Court Case/ Most Immediate
By Speed Post

No.38028/1/2005-CA-I(Vol.-II)
Government of India
Ministry of Coal

New Delhi, dated 21st October, 2011

To
1. The Principal Secretary,
Government of Maharashtra,
Department of Industries, Energy and Labour,
Mantralaya, Mumbai-400032

2. The Director (T/C RD),
CMPDIL, Kanke Road, Ranchi-834008

3. The Coal Controller,
Coal Controller's Office,
1, Council House Street, Kolkata-700001

Subject: Judgment dated 1st September, 2011 in LPA No.658 of 2011 against order in CWP No.8944 of 2005- M/s Central Collieries Company Ltd. Vs. Union of India in the High Court of Delhi- Representations from the Petitioner (M/s CCCL).

Sir,

I am directed to refer to this Ministry's letter of even number dated 18th June, 2010 on the above subject (**copy enclosed**) and to **enclose** herewith a copy of Judgment of Delhi High Court dated 1st September, 2011 in LPA No.658 of 2011 against order dated 16.04.2010 in CWP No.8944 of 2005- M/s Central Collieries Company Ltd. Vs. Union of India in the High Court of Delhi.

2. You are requested to strictly comply with the court order and inform the action taken thereof to the Ministry of Coal.

Yours faithfully,

(V.S.Rana)
Under Secretary to the Govt. of India

Copy to the CMD, Western Coalfields Ltd. Civil Lines, Nagpur, Maharashtra.

Copy also to NIC, M/o Coal

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No.38028/1/2005-CA-I(Vol.-II)
Government of India
Ministry of Coal

New Delhi, dated 18th June, 2010

To

1. The Principal Secretary,
Government of Maharashtra,
Department of Industries, Energy and Labour,
Mantralaya, Mumbai.

2. Shri N. Khurana,
Director (T/C RD)
CMPDIL, Kanke Road, Ranchi.

3. Shri A.K.Biswas,
Dy. Director General,
Coal Controller's Office,
1, Council House Street, Kolkata.

Subject: LPA against order in CWP No.8944 of 2005- M/s Central Collieries Company Ltd. Vs. Union of India in the High Court of Delhi- Representations from the Petitioner (M/s CCCL).

Sir,

The undersigned is directed to refer to letter No.CMPDI/DG/033.1/Captive/1640 dated 02/04.06.2010 received from CMPDIL and letter No.CC/Lit/CCCL/8944/060-A.I dated 07.06.2010 received from Coal Controller's Office on the above.

2. In this regard, it is informed that the Ministry of Coal on receipt of the High Court of Delhi order dated 16.04.2010 in WP No.8944/2005, has decided to challenge the said order by filing an LPA in the High Court of Delhi. Accordingly based on the advice received from the Ministry of Law and Justice, Department of Legal Affairs, the LPA has since been filed with the High Court of Delhi making M/s Central Collieries Company Ltd. and State Govt. of Maharashtra as Respondents. In the LPA it has been prayed for stay of the impugned order and revision of the judgement.

3. Since the Ministry of Coal has filed the LPA challenging the Court order and seeking stay on operation of the same, you are requested to await the Court's decision and the outcome of the LPA before acting on the directions of the High Court of Delhi order dated 16.04.2010. Further, no action on the representation received from the company would be initiated without the prior permission of the Central Government.

Yours faithfully,

(V.S.Rana)
Under Secretary to the Govt. of India

Copy to CMD, WCL, Nagpur for information and necessary action. BY (FAX)/ Speed post

\+ **Letters Patent Appeal No. 658/2010**

Reserved on: 5th August, 2011
% **Date of Decision:1st September, 2011**

Union of India & Anr. ....Appellants
Through Mr. Jatan Singh, Advocate.

VERSUS

Central Colleries Company & Anr. ....Respondents
Through Mr.Rishi Kapoor and Mr.Paras, Advocates for the respondent No.1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J.

The Union of India has filed the present intra court appeal assailing the decision dated 16th April, 2010 passed by the learned Single Judge allowing Writ Petition (Civil) No. 8944/2005, filed by the Central Collieries Company Limited, respondent No. 1 herein. Learned Single Judge has given the following directions in paragraph 63 of the impugned decision:

"63. It is hereby directed that within a period of four weeks from today, the lease deed will be executed afresh by the State Government in terms this judgment in favour of CCCL incorporating the conditions set out by the Central Government in its letter dated 28th December 1999. CCCL will be permitted to submit a revised mining plan to the Central Government which will consider the said mining plan in accordance with law and grant CCCL permission subject to any condition as it may deem fit to impose within a period of four weeks thereafter. CCCL will adhere to the conditions imposed by the Central Government in granting such approval. The consequential orders will be passed by the State Government within a period of four weeks thereafter."

2. The respondent No. 2 in the present appeal is the State of Maharashtra.

3. The respondent No. 1 had applied to the Ministry of Coal, Union of India, for allotment of Takli-Jena-Bellora block for development as a captive coal mine for a proposed power project. The proposal was considered by the Screening Committee constituted by the Ministry of Coal and allocation of southern part of the Takli-Jena Bellora block was approved for 3x30 MWs Captive Power Plant (CPP), subject to conditions, two of which are as under:-

"(c) The party shall set up a washery for washing this coal and use washed coal for generation of power through these CPPs.
(d) The party shall take necessary steps for obtaining mining lease within six months of issue of these minutes and comply with various legal requirement."

4. Screening Committee was an inhouse mechanism set up by the Central Government to identify coal blocks which can be allotted. Coal mines were nationalized with enactment of Coal Mines (Nationalisation) Act, 1973 (CMNA). The said Act allows private sector Indian companies engaged in the specified industrial activity to carry on coal mining for their end use in accordance with Section 3(iii) of the said Act.

5. By a letter dated 2nd September, 1999, Ministry of Coal, Government of India had approved the mining plan submitted by respondent No. 1. The said letter further mentions that they were directed to convey approval of the Central Government under Section 5(2)(b) of the Mines & Minerals (Development and Regulations) Act, 1957 (MMDR Act, for short). There is controversy with regard to the approved mining plan and this aspect has been noticed below.

6. In respect of major minerals, powers to make rules to carry out the purposes of MMDR Act, vest with the Central Government. The provisions of MMDR Act, in respect of major minerals have been noticed and discussed below.

7. Section 5 of the MMDR Act reads as under:-

"5. Restrictions on the grant of prospecting licences or mining leases-(1) A State Government shall not grant a [reconnaissance permit, prospecting licence or mining lease] to any person unless such person –

(a) is an Indian national, or a Company as defined in sub-section (1) of Section 3 of the Companies Act, 1956; and

(b) satisfies such conditions as may be prescribed :

Provided that in respect of any mineral specified in the First Schedule, no [reconnaissance permit, prospecting licence or mining lease] shall be granted except with the previous approval of the Central Government.

Explanation – For the purposes of this sub-section, a person shall be deemed to be an Indian national, -

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India;]

(2) No mining lease shall be granted by the State Government unless it is satisfied that-

(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and

(b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned."

8. It is clear from Section 5(1), that the State Government cannot grant a mining lease to any person in respect of any mineral specified in the first Schedule, except with the previous approval of

the Central Government. A prior approval is mandatory as per the proviso to sub-section (1) to Section 5 of the MMDR Act.

9. Sub-section (2) to Section 5, prescribes the parameters which a State Government is to keep in mind before granting a mining lease, but it does not affect or nullify the proviso to sub-section (1) to Section 5 which requires prior approval of the Central Government for grant of a mining lease in case of any mineral specified in the first Schedule. The proviso to sub-section (1) obviously is not applicable in respect of minerals not specified in the first schedule.

10. On 15th October, 1999, respondent No. 2 forwarded a proposal for grant of mineral lease to the respondent No.1 for a prior approval of the Central Government under Section 5(1) of the MMDR Act. The relevant portion of the said letter reads as under:-

> "3. Under the circumstances explained above the Mining lease may be granted to M/s. Central Collieries Company Ltd. for the total area 271.00 hects. on usual terms and conditions and following additional conditions:-
>
> i) No mining operation should be started in any area which is not prospected by State Government or by the company.
>
> ii) Minerals extracted from the above mines should be used as a captive source of raw material for their own plant only.

iii) The coal should not be used for commercial and trading purpose.

4. You are, therefore, requested to move the Government of India to approve the above proposal of the State Government to grant of Mining lease M/s. Central Collieries Company Ltd. Nagpur."

11. Ministry of Mines and Minerals, Department of Coal by their letter dated 28th December, 1999 granted approval. The said letter is relevant and for the sake of completeness is reproduced below:-

"Shri J P Dange
Secretary
Government of Maharashtra
Trade, Commerce & Mining Department
Mantralaya
Mumbai-400 032

Subject: **Grant of coal mining lease over an area of 271.00 hectares in Village Bellora-Jena-Takli, South Part, Tehsil Bhadrawati, District Chandrapur, Maharashtra to M/s Central Collieries Company Limited.**

Sir,

I am directed to refer to your letter No.MNA-1298/1586/(7642)/Desk-IV dated 15.10.99 on the subject mentioned above and to convey previous approval of the Central Government under the proviso to Section 5 (1) of the Mines and Minerals (Regulation & Development) Act, 1957 for grant of coal mining lease over an area of 271.00 hectares in Village Bellora-Jena-Takli, South Part, Tehsil Bhadrawati, District Chandrapur, Maharashtra to M/s Central Collieries Company Limited for a period of 30 years.

2. Previous approval of the Central Government under Rule 27(3) of the Mineral Concession Rules, 1960 is also hereby accorded for incorporation of the following additional conditions in the lease deed to be

executed between the State Government and M/s Central Collieries Company Limited:-

(a) No coal mining operations in the leased area shall be started by M/s Central Collieries Company Limited unless that area is not prospected either by the State Government or by M/s Central Collieries Company Limited.

(b) All raw coal mined from the leased area by M/s Central Collieries Company Limited shall be exclusively used for power generation in the power plants of M/s Central Collieries Company Limited who may improve the quality of the raw coal by beneficiation in the washeries owned by them before feeding into their power plants.

3. A copy of the lease deed executed with M/s Central Collieries Company Limited with the above mentioned additional conditions incorporated therein may be forwarded to this Department immediately after execution.

Yours faithfully,

(A Banerji)
Director

Copy for information and necessary action to Shri. G D Daga, Director, M/s Central Collieries Company Limited, Temple Road, Civil Lines, Nagpur 440 001 with reference to his letter No.CCCL/99-2000/F-31A/250 dated 6.11.99.

(A Banerji)
Director"

12. Copy of the said letter was also marked to Mr. G.D. Daga, Director of the respondent No. 1, with reference to his letter dated 6th November, 1999.

13. In the meanwhile, however, respondent No. 1 had written a letter dated 10th November, 1999 to respondent No. 2 seeking withdrawal of the 3 conditions imposed by the said respondent in their earlier letter dated 15th October, 1999, which has been quoted above.

14. Respondent No. 2 by their letter dated 21st December, 1999, informed the respondent No. 1 that the matter had been examined at their end and they had decided to waive the three conditions mentioned in the letter dated 15th October, 1999. The respondent No. 1 claims that this letter was sent to the appellant. The appellant, however, states that the copy of this letter was not available on their records and came to their possession only on or after 24th May, 2002. We do not think this controversy is required to be resolved/decided for the reasons stated below, but it does appear that the stand of the appellant is correct. It is difficult to accepted the finding of the learned single judge that the denial of the receipt of the letter dated 21st December, 1999 by the Central Government was not convincing as the counter affidavit filed by the respondent No. 2, indicated that the copy of the said letter was indeed marked to the Central Government. Learned single judge has rightly

adversely commented upon the vacillating stand of the second respondent. The letter dated 21st December, 1999, written by the respondent No. 2 to respondent No. 1 reads as under:-

"M/s Central Collieries Co. Ltd.,
5, Temple Road,
Civil Lines,
Nagpur-440 001.

Sub. :- WAIVAL (sic) OF ADDITIONAL CONDITIONS FOR GRANT OF COAL MINING LEASE-TAKLI-JENA-BELLORA AREA COAL BLOCK.

Ref.:- YOUR LETTER NO.CCCL/COAL/F-31A/99-2000/253 DATED 10TH NOVEMBER, 1999 & NO.CCCL/COAL/F-31A/99-2000, DATED 15TH DECEMBER, 1999.

Dear Sir,

We are in receipt of your letter No.CCCL/COAL/F-31A/99-2000/253 dated 10th November, 1999 & No. CCCL/COAL/F-31A/99-2000 dated 15th December, 1999 requesting us to waive conditions put by us vide our letter No.MNA-1298/1586/(7642)Desk-IV dated 15th October, 1999. The matter has been examined t our end and we are pleased to inform you that the additional conditions namely "3 (i) No mining operation should be started in any area which is not prospected by State Government or by the company (ii) Minerals extracted from the above mines should be used as a captive source of raw material for their own plant only (iii) the coal should not be used for commercial and trading purpose are being waived.

Yours faithfully,

(J.P. DANGE)
Secretary to
Government"

15. The said letter as noticed above, is not addressed to the Central Government. The letter does not seek approval of the Central Government under Section 5(1) of the MMDR Act. We have already referred to and quoted above the letter dated 15th October, 1999, written by respondent No. 2 to the Central Government seeking approval under Section 5(1) of the MMDR Act. In case, the respondent No. 2 wanted to amend or modify their earlier letter dated 15th October, 1999, this should have been mentioned and stated in the letter dated 21st December, 1999. As noticed above, prior approval under Section 5(1) of the MMDR Act is mandatory. Further, the approval granted by the Central Government vide letter dated 28th December, 1999 was specific and clear. It was accorded and subject to the condition that the lease deed executed between the two respondents shall have a condition that all raw coal mined from the lease area shall be exclusively used for power generation in the power plant of the respondent No. 1 who may improve the quality of raw coal by beneficiation in the washeries owned by them before feeding into their power plants. Even if it is assumed that the letter dated 21st December, 1999 was sent to and received by the Central Government, it was of no consequence as the Central

Government had imposed a specific condition. We may also notice here that the respondent No. 1 did not challenge or question the said condition inspite of letter dated 21st December, 1999 written by respondent No. 2 to the respondent No. 1 deleting/waiving three conditions which were mentioned in their letter dated 15th October, 1999. The respondent no.1 did question and challenge the conditions imposed by the appellant by writing a letter of protest.

16. Learned counsel for the respondent No. 1, has emphasized and referred to the unamended Rule 27(3) of the Mineral Concession Rules 1960 (MC Rules, for short). The Rule 27(3), before amendment w.e.f. 17th January, 2000, read as under:-

> "The State Government, if it is of the opinion that in the interest of mineral development it is necessary so to do, may, in any case, with the previous approval of the Central Government, impose such further conditions as it thinks fit".

17. The aforesaid Rule stipulates that the State Government with the previous approval of the Central Government could impose further conditions as it deemed fit. The learned Single Judge has accepted the contention of the respondent No. 1 that the three conditions imposed by the respondent No. 2 in their letter dated 15th October, 1999, were additional or further conditions covered by Rule

27(3) and, therefore, these could have been withdrawn and waived by the State Government without previous approval of the Central Government. The learned Single Judge in this regard has contrasted Rule 27(3) of the MCR after its amendment w.e.f. 17th March, 2000, which thereafter reads as under:-

> "The State Government may, either with the previous approval of the Central Government or at the instance of the Central Government, impose such further conditions as may be necessary in the interests of mineral development, including development of atomic minerals."

18. No doubt there is difference in the language of Rule 27(3) before and after its amendment, but this to our mind is inconsequential and irrelevant in the present case, as the Central Government has power to reject or approve a proposal under the proviso to Section 5(1) of the MMDR Act. The rules can supplement but cannot supplant the main enactment. There cannot be iota of doubt that the Central Government can impose a condition while granting an approval under section 5(1) of the MMDR Act. A conditional approval can be granted. The Central Government while granting approval had directed and stated that the two conditions including the condition of captive use of the mined coal in the power

plant must be mentioned in the lease deed executed between the two respondents. It is also apparent that in the approval dated 28th December, 1999, the Central Government had examined the proposal on the basis of the conditions mentioned in the letter dated 15th October, 1999. As noticed above, in case these conditions mentioned in the letter dated 15th October, 1999, were deleted or waived, the approval of the Central Government was still necessary under Section 5(1) of the MMDR Act. Approval can be given by the Central Government after examining and considering the proposal. Approval cannot be given to a proposal which has not been examined or considered. The approval dated 28th December, 1999, therefore, cannot be regarded as approval by the Central Government of the letter dated 21st December, 1999 deleting the three conditions. Approval granted by the Central Government was on the basis of and on the presumption that the letter of proposal dated 15th October, 1999, had been not been amended or altered.

19. Learned Single Judge has held that the lease deed after it was executed on 17th February, 2000, without incorporating the conditions imposed by the Central Government in their letter dated 28th December, 1999, was sent to the Indian Bureau of Mines and

Chief Inspector of Mines, in accordance with Rule 57 of the MCR. Thus it can be presumed that the said lease deed was within the knowledge of the Central Government throughout and, therefore, it cannot claim ignorance that the lease deed was executed without incorporating the additional conditions.

20. Letter granting permission dated 28th December, 1999 had specifically stipulated that the lease deed executed between the two respondents with the conditions stipulated in paragraph 2 of the approval should be forwarded to "this department immediately after the execution". This letter was written by the Department of Coal, Ministry of Mines and Minerals, Government of India. It will be wrong to presume that once a copy of the lease deed was sent to the Chief Inspector of Mines and Indian Bureau of Mines, the concerned department who had granted the permission had come to know and were aware that the lease deed executed on 17th February, 2000 had not incorporate the additional conditions mentioned in the approval. There cannot be any such assumption.

21. In this regard, the following correspondence exchanged between the parties may be noticed. The respondent No. 1 by letter dated 1st December, 1999, made an application to open the mines

under clause 14 of the Colliery Control Order 1945 (CCO, for short). By letter dated 17th December, 1999, the Coal Controller, Calcutta informed respondent No. 1 that the approved mining plan has not been enclosed with the application. By another letter dated 28th January, 2000, Coal Controller's Organisation, Nagpur informed the respondent No. 1 that the matter had been discussed with the Coal Controller, Calcutta and the respondent No. 1's request for opening of the coal mines under clause 14 of the CCO could be examined after obtaining copy of the mining lease. By letter dated 8th February, 2000, respondent No. 1 enclosed a copy of the Government order granting them coal mining lease. The letter did not enclose a copy of the mining lease. Along with the letter dated 18th February, 2000, an application for permission for opening of coal mine was enclosed. Against Column 9, respondent No. 1, with regard to details of mining lease, had stated that "the mining lease granted by the Government of Maharashtra (respondent No. 2) vide order No. xxx dated 29th January, 2000, was annexed as Annexure B". The said application form again did not specifically and clearly state that the mining lease which was executed on 17th February, 2000 was enclosed. It is not clear whether the order dated 29th January, 2000

was enclosed or the mining lease executed a day earlier was enclosed. Approval in respect of the opening of the mine was granted under new CCO, 2000 vide letter dated 28th February, 2000. The above correspondence, does not support the contention of the respondent no.1 that a copy of the mining lease was furnished to the Department of Coal, Central Government.

22. In this context, we may examine the controversy with regard to the approved mining plan. The said plan had to be approved by the Central Government. Learned Single Judge has held that the respondent No. 1 had submitted a detailed mining plan in which they had stated that at least upto sixth year after the mine was opened, it would not get sufficient quantity of coal for being used in the power plant. This has been interpreted to mean that the coal extracted from the mine would remain as an over burden and unutilized for first six years after opening of the mine. It is stated in the impugned decision that there was no denial by the appellant of the assertion made by the respondent No. 1 in this regard. In this connection, we may notice the specific finding recorded in the order dated 3rd November, 2004 passed under Section 30 of the MMDR Act, wherein it has been held :-

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"12.....

i) M/s CCCL had submitted that the mining plan approved by the Central Government allowed them to dispose coal during the interim period till the mine reaches its rated capacity in the 6th year of production at pages 15-16 of Annexure-III of the Supplementary Note on the Mining Plan. To substantiate this submission copies of the relevant pages from the mining plan retained with them were submitted by M/s. CCCL and the Government of Maharashtra respectively. This was rebutted by the Department of Coal, who submitted that the approved mining plan retained with the Department has no such provision and produced the mining plan retained with them before the undersigned. Department of Coal explained that from the mining plan approved by the Central Government one copy was retained in the Department and one was sent/given to M/s. CCCL, who were requested to give original to the State Government and retain a photocopy with themselves. M/s. CCCL, in their subsequent written submission, however, inter-alia stated that they do not wish to press this point any further. It is interesting to note that this permission by the Central Government in the approved mining plan to sell coal during the interim period does not seem to find mention at any time before the case was taken up revision. Department of Coal would do well to have it investigated as to how the mining plan with it and those with M/s CCCL and that given to Government of Maharashtra by M/s. CCCL differ. However, for the purpose of this case, the copy with Department of Coal is considered to be the authentic copy and is relied upon, also since M/s. CCCL has submitted not to press the argument that the mining plan approved by the Central Government allowed them to sell coal."

23. Therefore, the finding on the mining plan in the impugned decision in this regard is contrary to the facts on record. The mining

plan available on record of the Central Government, was not disputed by the respondent No. 1.

24. The conduct of the Central Government may also be noticed. On the basis of the report received from the Western Coal Fields Limited and the Officer on Special Duty, Coal Controller's Office that the respondent No. 1 had started coal mining activities without installing the plant/unit to consume coal produce, a show cause notice dated 27th October, 2000 was issued by the appellant – Central Government to the respondent No. 1 to show why the said alleged acts should not be held to be in violation of the conditions under which the coal mining had been approved. Respondent No. 1 replied vide letter dated 6th November, 2000. The reply was found to be unsatisfactory and a letter dated 13th July, 2001 was written by the appellant to the respondent No. 2 for cancellation of the lease granted to respondent No. 1. There is certainly some delay between November 2000 and 13th July, 2001, but this fact does not, in view of the other factors we have noticed above, justify dismissal of the present appeal. It may be noticed here that a show cause notice was issued by the respondent No. 2 to the respondent No. 1, but subsequently respondent No. 2 informed the appellant by their

letter dated 18th March, 2002 that they had withdrawn the show cause notice for termination of the lease. Thereafter, the appellant on 1st May, 2002, asked for a copy of the show cause notice issued to respondent No. 2 by respondent No. 1 and the copy of the lease deed. Copy of the lease deed was received as per the appellant on 24th May, 2002. Thereupon, the appellant referred the matter to Revisionary Authority under Section 30 on 27th August, 2002 and notices were issued by the Revisionary Authority to the two respondents on 4th September, 2002.

25. The Coal Controller passed an order dated 30th October, 2002, under the CCO, 2000, prohibiting the respondent No. 1 from using or supplying the coal mined to anyone else other than it's own power plant. In the revision petition also, a stay order passed by the revisionary authority. However, it has been stated by the appellant that in the interregnum, without permission or approval under the CCO, the respondent No. 1 had sold the coal to third parties before the stay order was passed by the Coal Controller/Revisionary Authority.

26. In the direction given vide order dated 30th October, 2002, it was mentioned that the coal mined in the captive block was being

disposed of in favour of the other parties and this was confirmed by the respondent No. 1 by its interim reply dated 9th December, 2002, wherein it was stated that the coal was not being sold immediately but it was sold only after it was washed. Washing of coal is a captive use within the meaning of CMNA and, therefore, sale of coal after being washed is not prohibited.

27. One of the contentions which was raised and has been considered as a relevant circumstance in favour of respondent No. 1 is the prayer made in the statement of facts of the case. It is alleged that this was prayer made by the appellant before the revisionary authority. The relevant paragraph reads as under:-

> "17. It is accordingly submitted that the Revisional Authority constituted in the Department of Coal to exercise the powers of revision of the Central Govt. u/s. 30 of the MMDR Act, 1957 take into revision the said defective lease grant/sanction order and the consequent lease deed and pass suitable orders thereupon which may, inter-alia, include due incorporation of the exclusive use condition in the order and the consequent lease deed."

28. It is submitted that the appellant had never prayed for and had never asked for declaration that the lease deed dated 17th February, 2000 should be declared as void.

29. The aforesaid argument though attractive should be rejected. The show cause notice which was issued by the Revisionary

Authority after examining the facts of the case dated 4th September, 2002, reads:-

> "9. Therefore, both the State Government and M/s CCCL are asked to explain as to why the mining lease order/deed accorded in favour of M/s CCCL be not declared void and without effect u/s 19 of the MMDR Act. The reply should reach this Department within one month's period from the date of receipt of this communication."

30. Thus, it is quite clear that the respondent No. 1 was not in doubt and was fully aware and conscious of the fact that the revisionary authority had taken suo motu notice under Section 30 of the MMDR Act. The statement of facts of the case was a note which was put up before the revisionary authority. On the basis of the said facts, it was for the revisionary authority to take action under Section 30 of the MMDR Act. Revisionary authority was required to apply its mind and then proceed. The power of the revisionary authority exercising jurisdiction under Section 30 of MMDR Act cannot be curtailed by an office note or a note on facts. Further, there cannot be any doubt that the respondent No. 1 was aware that the lease in question could be declared void by the revisionary authority. Respondent No. 1 was not taken by surprise or kept in dark. Whether or not what action should be taken or what order

should be passed, is decided by the revisionary authority, which has been conferred with the power under the said Section.

31. Section 19 of the MMDR Act reads as under:-

> **"19. Prospecting licences and mining leases to be void if in contravention of Act.**—Any reconnaissance permit, prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.
>
> *Explanation.*—Where a person has acquired more than one [reconnaissance permit,] prospecting licence or mining lease [* * *] and the aggregate area covered by such permits, licences or leases, as the case may be, exceeds the maximum area permissible under Section 6, only that reconnaissance permit, prospecting licence or mining lease the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void."

32. It is clear from the said Section that any lease granted in contravention of the provisions of the Act or Rules or orders made thereunder is void and cannot have any effect. The revisionary authority has come to the conclusion and in our opinion rightly that there was violation of proviso to Section 5(1) and the lease deed dated 17th February, 2000 was executed contrary to the terms of the prior approval. The lease deed, therefore, is void in terms of Section 19 of the Act and cannot confer any right on the respondent No. 1.

33. One of the contentions which found favour and accepted in paragraphs 55 to 55, is that the procedure adopted in the

proceedings before the revisionary authority was illegal. Initially, the revision petition was set up and heard by two member Bench consisting of Mr. A.P.V. N. Sharma, Joint Secretary, Ministry of Coal and Mr. B.N. Aggarwal, Joint Secretary (Law). The two members could not arrive at a consensus and no order was passed by them. Though it was not stated by the respondent No. 1 in the writ petition, it is clear from Annexure XXXIII to the writ petition filed before the learned Single Judge, that a Writ Petition No. 1922/2004 was filed before the High Court of Bombay, Nagpur Bench.

34. After the arguments were addressed and the order was reserved, the said annexure XXXIII was noticed, but the order passed by the High Court of Bombay, Nagpur Bench, was not available on the record. Accordingly, the matter was listed on 28th July, 2011 and the respondent No. 1 was directed to file copy of the order for appreciation of full facts in completeness. Copy of the said order dated 30th September, 2004, passed by the High Court of Bombay, Nagpur Bench in Writ Petition No. 1922/2004 was filed on 5th August, 2011. The said order records and refers to an earlier order dated 19th August, 2004, by which Revisionary Authority was directed to dispose of the suo motu proceedings finally as per the

procedure and law, within a period of three weeks. Thereafter the Union of India had filed the application no. 6455/2004, seeking further extension of time. While disposing of this application, it was recorded as under:-

> "It is submitted that the above referred order is received on 13.9.2004 and the time is likely to expire on 4.10.2004, however, there is difference of opinion between the two members of Committee who were required to adjudicate the matter, and therefore, the matter is already referred to a third Member for adjudication and decision, who is likely to take time. Therefore, the learned Counsel for the Respondent No. 1 seeks further time of eight weeks by way of last chance to comply with the above referred direction issued by this Court by order dated 19th August, 2004.
>
> Considering the contentions canvassed by the learned Counsel for the Respondents, time is extended by further period of three weeks from 4.10.2004 and no further time shall be granted and the Revisional Authority is directed to dispose of the proceeding as directed by this Court vide order dated 19th August, 2004, within extended time granted to them.
>
> Needless to mention that the Revisional Authority shall give copies of the opinion on which the Revisional Authority has differed, to the parties, if they so desire."

35. Thereafter the appellant wrote letter dated 18th October, 2004, to the respondent No. 1 stating inter alia :-

> "The copies are of opinions as draft stage. As no consensus could be reached, no further discussions between the members took place and the opinions remained at draft stage only. These are opinions and not orders, no finality can be attached as such to their contents. The Revision case is now before the

before the Single Judge of the High Court. In these circumstances, it cannot be said that the procedure for disposal of the revision petition was illegal or contrary to law.

37. We do not think that the respondent No. 1 can now question and challenge adjudication and decision by the third member. Respondent No. 1 had participated in the said proceedings and taken chance and if there was any irregularity in the procedure, it should have challenged it immediately. It may be noticed that the objection raised is technical and procedural in nature and not substantative.

38. The last contention raised by the respondent No. 1, which has also found acceptance and is one of the reasons why writ petition has been allowed, is the fact that after the Coal Mines (Nationalisation) Amendment Act, 1993, under Section 3(iii) of the CMNA Act, washing of coal is treated as an end user. This no doubt is correct but the stand taken by the appellant and which has been accepted by the revisionary authority is that inspite of amendment, the Central Government had not taken any decision whether or not to grant coal mining permission for washeries by treating them as an end user. The prior approval granted by the appellant and the conditions imposed were not challenged.

> Additional Secretary (Coal) who, in the order of the Hon'ble High Court of Mumbai (Nagpur Bench) referred to above, has been directed to dispose of the case within three weeks from 4.10.2004."

36. As per the stand of the appellant, the members did not reach any conclusion/opinion and no further discussion took place. Therefore, the opinion expressed by the members was not an order and no finality was attached to their contents. The revision petition was referred to Additional Secretary (Coal), as per the order of the High Court of Bombay (Nagpur Bench), with a direction to him to dispose of the petition within three weeks from 4th October, 2004. This order has not been referred to in the impugned decision. It is apparent from the aforesaid order that keeping in view the facts of the case and as there was no consensus and the two members were not able to pronounce the order, the matter was referred to the Additional Secretary (Coal) for his decision. The said procedure was accepted by the High Court of Bombay (Nagpur Bench) and a direction was issued to the Additional Secretary (Coal) to dispose of the revision petition. It was pursuant to the said direction that the order dated 3rd November, 2004 was passed by the Additional Secretary (Coal), acting as a revisionary authority under Section 30 of the MMDR Act, which was impugned by the respondent No. 1

39. During the pendency of the writ petition before the learned Single Judge, respondent No. 1 had agreed and accepted the condition of captive consumption and that the said condition may be incorporated and mentioned in the lease deed. Vide order dated 27th July, 2006, respondent No. 1 was permitted to amend the writ petition and incorporate facts concerning the steps taken by it to obtain permissions for power project and place on record guidelines issued by the Central Government for disposal of mined coal during the development phase of the mine, which were posted on the website of the Ministry of Coal. Respondent No. 1, placed on record a copy of the Circular dated 29th November, 2002, for amendment/revision of the mining lease incorporating certain conditions. Learned Single Judge in this connection as recorded as under:-

> "22. It must be mentioned here that CCCL has categorically stated before this Court during the arguments as well as in its written submissions that it is open to the very same conditions being incorporated in the lease deed and it is only aggrieved by the cancellation of the lease itself. It is pointed out that CCCL has since taken effective steps for making the power project operational. CCCL has made heavy investments to acquire 250 hectares of land and more than Rs. 15 crores have already been spent by it on the project. It is stated that the holding cost of the project is Rs. 2.5 crores every year. CCL refers to certain other instances where the leases were not declared void for

> non-inclusion of the conditions but an order was passed requiring inclusion of such conditions. It is accordingly prayed that CCCL should not be discriminated against in this regard."

40. Before the learned Single Judge in the order dated 19th March, 2007, it was recorded that the respondent No. 1 would be willing to inclusion of the condition of captive use to be incorporated in the lease deed. An affidavit to the said effect was also filed. Certain letters exchanged between the Government of Maharashtra and the Central Government have been also referred to in paragraphs 30, 31 and 32 of the impugned decision, which for the sake of convenience are reproduced below:-

> "30. It may be mentioned that on 19th March 2007, this Court passed an order recording the statement of the Senior counsel of the Petitioner that CCCL would be willing to inclusion of the conditions of captive use of the mined coal into the lease deed. Pursuant thereto an affidavit was filed on 10th September 2007 by CCCL where apart from enclosing copies of letters exchanged with the State Government regarding CCCL's supplying material to the Maharashtra Power Generation Company, a copy of the letter dated 17th July 2007 written by the State Government to the Central Government on the alleged irregularities committed by the officers of the State Government was enclosed. By the said communication dated 17th July 2007 the State Government conveyed to the Central Government that:
>
> > "The concerned State Government Officers have taken decisions in the interest of the State and the Senior Officers have supported the same. In any

> case, the Government of India has cancelled the said Mining Lease and also the matter is `**subjudice**' before the Hon'ble High Court, New Delhi."
>
> 31. Thereafter this Court passed a detailed order on 15th January 2008 where after noticing some facts, it was directed that the Respondents should take a relook and place the direction/decision on affidavit before the Court.
>
> 32. Pursuant thereto, on 3rd March 2008 the State Government filed an affidavit stating that in its view after the impugned order dated 13th November 2004 was passed by the Revisional Authority, "the existence and validity of the order granting mining lease in favour of the Petitioner came to an end". Thereafter a letter dated 4th December 2005 was written by the State Government to the Central Government to reserve certain coal blocks, including those granted to CCCL on lease, for the Maharashtra Power Generation Company. It was stated that the State Government would abide by the decision of the Court."

41. However, the Central Government by affidavit dated 1st September, 2008, declined to accept the proposal of respondent No. 1 for incorporation of the conditions into the lease deed on the ground "since it is fraught with dangerous consequence as it would set a wrong precedent and others may get encouraged to resort to such malpractices". Be it noted that the learned Single Judge inspite of allowing the writ petition, in paragraph 63 of the impugned decision which has been quoted above, has directed that a fresh lease deed would be executed by the State Government

incorporating the conditions set out by the Central Government in its letter dated 28th December, 1999. Further the respondent No. 1 would be permitted to submit revised mining plan to the Central Government which would consider the mining plan in accordance with law within the time limit stipulated therein.

42. Learned single Judge has rightly observed and adversely commented on the oscillating stand of the State of Maharashtra, respondent No.2. The respondent No.1 to a large extent has been the beneficiary of the said stand. Possibly there is merit in the contention of the appellant that the respondent No.2 has deliberately and intentionally helped and favoured the respondent No.1. Having deliberated upon the factual matrix, we do not think that the respondent No.1 can be granted any relief in spite of change in their stand. However, it is clarified that the aforesaid cancellation and the grounds, on which the cancellation has been affected including the mining activities, will not be a ground or reason to deny mining lease in future. It is open to the respondent No.1 to apply afresh for grant of mining lease and if any such application is filed, the same will be considered in accordance with law.

43. With the aforesaid observations, the present appeal is allowed and the impugned decision dated 16th April, 2010, passed by the learned Single Judge is set aside. The order passed by the revisionary authority dated 3rd November, 2004 is upheld. There will be no order as to cost.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(DIPAK MISRA)
CHIEF JUSTICE

September 1, 2011
KKB