. In essence, this paper is an out-product of doctrinal research methodology.

HYPOTHESIS

By taking the recourse of the process involving auction through competitive bidding for the allocation of coal blocks, the government has taken a further step towards the boon of cooperative federalism.

REGULATORY FRAMEWORK WRT COAL BLOCKS ALLOCATION

Entry 54 of the Union List reads - "*Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.*" It is Section 2 of the MMDR Act, 1957 which declares that "*it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals.*" Furthermore, the First Schedule of the MMDR Act indicates that 'coal' is one of the minerals specified therein.⁷ "Coal" is a mineral, the responsibility of the regulation and development of which primarily lies in the Union.

The MMDR Act, the Mines Act 1952, and the Rules made under these two enactments form the body of laws governing coal mining in India.⁸ Environmental laws & regulations also affect the functioning of the coal sector.⁹ The Coal Bearing Areas (Acquisition and Development) Act, 1957, provides for "*greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits....*"¹⁰ In 1973, the Coal Mines (Nationalisation) Act 1973 (hereinafter, the CMN) came, and the ownership and control of the country's coal resources were vested in the state. In 1993, the CMN Amendment Act came, and private sector participation was allowed in coal mining for captive use for power generation and other captive end uses. The private sector was further allowed to set up coal washeries. It ensured the rational, coordinated, and scientific development of coal mines and the country's optimal utilization of coal resources. The CMN Act is no longer in operation.¹¹

⁷ The Mines and Minerals (Development and Regulation) Act, 1957, Schedule I, Part A, Item 1.

⁸ Arpita Asha Khanna, *Governance in Coal Mining: Issues and Challenges*, August 2013, 8-9, available at <https://www.teriin.org/projects/nfa/2008-2013/pdf/nfa-WkP9-coal-governance.pdf> (Last visited on October 25, 2022).

⁹ See The Forest (Conservation) Act, 1980; and The Environment (Protection) Act, 1986.

¹⁰ The Coal Bearing Areas (Acquisition and Development) Act, 1957, The Long Title.

¹¹ Coal Mines (Nationalisation) Act, 1973 [Repealed], available at <https://www.sconline.com/Members/BrowseResult.aspx> (Last visited on October 25, 2022).

Although multiple Rules exist under the MMDR Act & the Mines Act, which govern the regulation of coal mines and the development of coal reserves, the Auction by Competitive Bidding of Coal Mines Rules, 2012 (hereinafter, 2012 Rules) holds special significance in the context of this paper. In *ML Sharma*¹², the Supreme Court stumbled upon this aspect. The court noted that although competitive bidding was introduced in 2004, several State Governments had expressed their reservations owing to diverse concerns. In *ML Sharma (Supra)*, the Central Government explained the reasons for not introducing competitive bidding for the allocation of coal blocks since 1992-93. In 2006, the Central Government initiated measures to amend the MMDR Act (1957) to address competitive bidding.

Consequently, the Parliament passed the MMDR Amendment Bill of 2008 in 2010. This amendment introduced Section 11A in the MMDR Act, which provided for the allocation of coal blocks through competitive bidding. Then on 02/02/2012, the 2012 Rules were notified.¹³

After the Supreme Court in *ML Sharma (Supra)* held allocations of coal blocks through the Screening Committee route to be arbitrary and illegal, the court, vide its order dated September 24, 2014, cancelled such allocations and issued directions concerning such coal blocks. In pursuance of the said order, the Central Government brought the Coal Mines (Special Provisions) Act, 2015 (hereinafter, 2015 Act) to allocate coal blocks to ensure continuousness in coal mining operations.¹⁴ The 2015 Act, *inter alia*, re-introduced Section 11A of the MMDR Act.¹⁵ Section 11A of the MMDR Act, 1957, after going through a couple of more amendments, is currently titled "*Granting of mineral concession or composite license in respect of coal or lignite.*"¹⁶ *Inter alia*, Section 11A of the MMDR Act provides for allocating coal blocks through auction by competitive bidding. Provisions of Section 11A of the MMDR Act are there (discussed) in the latter part of this paper.

The Central Government notified 2012 Rules in the exercise of the powers conferred by Section 13(2) (d) of the MMDR Act for specifying the auction process by competitive bidding for the company selection under Section 11A of the MMDR Act. However, the 2015 Act has amended Sections 11A & 13(2) (d) of the MMDR Act, necessitating amendments in the 2012 Rules. Thus,

¹² *Manohar Lal Sharma v. The Principal Secretary*, (2014) 9 SCC 516.

¹³ The Auction by Competitive Bidding of Coal Mines Rules, 2012.

¹⁴ The Coal Mines (Special Provisions) Act, 2015, The Long Title.

¹⁵ The Coal Mines (Special Provisions) Act, 2015, Schedule IV, Part B, Item 1.

¹⁶ See The Mineral Laws (Amendment) Act, 2020; and The Mines and Minerals (Development and Regulation) Amendment Act, 2021.

in the exercise of powers conferred by Sections 13(1) & 13(2) (d) of the MMDR Act, the Central Government, on July 13, 2017, notified the Coal Blocks Allocation Rules, 2017.¹⁷ Coal Blocks Allocation Rules (2017) provide an inclusive definition of "coal" - "*coal includes anthracite, bituminous, lignite, peat, coking coal, coke, and any other form of carbonaceous matter sold or marketed as coal.*"¹⁸ These Rules (2017) have further been amended in 2020.¹⁹

LEGISLATIVE POWERS OF STATE GOVERNMENTS CONCERNING THE COAL SECTOR

Entry 23 of the State List reads: "*Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.*" This power of federating units is subject to the provisions of the Union List. The declaration in Section 2 of the MMDR Act, 1957 dictates that the Union should take control of the regulation of mines and the development of minerals. Thus, one can deduce that the State Governments have lost their legislative power to the extent to which the Union has taken over control and regulation of coal resources.²⁰ In other words, the power of the Union vide the declaration under the MMDR Act is extracted from the competence of State Legislatures.²¹ In effect, the afore-stated declaration has taken out "regulation of coal mines and development of coal" from Entry 23 of the State List. However, the word 'regulation' occurring in the declaration of Section 2 of the MMDR Act, although it should receive wide interpretation but the extent of control of the Union as directed by the MMDR Act has to be construed strictly.²² It means that the declaration of Section 2 of the MMDR Act erodes the legislative power of states only to the extent to which the Union assumes control.²³

The State Legislatures are competent to enact laws concerning regulating coal mines and developing coal resources under Entry 23 of the State List. But this power is subject to the declaration of Section 2 of the MMDR Act. In effect, the matters referred to in the declaration stand extracted from the State List, and those become matters of the Union List.²⁴ It is well within

¹⁷ The Coal Blocks Allocation Rules, 2017, The Long Title.

¹⁸ The Coal Blocks Allocation Rules, 2017, Rule 2(1) (k).

¹⁹ See The Coal Blocks Allocation (Amendment) Rules, 2020.

²⁰ *Bajnath Kadio v. State of Bihar*, (1969) 3 SCC 838. See also *Hingir-Rampur Coal Co. Ltd. v. State of Orissa*, (1961) 2 SCR 537; *State of Orissa v. M.A. Tulloch and Co.*, (1964) 4 SCR 461.

²¹ *Sandur Manganese and Iron Ores Ltd. v. State of Karnataka*, (2010) 13 SCC 1.

²² *Monnet Ispat and Energy Ltd. v. Union of India*, (2012) 11 SCC 1.

²³ *Orissa Cement Ltd. v. State of Orissa*, 1991 Supp. (1) SCC 430.

²⁴ *Bharat Coking Coal Ltd. v. State of Bihar*, (1990) 4 SCC 557.

the authority of State Governments to make a reservation of a mining area within the territory of respective states for their use. This authority is the offspring of ownership and is inseparable from states unless denied expressly by law. The MMDR Act does not affect this inherent right/power of State Governments. Setting aside land owned by a State Government for its exclusive use is an incident of ownership and sovereignty.²⁵ It is justified if a State Government reserves an area in respect of minerals lying within its territory for exclusive use and exploitation by the public sector.²⁶

INSTITUTIONAL FRAMEWORK BEHIND THE COAL SECTOR IN INDIA

The institutional structure in this regard comprises institutions at various levels. At the central level, (a) The Ministry of Coal along with; (b) the Ministry of Environment, Forest and Climate Change; (c) The Ministry of Mines; and (d) The Ministry of Labour and Employment; form the body of institutions involved in the management of the coal sector. At the state level, the institutions, including the (a) Mining Department; (b) Forest Department; (c) Department of Environment; and (d) State Pollution Control Boards (SPCBs), form the institutional framework committed to the regulation and development of coal resources. At the local level, Panchayats and Municipalities play an important part in managing environmental concerns, e.g., land improvement and soil conservation, *inter alia*. At this level, institutions such as the District Magistrate, Department for Collecting Taxes, and Department for issuing Licenses for Mining Operations, also perform indirect regulatory functions.²⁷

In addition to the institutions involved in managing the coal sector in India, trade unions of diverse magnitudes have also started playing a significant role. Over several decades, these trade unions, among other informal institutions, have achieved noteworthy representation and acquired an influential political voice.²⁸

²⁵ Monnet Ispat and Energy Ltd. v. Union of India, (2012) 11 SCC 1.

²⁶ Amritlal Nathubhai Shah v. Union of India, (1976) 4 SCC 108.

²⁷ *Supra* note 8, 9-11.

²⁸ *Id.*

ALLOCATION OF NATURAL RESOURCES VIS-À-VIS COAL BLOCKS

Two Supreme Court decisions viz. 2G Case²⁹ & Natural Resources Allocation Case³⁰ directly deals with the aspect of the auction as a mode for alienation/allocation of natural resources. In the 2G Case, the court said that an auction conducted impartially and in adherence to the rule of law is perhaps the best-suited method for alienating natural resources. While disposing of natural resources, the state is duty-bound to submit to the mandate of Articles 14 and 39(b) of the Constitution of India.

The overhead view of the court necessitated the reference by the President of India to the Supreme Court under Article 143(1) of the Constitution, i.e., the Natural Resources Allocation Case. The primary question at the core of the above reference was whether the conduct of auctions should always do disposal/alienation of natural resources. The Constitution Bench, which handled the reference, observed that the court's view in the 2G Case was confined to the specific case of the spectrum and not to the alienation of all natural resources. The court stated that the state, while allocating natural resources to entities, should primarily ensure two things, viz. (a) the process of allocation/alienation should not be arbitrary and rather should conform to the mandate of the equality clause, i.e., Article 14 of the Constitution;³¹ and, (b) material resources of the community should be distributed to subserve the common good.³² The court acknowledged that there could be legitimate deviations from the mode of the auction for alienating/allocating natural resources.³³ However, in essence, the court stated that the auction, although a preferable mode of alienation/allocation of natural resources, cannot be held to be a constitutional mandate.

View of the Court embedded in the decisions of the 2G Case & the Natural Resources Allocation Case concerning the desirability/preferable-ness of the mode of the auction for the allocation of natural resources, i.e., coal was reiterated by the court in ML Sharma (Supra).

²⁹ Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1.

³⁰ In Re: Special Reference No. 1 of 2012, (2012) 10 SCC 1.

³¹ E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

³² State of Tamil Nadu v. L. Abu Kavur Bai, (1984) 1 SCC 515.

³³ See M/s Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir, (1980) 4 SCC 1; M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592 *inter alia*.

COOPERATION BETWEEN THE UNION AND THE STATES W.R.T. REGULATION AND DEVELOPMENT OF THE COAL SECTOR

A study of the regulatory framework w.r.t. coal blocks allocation and analysis of the institutional framework behind the running of the coal sector of India suggests that it is both the Central Government and State Governments whose coordinated efforts contribute to the regulation of coal mines and development of the coal resources of the country.

Section 11A of the MMDR Act, 1957 can be illustratively analyzed to understand how the allocation of coal blocks is achieved through the cooperative approach of the Union and the Federating Units. Section 11A provides that to grant mineral concession³⁴ or composite license³⁵ in respect of coal resources, the Central Government may select any companies listed therein through auction by competitive bidding. However, the State Government has been trusted to grant such mineral concession or composite license in respect of an area containing coal reserves to such company as selected by the Central Government.³⁶

Similarly, the scheme of the Coal Blocks Allocation Rules, 2017 indicates how the Central Government and the State Governments are expected to collaborate to effectively achieve the intended purpose, i.e., allocating coal blocks. It is noteworthy that the term "allocation" implies allotment and auction referred together.³⁷ CBA Rules, 2017 provides for the allocation process; block dossier; auction; allotment; allotment based on tariff-based competitive bidding for power projects; procedure after the declaration of the successful bidder/successful allottee; re-auction and re-allotment; and other miscellaneous provisions.

In *Goa Foundation v. Union of India*³⁸, it has been acknowledged by the court that, as a matter of policy, it is for the State Government to decide how mining leases are to be granted. However, the constitutionality of the decision of the State Government can be judged through the judicial

³⁴ The Mines and Mineral (Development and Regulation) Act, 1957, §3(ae). It reads: "mineral concession" means either a reconnaissance permit, prospecting licence, mining lease, composite licence or a combination of any of these and the expression "concession" shall be construed accordingly.

³⁵ The Mines and Mineral (Development and Regulation) Act, 1957, §3(a). It reads: "composite licence" means the prospecting licence-cum-mining lease which is a two stage concession granted for the purpose of undertaking prospecting operations followed by mining operations in a seamless manner.

³⁶ The Mines and Mineral (Development and Regulation) Act, 1957, §11A.

³⁷ The Coal Blocks Allocation Rules, 2017, Rule 2(1) (c).

³⁸ *Goa Foundation v. Union of India*, (2014) 6 SCC 590.

review process. It has been held time and again that the ownership of all the mines and minerals within a state's territory lies with such a state. Furthermore, minerals vest with the state.³⁹

CONCLUSION

Regarding rational and scientific regulation of coal mines and optimum utilization of coal resources, it can be achieved only through coordinated efforts of the Centre and the Federating Units. It should be the joint endeavor of the Union and the States to work together to develop coal resources in the country. The spirit of cooperative federalism has the welfare and efficient development of coal blocks in its womb. To achieve this coordination, the Union and the States must embrace a cooperative federal design. In the words of BN Srikrishna, "*federalism can only work when there is a strong sense of unity underlying the diverse constituents.*"⁴⁰

A perusal of this paper would dictate that India has come a long way regarding allocating coal blocks. From the preferential licensing regime to the current mode of allocation through auction by competitive bidding, the evil of arbitrariness has been successfully tackled. There is no doubt that the current regime regarding the allocation of coal blocks aligns with the mandate of Articles 14 & 39(b) of the Constitution of India. The more transparent and fairer the allocation process of coal blocks, the better it is for the optimum utilization of the coal reserves.

It can further be stated that by adopting the framework in which coal blocks are being fairly allocated, India has taken another step towards the boon of cooperative federalism. Currently, the Union and the States are working along the lines of cooperative federalism to ensure effective regulation of coal mines and scientific development of coal resources.

³⁹ State of Orissa v. Union of India, (2001) 1 SCC 429. See also Amritlal Nathubhai Shah v. Union of India, (1976) 4 SCC 108.

⁴⁰ Srikrishna, B. N. (2011). Beyond Federalism. *India International Centre Quarterly*, 38(3/4), 386–407, 407.