ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Issue I

August 2019

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUE OF PROFESSIONAL STUDIES

ISO 9001:2015 Certified Institution
(Affiliated to GGSIP University & Approved by BCI & AICTE)
The Institute is NAAC Accredited 'A' Grade, recognized by UGC under section 2(f)
& NBA Accredited for MCA Programme

TABLE OF CONTENTS

S.No Title of the Paper/Author **Page No.**

Implementation of Mediation in District Courts:
Issues, Challenges and Solutions..... 1
Sudhir Kumar Jain

Prolegomenon to Presumption as a Canon of Justice: The Judicial Perspective..... 8
V. Sree Vidya

Protective Legislation for Men in Matrimonial Violence - Need for Law in India..... 19
Virek Aggarwal

Performer's Right under Copyrights Act, 1957: Critical Analysis..... 25
Saksham Bhardwaj

Right to be Forgotten: Can it be for Real?..... 36
Archana Gadekar

Regulatory Challenges Faced by the Coal Sector in India vis-a vis needs..... 44
for an Independent Regulator : An Insight
Priya Bhatnagar

Crime of Rape and Laws: Need of Gender Neutral Approach..... 59
Ankita Kumar Gupta

Globalisation: An Analysis in The Context of Sustainable Justice..... 72
Kanchan Lavania

STUDENT SECTION

Child Labour in India: Unheard Screams..... 87
Neha Jain

Reservation in Private Sector and Right to Employment: Critical analysis..... 98
Diksha Dubey

The DNA Technology (Use and Application) Regulation Bill, 2019 and
its Effectiveness in Upholding the Principles of Privacy..... 114
Udhaya Karthika and Ms. Tanisha Verma

Case Comments

Dr. Subhas Kashinath Mahajan V. *State of Maharashtra* :
A Critique: AIR 2018 SC 1498 129
Indrajeet Dey

Shayara Bano v. *Union of India*: AIR 2017 SC 4609..... 135
Adarsh Pandey and Mr. Arunaditya Singh Parihar

Regulatory Challenges Faced by the Coal Sector in India Vis-a-Vis Needs for an Independent Regulator: An Insight

Priya Bhatnagar*

Abstract

Coal is vital to the global structure of energy. The contribution of coal in production of world's electricity is 40% of total production of world's electricity. This validates that it is the principal source of electricity. In years to come, coal shall replace oil and become the largest source of primary energy. In context of Indian economy, it is the 3rd largest coal producing nation of the world. In spite of this fact, Coal India limited being the sole coal producer in India has repeatedly failed to meet the demand of nation thereby, pushing the imports. Also, the loss caused due insufficient supply of coal is increasing every year. These days coal is one of the most debated issue in the energy sector of India, facing many regulatory and policy changes. The irony of coal sector in India is that our country has huge coal reserves to last for decades, but unfortunately the energy enriched nation is unable to tap its potential. One of the major reason for this is the current legislations which monopolies and restricts the mining of coal in the hands of two public sector companies that is Coal India Ltd. (CIL) and Singareni Collieries Coal Ltd. (SCCL). To break this monopoly, there is a constant effort on the part of the government of India to demonopolize it by introducing competition in this sector and bringing in private players by allowing commercialization of coal. Through this step, the uprising demand of coal is expected to be met and the abuse of dominant position by Coal India limited and its subsidiaries is likely to reduce. With this, several issues of allocation of coal blocks like illegal and arbitrary allocation arises.

The following article shall highlight the competition and other regulatory

* PhD Scholar at TERI SAS, Assistant Professor of Law, Vivekananda School of Law and Legal Studies, Vivekananda Institute of Professional Studies (VIPS), Delhi

issues at hand in the coal sector. The author shall also discuss the need of having an independent regulator to govern the coal sector in India

***Keywords**: Energy, Coal, Competition, Monopoly, Independent Regulator*

INTRODUCTION

One of the prime objectives of India's energy policy has been to provide access to energy to the entire population. Home to one-sixth of the world's population and third-largest economy of the world, India accounts for only 6% of global energy use.[1] Unfortunately the energy sector in India is incapable to supply energy to the growing population. On account of policy changes in India, there has been a shift towards the free market economy with an increase in production. Unfortunately the energy sector is unable to meet the growing demand. One of the major resource of energy in India is coal which is heavily relied upon by certain key industries like power sector, cement and fertilizer industries.

The global coal reserves which are recoverable are estimated to be over 617 billion metric tonnes (BP-2018).[2] As per the statistics given by Ministry of Coal, Government of India as on 1.4.2018, India accounts for 319.02 billion tonnes of coal. Countries like USA, China, Australia, Indonesia, South Africa and Mozambique are amongst other countries have massive resources.[3]

As per report by Indian Chambers of Commerce, coal production in the Asia Pacific region has grown enormously and accounts for over 67% of the total production globally as compared to about 27% in 1981. With coal as second largest source of energy, it is assessed that the world total consumption of coal shall increase at an average rate of 0.6% per year from 2012 to 2040. India is the second, in the ladder of consumption of coal after China and United States is the third one.[4] India has world's third largest coal reserves with major chunks concentrated in the Eastern and Central parts of Peninsular India. The Jharia coalfields situated in the east of the province of Bihar and Orissa, forms one of the most important units of the Permo- Carboniferous coal bearing area of India.

1 *International Energy Agency*, "World Energy Outlook", 2015 available at https://www.iea.org/publications/freepublications/publication/WEO2015.pdf

2 World Coal 2018-2050: World Energy Annual Report(part -4)

3 Report Presented in 8th India Coal Summit, "Bridging the gap Increasing Coal Production and Sector Augmentation," Indian Chamber of Commerce, 2016

4 *Supra* 2

Though India is second largest coal producer in the world but is unable meet the growing demand for coal. Thus, in the absence of self-reliance for coal production, India's coal imports have shown an expansion from 22 million tonnes in 2003 to 200 million tonnes in 2014[5] with an ever increasing rate of 235.24 million tonnes in 2018 as per the ministry of coal. India imports most of the coal from Indonesia and Australia. In fact, Indonesia accounting for 85% of Southeast Asia's coal production, it remains the world's top exporter of steam coal, which is one of the factor for Southeast Asia emerging as key player in the global energy system.[6]

Coal as prime fuel of energy is not a new discovery in our country. Traces of it being used for melting metals in ancient and medieval India have been found. However, the earliest records of coal industry in India are available since the middle of the 18th century. History of commercial mining of coal dates back to 220 years ago, beginning from 1774-75, when the first mines were worked in Raniganj coalfield in West Bengal along the western bank of river Damodar.[7] In India 80% mining is carried on in the coal sector as it is one of the leading repositories of this black gold. Rest 20% mining consist of other minerals, fuels and metals.India has rich dregs of bituminous and sub-bituminous coal, which rank below anthracite, the best quality of coal in the world.[8] Thus, in India mainly two types of coal are produced, coking coal which is used in metal industries and non-cooking coal used for power generation, cement paper and fertilizer manufacturing.

Also known as black gold, the coal sector in India has the history of not welcoming private players and operating under the state monopoly. With the drastically increasing demand for electricity, demand for coal is on rise. Yet this sector remains the most controlled and possibly least efficient of all energy sectors of the country.

India's 80% domestic need of coal is met by Coal India Limited, a government holding company, with currently has eight subsidiaries. It works under the direct control of Ministry of Coal, which formulates policies and develops strategies on mining, production, supply and price of coal. The regulatory activities related to coal like assessment of quality of coal, its inspection, project approvals, quality disputes and management of coal statistics is done by the office of Coal Controller, which is under the Ministry of Coal.

The coal industry in India has been confronting lot of competition and regulatory issues

5 Parakh PC, The Coal Conundrum: Failure and Judicial Arrogance, 2017

6 International Energy Agency, "World Energy Outlook," 2013 https://www.iea.org/publications/freepublications/publication/WEO2013.pdf

7 Glimpses of Coal India, CIL, Kolkata, (2006):1

8 Fox C.S., "The Jharia Coal Field," *Geological Magazine*, *Cambridge University Press,* (1931)

which are to be addressed. This is evident by the major setback of Coalgate scam[9] wherein cancellation of allocation of 214 out of 218 coal blocks by the Supreme Court of India in 2014 on the grounds of arbitrary and illegal allocation of coal mines. Lack of competition in the market, one sided fuel supply agreements, issue of price distortion, arbitrary allocation policy and abuse of dominant position by the sole coal producer Coal India Limited and its subsidiaries are some of the highlights of the sector. Issues of transparency has always been there as one of the highlights of this sector. Also, other challenges like lack of supply of coal, increase in import of coal, delayed environment clearance issues and land acquisition policies related to coal needs to be comprehensively addressed.

Coal Sector in India

Prior to the Ministry of Coal's order dated 20th February 2018, on commercialisation of coal to private sector In India, coal stood up alone as a sector not fully opened to private investment except production of coal for captive consumption by private companies. [10] Coal production at present is handled by only two PSUs, vis-a-viz Coal India Limited (CIL) and Singareni Collieries Company Limited (SCCL).[11]Coal India Limited, a government holding company, with currently has eight subsidiaries, is responsible for about 80% of coal production of the country. Singareni Collieries Company Limited (SCCL) is another government owned coal mining company in India with 51% of its stake held by Telangana government and rest by the Union Government. Both companies work under the direct control of Ministry of Coal, which formulates policies and develops strategies on mining, production, supply and price of coal. The regulatory activities related to coal like assessment of quality of coal, its inspection, project approvals, quality disputes and management of coal statistics is done by the Coal Controller's Office which is under the Ministry of Coal.

Nationalisation of the Sector

With the aim to ensure rational, coordinated and scientific development and utilisation of resources as per the growing needs of the country, coal sector in India was nationalised under the *Coal Mines (Nationalisation) Act, 1973*. The reasons for nationalisation of the coal were, need for monetary investment in the sector, problem of depletion of natural

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

10 Cabinet Committee on Economic Affairs (CCEA) available at http://www.pib.nic.in/PressReleaseIframePage.aspx?PRID=1521019

11 Conference Proceedings of BRIDGES – a Mentors' Workshop on "Bridging Development Divide for Inclusive Growth through Science, Technology and Innovation", "India's Energy Security: Challenges, Policies and Opportunities," DST-Centre for Policy Research (2015).

resources by private industries while performing mining activities, need for symmetrical plan for extraction of coal, over exploitation, arrangement for safety of labourers and environment degradation concerns.[12]

In past also the policy of nationalisation was adopted in India at the time when banks were nationalised. Available literature shows that it has benefited the banking industry and so did we expect in the case of coal industry in India. It has largely been a positive policy change in the banking sector of our country but an author of a paper on nationalisation of banks in India concludes her paper by saying, that "*the main aim of nationalisation is to control the heights of the economy and to meet progressively and serve better the needs of development of the economy, this has not been achieved yet"*.[13] The growth rates worked out in case of nationalisation of banks, indicated that on the average in case of a majority of operational variables, the performance of nationalised banks as compared to private banks was found higher.[14]

On the contrary, in case of coal, it seems that the idea of nationalisation has failed considerably due to the following reasons: -- non-revival of old mines which had potential to produce, huge investments were made in new projects and technologies which increased cost of production, which brought down the production, many technologies failed to suit the geographical locations incurring heavy losses, failure on the part of the government to fix the selling price of coal.

The scope of *Coal Mines (Nationalisation) Act, 1973* was enlarged in 1993 thereby allowing certain industries to produce coal for captive mining i.e. with end use restriction.[15] As per the *Colliery Control Order, 1945* the price and distribution of coal was completely controlled by Ministry of Coal.[16] But after the introduction of *Colliery Control Order, 2000* though the distribution policy remained same but the prices were deregulated.[17]

In 2007, New Coal Distribution Policy was formulated replacing the linkages system with

12 Udyog, Special Number, Asansol, West Bengal, *"Privatisation of Coal Industry: A Review",* (2003) available at http://www.revolutionarydemocracy.org/rdv10n1/coal.htm

13 Alka Mittal, "An Analysis of the Impact of Nationalisation on the functioning of the Commercial Banks," *International Journal of Commerce, Business and Management*, 5(4) (2016):163-171.

14 P. Prince Dhanraj, "Management of Finance of Nationalised Banks in India: A Post Liberalisation Analysis," *International Journal of Business Policy and Economics*, 4(2) (2011): 293-305

15 Ministry of Coal, Government of India, Annual Report 2010-2011 available at https://coal.nic.in/content/annual-report-2010-11

16 International Energy Agency, "Coal in the Energy Supply of India," OECD, Paris (2002b)

17 Ministry of Coal, Government of India, available at https://www.coal.nic.in/ also refer to https://coal.nic.in/sites/upload_files/coal/files/curentnotices/pricing_0_0.pdf

legally binding Fuel Supply Agreements (FSAs) and Letter of Assurances for better supply of coal. However, it came out to be rather burdening CIL than aiding its distribution policy.[18] Since 1993, 218 coal blocks have been allocated by the government to accelerate the progress of captive mining. However, in September 2014, the apex court cancelled the permit of 2014 blocks as being allocated on arbitrary grounds. Thus, to have a uniform allocation policy, the *Coal Mines (Special Provisions) Act, 2015* was enacted. It shall be interesting to study the impact of this legislation on the overall coal sector. Along with this major setback of *Manohar Lal v. Principal Secretary ("Coal Block Allocation Case")*, coal industry in India has been confronting lot of competition issues which are still to be addressed.

Challenges faced by the coal sector in India

Although there is humongous potential of coal reserves, India is unable to realise it in the absence of the supporting factors. In spite of the long lease durations of 20-30 years and huge scope for employment and other factors of production, India lags behind because of various challenges that mining sector faces today. Factors like stumpy exploration expenditure, lack of foreign investments, illegal mining activities, deficiency of adequate infrastructural facilities and regulatory challenges have caused a major downfall of the Indian mining industry especially the coal sector. The inefficient institutional framework managing the governance of these coal mining activities reveals that there is a huge scope of launching new laws and policies for the mining sector. The companies carrying on mining activities continue to struggle with either low prices or issues related to land and environment clearance. For instance, there are large number of coal mines which have been abandoned without proper closure and without any efforts of rehabilitating the area.[19]. The order of quashing 214 allocated mines as arbitrary and illegal by Supreme court of India in 2014 popularly known as the "coalgate scam "is a clear case illustrating how mine allocations are actually done thereby highlighting the lack of transparency in the system. The amended *Mines and Minerals (Development and Regulation) Act, 1957* intends to legalise the system of auction of mines to enhance the transparency in mineral allocations in India. A transformed mining era is expected to be witnessed.[20]

In India, competition is lacking in the coal market. *The Competition Act, 2002* was enacted in

18 International Energy Agency, "Understanding Energy Challenges; Policies, players and issues," (2012)

19 S K Chaulya *et.al,* "Modernization of Indian Coal Mining Industry: Vision 2025", *Central Institute of Mining and Research, Dhanbad*,67 (2008): 28-35

20 Indian Chamber of Commerce, 5th India Coal Summit, "Coal Mining: Is Private Participation is the Answer?", (2013)

order to boost competition in the national economy of India thereby setting in efficiency and novelty, providing for a wider choice for consumers at competitive prices. Any economy or any sector of the economy deprived of competition leads to abuse of economic power by entering into collusive and unfair trade practices. Also a monopoly market restricts the entry of new players in the market in a way violating the fundamental right to practice any trade and profession given by Constitution of India.

Coal India Limited is virtually a monopolistic supplier of domestic coal in India. It commands one sided fuel supply agreements, lack of effective grievance redressal mechanisms for consumers, increasing complaints from power producers about quality and quantity of coal received, and increasing profitability of CIL despite no significant productivity increase, prima facie suggest that CIL is taking undue advantage of its authoritative position .[21] Not welcoming the private players and creating entry barriers shows the insecurity of the public sector towards losing its monopoly. Privatisation to an extend leads to more corruptive environment and concentration of wealth, but if governed by robust policy and regulatory framework then it can prove to be beneficiary for the economy.[22]

In order to survive and compete with the world, India needs to improvise its manufacturing efficiency/manufacturing cost especially in the energy intensive industries like steel, aluminium, cement and fertilizers.[23] The technologies adopted for mining are not viable for maximum extraction from coal reserves. Large coal reserves in India remains unexplored due to the inefficient mining methods. These challenges might be met by the restructuring of Coal India Limited and maximum participation by the private sector which shall result in increased flow of investments.

Regulatory / Competition issues faced by the sector

Inability to meet the Rising Demand and Imports

Indian coal availability is a critical factor to achieve the targeted power generation capacity addition in India on a sustainable basis for long term. The coal requirement during 2012-13 was 773MTPA but the available Indian coal was 557MTPA.This has resulted in the import of 216MTPA during the same year. It is projected that the coal requirement will

21 Dikhsa Garg *et.al*, "Understanding India's Energy Sector: Players, Policy Framework and Challenges." *International Journal of Scientific Research and Management*, 3 (2015): 2355-2362

22 Arpita Asha Khanna, "Governance in Coal Mining: Issues and Challenges," *The Energy and Resources Institute TERI-NFA Working Paper No. 9,* (2013)

23 Jyoti Prasad Painuly, "Financing Energy Efficiency: Lessons from experiences in India and China," *International Journal of Energy Management*, 3 (2009): 293-307.

be 1373MTPA by 2020-21 and a lot of catching up have to be done to meet this demand.[24] The demand for coal in India has increased nearly to one-third in the last five years. The power sector and non-regulated sectors, both, have driven the increase in demand. The power sector remains the key consumer segment with nearly 70 per cent of the overall coal demand.[25]

Due to lack of latest technology, labour health, human resource, environmental and social issues, CIL and its subsidiaries are not being able to feed the current demand despite the fact that India has abundant reserves to satisfy the demand.[26] Subsidiaries of CIL with larger share of underground mines are having slow growth in productivity due to improper utilisation of labour, capital, and technologies.[27] Many consumers complained about the quality and quantity of coal they get from CIL which again lead to importing of coal. Approximately 82% of the coal produced by CIL is sold under fuel supply agreements (FSAs).[28] Most of the FSA are one sided and contains onerous conditions which the ultimate consumer has to abide by to get the coal supply eventually.[29] These are the few reasons for companies in India to import coal. Other reasons include, placing of coal under open general licence, liberalisation in the power sector after *The Electricity Act 2003* and reduction of import duty over a period of time are few reasons contributing to rise in import of coal.[30]

Price Distortions

With the complete autonomy to set prices, CIL and SCCL (Public sector undertakings) along with the dominant power sector hampered the deregulation of price regime. Now though the prices are being deregulated, the sector has not yet learnt to deal with the

24 Palaniappan Chockalingam *et.al*, "Review on the challenges in setting up coal based power generation capacity in India," *International Journal of Scientific & Engineering Research* 8(1)(2017)

25 Coal Vision 2030, Stakeholders available at Consultationhttps://www.coalindia.in/DesktopModules/DocumentList/documents/Coal_Vision_2030_document_for_Coal_Sector_Stakeholders_Consultation_27012018.pdf

26 Vineet Tiwari *et.al,* "Developments in Indian Energy Sector: Problems and Prospects," IOSR *Journal of Business and Management*, 5 (2013) 11-17.

27 Mudit Kulshreshtha*,* "A Study of Productivity in the Indian Coal Sector," *Energy Policy,* 29 (2001):701-713

28 Ministry of Corporate Affairs, "Report on Competitiveness of the Coal Sector*" Indian Institute of Corporate Affairs and CUTS Institute for Regulation and Competition for Ministry of Corporate Affairs* February 12, 2012

29 Singh& Bhaskar, NCL, 2010; MSPGCL, 2012;

30 Sylvie Cornot-Gandolphe, "Indian Coal Steam Coal Imports: The Great Equation," *The Oxford Institute for Energy Studies*, (2016).

inevitable volatility in global coal prices.[31]At present it's very difficult to tell the true cost of domestic coal in the presence of huge cross-subsidies in rail transport. Pricing of coal in India has always been a matter of discussion which uses an age-old method to price coal on the basis of it beneficial heat value rather than gross calorific value.[32] The overall, the pricing scheme of the energy commodities at present is not able to gather reasonable return on investments for the non-government companies, leading to the questioning of the investment decisions made by the managers on behalf of the companies in this sector.[33] Rise in prices of coal due to huge transportation cost from mines to the consuming centre, high production cost, losses due to pilferage, power shortage is another issue in the sector.

Lack of Level Playing Field

Under the current policy regime in the coal sector, the new entrants find it very difficult to enter and operate as there is a significant increase in the start-up and operating cost particularly for the private companies. Also, the latter is not able to gather reasonable return on investment because of the pricing strategy.[34]

Though private entities earlier were allowed to do captive mining, but what captive mining does is to induce inefficiency as a producer of steel, aluminium, cement or power, a far than efficient miner, is allotted mines of coals, leaving behind the experts of this field, thus, leading to inefficiency. Obtaining clearances and approvals from numerous departments have exhausted the captive miners resulting in losing their interest in captive mining.[35] So, the question is, was this even a fair play field for them?

Very recently the Ministry of coal has commercialised the mining of coal without end use restriction.[36] But it is apprehended by the private sector that the blocks that will be auctioned might be the ones which are kept non-operational by CIL due to difficulties like mines with dense population or which are buried deep underground again creating a room for an in competitive environment. Also, the auctioning process which depends more on the

31 Kuntala Lahiri-Dutt, "Coal mining industry at the crossroads: Towards a Coal policy for liberalising India," *The Australian National University, Australian South Asia Research Centre,* (2007) available at http://www.academia.edu/3141697/Coal_mining_industry_at_the_crossroads_Towards_a_Coal_policy_for_liberalising_India, Working Paper 2007

32 Nick Malyshev, "The Evolution of Regulatory Policy in OECD Countries," *Organisation for Economic Co-Operation and Development*

33 Anindita Chakrabarti *et.al*, "India's Energy Security: Critical Considerations*", Sage*, 17,16 (2016):1–17

34 *Supra* 31

35 *Supra* 24

36 Government of India, Ministry of Coal, CBA2-13011/ 1/2017-CBA2-Part (1), Dated ,27'February, 2018 available at https://www.coal.nic.in/sites/upload_files/coal/files/curentnotices/27-02-2018.pdf

price rather than the competence and expertise of the bidders is highly doubted.[37]

A number of laws and rules govern the coal sector in India. Some of these are:

- *Coal Mines (Nationalisation) Act, 1973*
- *Coal Bearing Areas (Acquisition and Development) Act, 1957*
- *Mines and Minerals (Regulation and Development) Act, 1957*
- *Coal Mines (Special Provision), Act 2015*
- *Colliery Control Rules, 2004*
- *New Coal Distribution Policy, 2007*
- *Notification under Contract Labour (Regulation and Abolition Act), 1970*

Certain provisions of these acts are in favour of the government and public-sector undertakings thereby creating a forum for differential treatment and scope of misuse of these provisions thereby defeating the objective of *The Competition Act, 2002*.

For instance, *Coal Bearing Areas (Acquisition and Development) Act,1957* provides for acquisition of virgin coal land by the government for giving it to PSU's, thereby reserving the land. But no such preference is offered to private players. Also, the act empowers government the right to acquire land for which the prospecting licence has already been issued, making the private miners susceptible to the hands of the government.[38] The provision of reserving prime coal blocks for the public sector while allowing the private sector to have blocks only through allocation process vitiates the idea of level playing field.

Also, there exist a number of issues related to land acquisition, compensation and rehabilitation which has not been addressed by the new land acquisition act, which needs to be highlighted. Differential treatment in the procedural formalities of obtaining land acquisition and environment clearance and allocation process, showcase that how these laws are inclined towards the PSU's thereby defeating the very objective of creating a level playing field and striking a balance between privatisation and nationalisation.

In the past few years there has a large number of reforms in the Indian coal sector which has helped the sector to reshape but a common legislative framework that provides an equal footing for public and private sector is yet to be introduced. Thus, in this backdrop it is

37 Debjoy Sengupta, "Is Coal India's Monopoly really going to end?" *Economic Times*, February 22, 2018 available at https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/is-coal-indias-monopoly-really-going-to-end/articleshow/63019787.cms

38 *Supra* 2

important to streamline the coal sector which can only be done by eliminating the existing policy biases that prima facie is against the competition. Therefore, the above mentioned laws and policies which have the potential to affect the competition in sector needs to be re-examined.

Allocation Policy in India

The allocation of natural resources has always been a matter of concern and controversy entailing judicial scrutiny invoking Article 14, 19 and 21 of the constitution of India. This is evident from a number of cases in the past decades questioning the constitutional validity and authenticity of allocation of mines and reserves. Cases ranging from *M/S Kasturi Lal Laxmi Reddy v. State of J&K and another,*[39] where allotment for extraction of resins was alleged to be defective for the want of fairness till the latest "Coalgate Scam",[40] there are plethora of precedents which adjudicated on methods and basis of distribution of natural resources by the government.

The Indian Constitution mandates that no action of the government should be eccentric as arbitrariness is antithesis to equality. The public trust doctrine[41] lays down that government of India is the custodian of natural resources and is bound to protect the same, prohibiting the transfer of these to private persons. Expounding the meaning of arbitrariness, it was also observed by the apex that an enactment shall not be quashed just because court thinks it to be unjust and unreasonable. But the boundaries of doctrine of arbitrariness shall be said to have crossed only when some constitutional frailty is found and there is an apparent violation of equality clause. In case of coal, it is alleged that the scarcity of coal is artificial and with the present system of coal distribution, any of the methods of allocation, allotment or auction is not favourable. In the past few years, the pressure on imports of coal has amplified due to insufficient supply.[42] To enable the coal industry to boom its production levels, ministry of coal needs to work in synchronization with other ministries like petroleum, environment and forest, railways, shipping on the issues of pricing, allocation, clearance etc.

Coal India limited was unable to achieve its past supply commitments made through Letter of Assurances and Fuel Supply Agreements with different consumers, in the absence of

39 1980 AIR 1992, 1980 SCR (3)1338

40 *Supra* 9

41 *M.C. Mehta v. Kamal Nath* (1997)1 SCC 388 --The principle that certain natural and cultural resources are preserved for public use, and that the government owns and must protect and maintain these resources for the public's use.

42 MP Ram Mohan et.al, ", Constitution, Supreme Court and Regulation of Coal Sector in India," *National University of Juridical Sciences Law Review*, 11 (1) (2018)

any new contracts. In such a scenario, CIL being the sole repository of coal in India could route its escape and feed the hungry consumers only through allocation of coal blocks for captive consumption. To actualise this, The Coal Mines (Nationalisation) Act, 1973 was amended to permit captive mining and guide allocation activities in the coal sector. In order to govern captive mining, Captive Coal Mining, 1993 was enacted and National Coal Distribution Policy, 2007 was formulated by Ministry of Coal, which laid the modus operandi of the allocation and distribution process. But unfortunately the coal sector was spanked by CAG's allegation of conducting allocation process in an arbitrary and opaque manner, which led to cancellation of allocation of as many as 204 coal blocks by Supreme Court of India in 2014 in the major Coalgate scam. Due this again the coal production was affected as during 2004-09 only few blocks were put to production.[43] The procedure for distribution of coal mines was not regulated comprehensively before 2010. It was only in 2010 when the 1957 Act was amended to introduce sec 11A allowing competitive bidding.

From settling of disputes between centre and state related to land acquisition for mining in *West Bengal Case,*[44] till the latest Coalgate scam judiciary has played a proactive role in developing the regulatory framework of allocation of coal mines.[45] The current legal regime is inclined towards the public sector for instance the Coal Bearing Act 1957 allows the central government to possess virgin lands and thus the PSUs are not required to obtain lease for land acquisition for mining of coal. However private players do not get such advantage.[46] Therefore, after introduction of *Coal Block Allocation Rules, 2017* there is a need to examine the impact of these in the competition regime of the sector while highlighting the concept of distributive justice in allocation of coal.

Governance of Issues related to Environment Management, Land Acquisition and other Social Concerns

The Indian Constitution mandates wholesome environment to its citizen under Article 21.[47] But there exists an endless conflict of achieving sustainable development. The coal mining

43 Pooja Dasgupta *et.al,* "Coal is Gold: The 'Coalgate' Scam," *Global journal of Commerce and Management Perspective,*2 (2016): 16-21

44 *State of West Bengal v. Kesoram Industries Ltd. And Ors* (2004) 10 SCC 201: AIR 2005 SC 1646

45 *Supra* 42

46 Molshree Bhatnagar, "Competition and Regulatory Issues in Coal Sector in India," CIRC Working Paper No. 11. New Delhi: *CUTS Institute for Regulation & Competition.* (2014).

47 Art. 21: Constitution of India, No person shall be deprived of his life or personal liberty except according to procedure established by law.

activities and combustion of coal leave the environment damage irreversible.[48] From legislative perspectives, the environmental concerns related to coal mining process are multi-fold, namely clearance and approvals, regulation for safety, environment pollution and land degradation. To illustrate the number of coal-based power projects pending for environmental clearances is 78 which amounts to 103GW.[49] The acts of subsidence have left most of the area barren and unstable. No coherent efforts have been made to make these lands reusable. Many countries have laws that deals with subsidence but in India there no legislation specifically dealing with this issue.[50]

Coal also called "the dirty fuel"[51] is more pollutive and harmful for the environment as compared to other fossil fuels. Indian coal has a lower Gross Calorific value but higher ash content, reducing the amount of heat produced, which when transported over long distances causes environment pollution. Since coal is extracted through opencast mining, it has resulted in damaging the ecosystem on the whole by causing air and water pollution, deforestation, removal of topsoil and vegetative cover thereby causing imbalance in the biodiversity.[52] To exemplify the effects of coal washing on water resources, a single coal washery discharges about 45 tonnes of fine coal in the river Damodar, which has become the most polluted river in that particular coal mining belt. The region consists of 11 washeries, so the effect cannot be even imagined.[53] Between 1973 and 2007, the forest cover in the Angul-Talcher region in Odisha reduced to 11% because of coal mining.[54]

Not only mining activities harm the environment but also the non-mining activities like burning of coal in open stock, active fires and road transport of the coal have added a new dimension to the atmospheric pollution of the region[55]. Though there are numerous laws dealing with environment protection and conservation. But there is no single comprehensive

48 Sujata Upguta *et.al*, "Impacts of Coal mining: a Review of Methods and Parameters Used in India," Current World Environment 12,(1) (2017): 142-156

49 *Supra* 23

50 Sribas Goswami, "Challenges of Environmental Management in Indian Coal Mining Sector," *Universal Journal of Environmental Research and Technology,* 6 (2013):616-629

51 Gurdeep Singh, "Environment and Social Changes Facing the Coal Industry," *Proceedings of International Coal Congress & EXPO* (2006)

52 Niharranjan Mishra *et.al,* "Coal Mining and Local Environment: A Study in Talcher Coalfield of India" *Air, Soil and Water Research, Sage* 10 (2017):1-12

53 Nitish Priyadarshi, "Effects of Mining on Environment in the State of Jharkhand," *Environment and Geology,* (2012) available at http://nitishpriyadarshi.blogspot.in/2012/05/effects-of-mining-on-environment-in.html

54 R. Singh *et.al* "Evaluation of land degradation due to coal mining-A vibrant issue" First International Conference on MSECCMI, New Delhi, India. (2007).

55 *Supra* 23

act policy dealing with environment challenges stemming from coal exploration.

Despite of a having numerous environment policies and regulations, the environment condition around the mining area is depleting because of ineffective implementation of these laws. In a report by CAG in 2011 it was found that most of the coal mining companies specially CIL and its subsidiary have been found in violation of national environment standards with no closure plans of mines.[56] Another concern is that related to lack of coordination across various government departments.

Due to the current laws and policies, getting environment clearances and land acquisition has become complex. In spite of efforts to simplify the clearance process there has been consistent delays in getting approvals. The cause of this delay is majorly attributed to non-submission of required information. [57] Fear of not getting environment clearances and land acquisitions on time not only creates entry barriers for prospective miners but also drives the existing players out of the market, thereby affecting the overall competitiveness of the sector.

The need for an Independent Regulator

Coal India limited as a public-sector undertaking is responsible for the production and distribution of in India is under the control of Ministry of Coal. Coal quality inspection, resolving quality disputes, providing approval of projects and performing a role of an arbitrator is done by the Coal Controller's Office which is subordinate to the ministry.[58]

According to the *Coal Regulatory Authority Bill, 2013* which is still pending in the parliament, the impact of monopolistic market structure has exponentially increased due to the absence of an independent regulatory oversight.

Independent regulators with defined powers and functions and a certain degree of autonomy separates its role from the government and politics influence. Most of the OECD countries are trending towards having an independent regulator. It acts as armour preventing market interference from political and private interest.[59] The Telecom sector in India is can be cited

56 Lubna Fairoze, "Cartelization in the Indian Competitive Market," *International Journal of Law and Legal Jurisprudence Studies* 3(1) (2016) :366-377

57 G. Raghuram *et.al*, "Mega projects in India Environmental and Land Acquisition Issues in the Road Sector," Indian Institute of Management Ahmedabad Research and Publication Department IIMA Working Papers, (2009).

58 Coal Controller's Organization, Ministry of Coal, Government of India 2015 http://www.coalcontroller.gov.in/

59 *Supra* 20

as an example where the monopoly structure transformed to a competitive one followed by the emergence of an independent regulator in the form of Telecom Regulatory authority of India (TRAI) to control the deregulation mechanism.[60]

Without a regulator, the public sector upholds the monopolistic structure barring new entrants.[61] The auction process is also expected to improve with more transparent and effective allocation by introduction of an independent regulator.[62] Thus, an Independent regulator with a more practical regulatory approach, technical capacity and institutional legitimacy in their dealings is necessary in various sectors is essential for economic development.[63] The Trend of having sector wise independent regulator started in United States early in 20th century to check abuse of monopoly powers. The US regulatory agencies are relatively autonomous with almost zero political interference with proper accountability and supervision by the US Congress.[64] Thus, Independence without accountability is a bane than a boon.

The establishment of an independent regulatory body without any interference from the government and ministry shall definitely be able to answer the challenges in the sector including that of competition.

Conclusion

Thus, in order to inject competition in the sector the government has taken the right step viz-a-viz allowing commercialisation of coal mining. But again that does not seem to be so easy task keeping in mind the allocation of coal blocks and deep rooted CIL's hold in the sector is not easy to loosen. Also the current regulatory regime of coal sector in India is not ready to welcome such a major policy change of introducing commercialisation. We need to have a governance system with autonomy and minimum interference from the stakeholders in the form of an independent regulator or modify the existing powers and functions of office of Coal Controller.

60 R.U.S. Prasad, "The Impact of Policy and Regulatory Decisions on Telecom Growth in India," *Stanford Centre for International Development*, Working Paper No. 361, July (2008).

61 Anurag Sehgal *et.al,* "Coal Requirement in 2020: A Bottom-up Analysis" *Brookings India Quality. Independence. Impact* ,2016

62 Molshree Bhatnagar, "Competition and Regulatory Issues in Coal Sector in India," New Delhi: *CUTS Institute for Regulation & Competition*, CIRC Working Paper No. 11. (2015)

63 Navroz K. Dubash, "Independent Regulatory Agencies: A theoretical Review with Reference to Electricity and Water in India," *Economic and Political Weekly* 43, 40 (2008).

64 V.Paratab Kumar *et.al,* "Public-Private Partnerships in Infrastructure: Managing the Challenges", Springer, 2017.