

COMMON CAUSE CASE UPDATES

Introduction of Electoral Bonds Challenged: Common Cause and the Association for Democratic Reforms (ADR) have challenged the introduction of Electoral Bonds, as part of the Finance Act 2017, which have made electoral funding of political parties more opaque legitimizing high-level corruption to an unprecedented scale. The PIL filed in the Supreme Court points out that the bonds make the electoral funding unlimited for big corporates and open the doors for foreign lobbyists.

The PIL seeks directions from the Supreme Court to strike down the amendments made through the Finance Act, 2017, and the Finance Act, 2016. It is alleged that such wide-ranging amendments in the Representation of People's Act, 1951, the Reserve Bank of India Act, 1934, the Income Tax Act, 1961 and the Companies Act were brought in illegally as a "Money Bill" in order to bypass the Rajya Sabha.

This matter was taken up on October 3, 2017, when notice was issued to the Union of India and other respondents. It is likely to be taken up on November 20, 2017.

Illegal Mining in Odisha: On August 2, 2017, the Supreme Court pronounced its landmark judgment on the petition filed to curb the rampant illegal mining in Odisha. Refusing to accept the narrow interpretation of "illegal mining" given by the counsels for the mining companies, the Court said "illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area..." Reinforcing the Environment Impact Assessment (EIA) notifications of 1994 and 2006, which provide for mandatory environmental clearance (EC) in case of expansion in mining activities, among other things, the Court said "The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant."

The court specified that mining companies and leaseholders engaging in illegal mining would have to pay compensation equivalent to 100 percent value of illegally extracted minerals. Although the M B Shah Commission had strongly favored a CBI probe, the Court did not pass any direction for such an inquiry, as it deemed fit to first ensure that illegal mining operations were not repeated in any other part of the country. The apex court favoured setting up of an expert committee under the guidance of a retired SC judge to identify the lapses occurred over the years and to recommend measures to prevent their recurrence. The Court also directed the UOI to announce a fresh and more effective, meaningful and implementable policy within the next few months and in any event before 31st December, 2017. The Court directed that the deposits received from the erring mining companies be used through a Special Purpose Vehicle set up for the benefit of the tribals in the affected districts and for area development works.

Bar on News Broadcast by Private Radio Stations: The PIL prays for the quashing of the unreasonable provisions in the policy guidelines and grant of permission agreements of the Ministry of Information and Broadcasting, which prohibits the broadcast of news and current affairs on FM and community radio stations. In March, the Government had sought more time to file its reply after the Court had asked why private radio stations should not be allowed to broadcast news.

The matter was listed for hearing on August 22, 2017, but could not be taken up.

Challenging the Appointment of the CVC: Common Cause, along with a few renowned and concerned citizens, filed a PIL challenging the arbitrary appointments of India's new Chief Vigilance Commissioner and the Vigilance Commissioner. The petition argues that the Central Govt had followed complete non-transparency in making the said appointments and that these were illegal and void as they violated the principles of 'impeccable integrity' and 'institutional integrity' laid down in the landmark SC judgments in Vineet Narain (1998) and CPIL (2011) cases. Notice has been issued in the petition. Common Cause filed an IA praying that the UOI may be directed to not make any appointments which required the participation of

either the CVC or the VC, since their appointment itself had been challenged. On September 7, 2017 the bench of Justices Arun Mishra and Mohan M Shantanagoudar completed its hearing and reserved the judgment.

Corruption in Management of Defense Lands: The PIL seeks systemic reforms and court-monitored CBI investigation into illegalities and irregularities in the management of defense lands. It was filed in the wake of the CAG reports highlighting mismanagement noticed in the audit of defense lands. On February 20, 2017, the court issued a notice to the Center directing it to evict encroachers from the defense lands. On July 11, 2017, submissions were made by the petitioner pertaining to computerization of land records, removal of encroachment on the defense lands, and establishment of an independent regulator, among others. The Court noted that there was a need to consolidate the position regarding actions already taken by the government and actions which are supposed to be taken. The Court took note of the written arguments submitted by our counsel Mr. Prashant Bhushan and gave them to the respondents. The matter was taken up on August 25, 2017 when, owing to the request of the respondent counsel, the matter stood adjourned for two weeks. It has since not been taken up and is listed for hearing on November 20, 2017.

Coal Block Allocation: On August 21, 2017, the Court while hearing the matter observed that it appeared that the investigation in the coal scam cases by the CBI would "not come to an end". The issue of pending investigation in coal scam cases cropped up before the Court, when special public prosecutor sought court's permission to relieve a senior officer from CBI as his deputation tenure had ended on September 2, 2016 and there was a shortage of DIG-level officers in the cadre state. To this, the bench enquired about the status of the probe in the cases which were being supervised by the officer. The bench, while relieving the official asked the agency to file a report giving status of its investigation in the pending cases and fixed the matter for hearing on October 9, 2017.

On October 9, 2017 the Court again asked the CBI and the Enforcement Directorate (ED) to expedite the probe in the coal allocation scam cases. A three-judge bench headed by Justice Madan B Lokur expressed displeasure over the delay. The bench, also comprising Justices Kurian Joseph and A K Sikri, observed: "You need to expedite the investigation in these cases. Some method has to be devised. You need to apply some out-of-the-box thinking. We understand that some delay is inevitable. But the probe cannot go on for so many years."

On October 17, 2017, the CBI informed the court that it had investigated 33 coal scam cases covering allocations to 168 companies through meetings of the screening committee from 2006 to 2009. The agency said that final reports have been filed in the special court in 28 cases while two more final reports would be filed before November.

On October 20, 2017, the ED informed the court that it had lodged seven more cases in the coal block allocation scam and was in the process of filing prosecution complaints against two firms, including M/s Jindal Steel and Power Ltd. In its tenth status report filed in the apex court for the period from January 2016 to September 30, 2017, the ED said it had earlier received 55 FIRs from the CBI and registered enforcement case information report (ECIR) in all of them and that provisional attachment orders have been issued in 11 cases.

The apex court asked CBI and ED to file the next status report before December 4, 2017.

Living Will: Common Cause had filed a petition seeking citizens' right to die with dignity through enactment of laws permitting living will as a corollary to passive euthanasia. The petition argued that the right to life includes right to refuse medical intervention after a board of doctors certifies that the person would not live without life support system.

In the hearing on October 11, 2017, the Centre informed the Court that it was preparing a draft legislation, based on the guidelines of the Apex Court in the Aruna Shaunbagh judgement, to allow passive euthanasia for terminally ill patients. Additional Solicitor General PS Narasimha told the five-judge Constitution bench that the Management of Patients with terminal Illness-Withdrawal of Medical Life Support Bill had been drafted. However, the Centre was opposed to allowing a 'living will' as it could be misused and the social consequences could be negative, according to media reports.

The CJI reportedly asked "If we recognize the right to dignity in death, then why not dignity in dying." He remarked that a living will may relieve grief-stricken relatives the moral burden of deciding whether life-support should be withdrawn from terminally-ill patients.

Judgement in the case has been reserved.

Delhi High Court

SIT on over invoicing requested by CPIL, Common Cause: Common Cause and Centre for Public Interest Litigation (CPIL), have approached the Delhi High Court seeking a direction for a thorough investigation by an SIT into the over-invoicing of imported coal and power equipment, carried out by various private power generating companies as reported by the Directorate of Revenue Intelligence (DRI) in several of its investigation reports. In the last three or four years, several major instances of such over-invoicing have been unearthed by the DRI in which several prominent and influential companies are involved.

According to the petition, the modus operandi is identical in all these cases. The coal or power equipment is shipped directly to India, even though its invoice is routed through another foreign company directly owned or controlled by the promoters in India. Such over-invoicing by companies/entities engaged in power sector violated several laws and amounted to cheating the consumers, the share-holders and the tax authorities. Hence, it is a clear case of criminal offence and needs a thorough investigation by an SIT.

On September 13, 2017, Justice C Hari Shankar recused himself from hearing the case as he had earlier appeared for some of the firms named in the petition.

The matter was taken up on September 20, 2017, when the bench of Justices S Ravindra Bhat and Sunil Gaur sought the details of the DRI enquiry against alleged over-invoicing of fuel and equipment for power plants. Our counsel Mr Prashant Bhushan stated that a brief note with various show-cause notices, outcome of investigations and the adjudicatory order made, if any, would be placed on the record of the Court. Tagging the petition filed on a similar issue by social activist Mr. Harsh Mander, the court listed the matter for hearing on October 25, 2017.

Allahabad High Court:

CAG Audit of NOIDA, G. Noida and Yamuna Expressway Authority: The writ was filed in the light of serious allegations of corruption and misconduct in the acquisition and disposal of land meant for public purposes and the need for auditing of accounts by the CAG. As has been reported, the Government of Uttar Pradesh decided to conduct CAG audit of the three industrial development authorities- Noida, Greater Noida and Yamuna Expressway - as stated by Mr Alok Sinha, Principal Secretary, UP Industrial Development Department, in a letter to the Accountant General of the Economic and Revenue Sector Audit on July 11, 2017. (As mentioned in the earlier updates, Common Cause had made several representations regarding this to the authorities in the past)

The matter is likely to be listed on January 05, 2018.