

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)**

Writ Petition (Civil) No. of 2012

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

1. COMMON CAUSE
THROUGH ITS DIRECTOR
5, INSTITUTIONAL AREA
NELSON MANDELA ROAD
VASANT KUNJ, NEW DELHI-110070 ...PETITIONER No. 1

2. MR. T S R SUBRAMANIAN
FORMER CABINET SECRETARY
GOVERNMENT OF INDIA
74, SECTOR 15-A, NOIDA-201301 ...PETITIONER No. 2

3. MR. N GOPALASWAMI
FORMER CHIEF ELECTION COMMISSIONER
5, LEO MADHURAM
39, GIRI ROAD, T NAGAR
CHENNAI-600017 ...PETITIONER No. 3

4. MR. RAMASWAMY R IYER
FORMER SECRETARY
GOVERNMENT OF INDIA
R/o A-10, SARITA VIHAR
NEW DELHI-110076 ...PETITIONER No. 4

5. ADMIRAL (RETD.) R H TAHILIANI
MENTOR, TRANSPARENCY INTERNATIONAL INDIA
R/o 290, DEFENCE COLONY
SECTOR-17, GURGAON-122001 ...PETITIONER No. 5

6. ADMIRAL (RETD.) L. RAMDAS
(FORMER CHIEF OF NAVAL STAFF)
BHAIMALA VILLAGE, P.O. KAMARLE
ALIBAG-402201 (MAHARASHTRA) ...PETITIONER No. 6

7. MR. SUSHIL TRIPATHI
FORMER SECRETARY
GOVERNMENT OF INDIA
R/o HOUSE No. 27, SECTOR 15 NOIDA ...PETITIONER No. 7

VERSUS

1. UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF COAL
A-WING SHASTRI BHAVAN
NEW DELHI ...RESPONDENT No. 1
2. CENTRAL BUREAU OF INVESTIGATION
THROUGH ITS DIRECTOR
CGO COMPLEX, LODHI ROAD
NEW DELHI-110003 ...RESPONDENT No. 2
3. CENTRAL VIGILANCE COMMISSION
THROUGH ITS SECRETARY
SATARKTA BHAVAN, A-BLOCK
INA, NEW DELHI-110023 ...RESPONDENT No. 3
4. DIRECTORATE OF ENFORCEMENT
THROUGH ITS DIRECTOR
6TH FLOOR, LOK NAYAK BHAVAN
NEW DELHI-110003 ...RESPONDENT No. 4

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING CANCELLATION OF THE ENTIRE ALLOCATION OF COAL BLOCKS TO PRIVATE COMPANIES BETWEEN THE YEAR 1993-2012 AND SEEKING A THOROUGH COURT MONITORED INVESTIGATION INTO THE SAID ALLOCATION BY THE CBI OR AN SIT, FOR THE ENFORCEMENT OF THE RULE OF LAW AND THE RIGHTS GUARANTEED UNDER ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the
Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

1. The petitioners are filing the instant writ petition in public interest under Article 32 of the Constitution highlighting how the Central Government went in for massive allocation of a scarce

natural resource of coal to a few select private companies at no cost in a completely arbitrary and non-transparent manner, causing a huge loss to the public exchequer running into tens of lakhs of crores of rupees. While the sword of the introduction of competitive bidding was kept hanging, captive coal blocks were allotted to companies/cronies at breakneck speed, many of whom were not even eligible or had no real need of coal, and most of whom had links with politicians or ministers. The instant petition seeks a cancellation of the entire allocation of captive coal blocks to private companies from 1993 and also seeks a thorough investigation by an SIT. The show-cause notices issued by the Government (just as in the 2G case) to few companies are a sham since they obfuscate the real issue that the allocation was per-se illegal. The current CBI investigation only focuses on the misrepresentations made by a select few companies rather than the allocation process itself. This is not surprising since the CBI works as a department of the Central Government, and here the Prime Minister was directly in charge of the Ministry of Coal for most of the time. Under these circumstances, the Petitioners have prayed for a thorough court monitored investigation through an Special Investigation Team (SIT) to unearth the full magnitude of the Coal Scam, which involves not only to the Ministry of Coal but also to the PMO (in charge of Ministry of Coal for intermittent period from 2004 to 2009), Ministry of Steel, Ministry of Power and various Governments of various States where the coal blocks are located.

This Hon'ble Court is currently seized of the matter regarding the process of allocation followed by the Government in the allocation of captive coal blocks. This Hon'ble Court, vide order dated 14.09.2012, has directed the Coal Secretary, Government of India to file an affidavit on the following aspects:

(i) *The details of guidelines framed by the Central Government for allocation of subject coal blocks.*

(ii) *The process adopted for allocation of subject coal blocks.*

(iii) *Whether the guidelines contain inbuilt mechanism to ensure that allocation does not lead to distribution of largesse unfairly in the hands of few private companies?*

(iv) *Whether the guidelines were strictly followed and whether by allocation of the subject coal blocks, the objectives of the policy have been realized?*

(v) *What were the reasons for not following the policy of competitive bidding adopted by the Government of India way back in 2004 for allocation of coal blocks?*

(vi) *What steps have been taken or are proposed to be taken against the allottees who have not adhered to the terms of allotment or breached the terms thereof?*

A copy of the said order dated 14.09.2012 passed in WP (Crl) 120 of 2012 is annexed as **Annexure P1**. (Page _____)

THE PETITIONERS

a) Petitioner No. 1, Common Cause is a registered society (No. S/11017) that was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the

people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Kamal Kant Jaswal, Director of Common Cause and a former Secretary to the Government of India, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama.

b) Petitioner No. 2 is Mr. T S R Subramanian. He is the former Cabinet Secretary, Government of India. He studied in Imperial College of Science in London and did his masters degree from Harvard University. He has also served as Textile Secretary and Commerce Secretary of the Government of India, Chief Secretary of Government of U.P. and senior adviser at the United Nations. He is the author of several books on governance.

c) Petitioner No. 3 is Mr. N Gopaldaswami. He is former Chief Election Commissioner of India.

d) Petitioner No. 4 is Mr. Ramaswami R Iyer. He is a distinguished former Secretary (Water Resources) to the Government of India.

e) Petitioner No. 5 is Admiral R H Tahiliani. He is the former Governor and Chief of Naval Staff. He has served for many years

as Chairperson of Transparency International India and now serves as its Mentor.

f) Petition No. 6 is Admiral L Ramdas. He is the former Chief of Naval Staff and a recipient of the Ramon Magsaysay award.

f) Petitioner No. 7 is Mr. Sushil Tripathi. He is a former Secretary, Government of India.

Though the petitioners have not made any representation to the authorities/Respondents for the concerned reliefs, but several others have repeatedly written to the Government on the above issue. For instance, Dr. E A S Sarma (former Power Secretary, Government of India) has written to to the Prime Minister, the CVC and Finance Secretary on the issue of coal scam and has sought their intervention. Copies of his letter dated 22.03.2012 to the PM, letter dated 15.06.2012 to the CVC and letter dated 04.09.2012 to the Finance Secretary, Ministry of Finance are annexed as **Annexure P2 (Colly)**. (Page _____). The authorities have not responded to these representations.

2. Coal was nationalized in 1972 by the Central Government. However, Government at that time allowed the companies engaged in production of iron and steel to retain their coal mines for captive use. To start the process of allocation of captive coal blocks, Government constituted a screening committee under the chairmanship of Secretary (Coal) through an executive order in

1992. Next year, in 1993, Government included power sector as a specified end use for allocation of captive coal blocks. Since 1993, through the process of screening committee, successive governments have been allocating coal blocks for captive use of the manufacturers of iron & steel, power and cement manufacturers. The above process was highly arbitrary and resulted in a windfall gain to private companies. The policy of Coal block allocation through competitive bidding was first announced by the Ministry of Coal (MoC) in June 2004. Nonetheless, a non transparent process for allocation of coal blocks for captive mining through a screening committee was resorted to. According to the Comptroller and Auditor General of India (CAG), the allocation of coal blocks meant a windfall gain to the tune of 1.86 lakh Crores (at a conservative estimate) to the private allottees, and the absence of competitive bidding in the procedure followed by the Ministry of Coal meant that the selection of parties was not fair, objective and non-arbitrary. The windfall gain to private parties also implied a related cost to the national exchequer. It has also come to light through the CAG report that the vested interests in the Ministry of Coal kept on delaying the introduction of the policy of competitive bidding for captive allocation on the one hand and on the other, most of the coal blocks were allocated under the pretext of an artificial urgency created by the Ministry.

3. The above was all designed to continue with the arbitrary process of allocation through Screening Committee, which was marred by multiple illegalities, corruption and favoritism. The

Screening Committee recommended the allocation of coal blocks without comparative evaluation of the inter se merits among the applicants, which is apparent from the minutes of the meetings of the Screening Committee. CBI has filed 5 FIRs under Prevention of Corruption Act and IPC against private allottees and 'unnamed' public servants in the Ministry of Coal. The preliminary enquiry conducted by CBI at the instance of the CVC has revealed that the public servants in the Ministry of Coal indulged in the abuse of their official position and hatched a conspiracy to confer huge undue benefits on certain private players. These public servants connived with applications (who in some cases were not even eligible) defeating the whole object of captive allocation.

4. According to the conservative estimates made by the CAG, the allocation between 2004-2010 caused a windfall gain of Rs. 1.86 lakh crores to private companies, making it the bigger scam than the 2G scam, and there was also a related loss to the public exchequer. Various political and commercial vested interests joined forces to block competitive bidding (auction) of coal blocks. The blocks were allocated almost for free to the private players in the name of 'catering to the need of growing demand of coal in Power, Cement and Steel industries'. MoC resorted to the non-transparent and unfair processes of Screening Committee, which was designed to benefit a few favoured companies. Even the guidelines mandatory for the Screening Committee were openly violated. The object of captive mining to provide infrastructural support for the development in Power, Steel and Cement industries, was defeated

by allotment of coal blocks to ineligible applicants, the loss of which is yet to be ascertained. Former Coal Secretary has clearly stated that the screening committee was susceptible to corruption, favoritism and political pressure. He has inter-alia stated: "*When you are giving assets worth 1000 and crores rupees without charging anything I don't think any allottee would mind passing on a few benefits to others.*" A copy of a report on the same dated 09.06.2012 is annexed as **Annexure P3**. (Page _____)

5. The allocation of scarce natural resources such as coal blocks for commercial exploitation for a song, below the market price, is breach of public trust and as per law propounded by this Hon'ble Court in 2G case ((2012) 3 SCC 1) is illegal and liable to be cancelled. Even otherwise, the whole process of allocation of coal blocks is tainted by bribery and corruption and made in flagrant violation of the established norms and procedures that renders it illegal. Hence it would be in the fitness of things and in the interest of the national exchequer that the allocation of coal blocks for captive mining to private companies from 1993 till date be held illegal and cancelled. The coal blocks allotted during this period should be taken back by the Government and auctioned as per Section 11A of the MMRD Act, subject to compliance of relevant environment and forest laws and the Constitutional requirements of the Fifth Schedule. In addition, punitive damages must be imposed on allottee companies which misrepresented facts, or which violated their undertakings given to the government.

THE CASE IN BRIEF

6. The entire coal scam is a well thought out and deliberate act in furtherance of a criminal conspiracy is hatched between the beneficiaries of allotment/ private companies /persons, and ministers, public servants of Ministry of Coal, other Ministries and State Governments. The time span from 2003-04 till date has been a significant one during which there has been an unprecedented scramble for captive coal blocks from private developers in power, iron & steel and cement sectors. This has created the scope for the scam.

7. As far as the power sector was concerned, the Electricity Act of 2003 was enacted with the ostensible objective of introducing competition in the power sector. However, the provisions of the Act were taken advantage of by Ministry of Power, Ministry of Coal and the States to open the floodgates to a large number of private power plants (known as merchant power plants) whose developers were chosen by the States through non-transparent selection processes. They were assured allocation of captive coal blocks and the freedom to sell power anywhere in the country at prices not subject to statutory independent regulation. They were allowed open access to the national transmission grid to trade electricity anywhere in the country. Such unregulated sale of electricity without any semblance of price control would evidently lead to windfall profits when the developers can get inexpensive captive coal blocks allotted to them for fuel supply. The Power Ministry in

consultation with the Coal Ministry identified a large number of captive coal blocks with millions of tonnes of precious coal deposits for allocation to such private power plants through Screening Committee. Clearly, this created an artificially high demand for captive coal. The number of merchant power projects increased steeply with almost all States indiscriminately allowing them to be set up with cheap land and several other undue concessions. The magnitude of this is evident from the fact that the total capacity of such merchant power projects cleared and in the pipeline for clearance by Ministry of Environment & Forests (MoEF) exceeded by 2.5 times the total capacity projected by Planning Commission up to 2031 in Integrated Energy Policy report. This created a huge artificial demand for captive coal.

8. A similar artificial spike in demand was created in the iron & steel and cement sectors in the name of pushing up industrial growth. As a result of the liberalised policies put in place by the Central government, iron & steel exports skyrocketed since 2002-03. This created a huge surge in demand for cheap captive coal which in turn would get the developers windfall profits as the export prices rose steeply. The same is the case with the cement industry in which the cement companies colluded and formed a cartel that led to a steep increase in the cement prices since September 2003. This explains the sudden scramble for captive coal blocks for cement that started in 2003-04.

9. Between August, 2004 till date, the number of coal blocks allotted is 250, as disclosed by MOC on its website. Out of these, 101 blocks have been allotted for steel, 97 for power, 10 for cement and 37 for “commercial” use. The so-called “commercial” use is an open ended term apparently meant to violate the statutorily mandated “captive” concept and thereby provide ample scope to private parties to sell coal for windfall profits not envisaged in the statute.

10. Against this background, a large number of private developers, many of them who have no capacity to develop coal mining, approached influential politicians and took full advantage of the highly arbitrary and non-transparent screening Committee approach of selection. When the MOEF tried to exclude such of those coal blocks that lay under dense forest cover and, therefore were prohibited from mining, the MOC and PMO thwarted its efforts and allotted the blocks infringing the forest laws. Captive blocks should be isolated from the CIL's mining areas to obviate the scope for any possible intrusion from the latter. Even this condition was flagrantly violated leading to huge losses to the CIL. Once the blocks were allotted, the conditions of allotment were flouted. Violating the statutorily mandated “captive” concept, the private coal developers sold the coal for a profit for other than captive use. Several companies who got the blocks free transferred them to third parties for huge profits. The MoC instead of monitoring and regulating their activities acquiesced in the violations knowingly. The avowed objective of the allotment of the blocks to enhance coal

production remained on paper whereas it served the private parties to earn profits at the cost of the public exchequer. Even captive coal blocks allotted to Central and State PSUs were surreptitiously transferred to private parties during this time.

11. As a result of the criminal conspiracy between vested private interests and public officials, introduction of an open transparent auction process for allocation of coal blocks for captive mining was thwarted which ought to have been introduced in 2004. In the name of 'artificial urgency' to cater the needs of Power, Cement and Steel industries, the screening committee method for allocation was chosen to favour select a few by resorting to all sorts of illegalities and irregularities. Moreover, established procedures / guidelines for allocation of captive coal blocks were also violated while making public claims that the Screening Committee was following the prescribed guidelines in a transparent manner. This was done by the public servants at Ministry of Coal and others in collusion with private enterprises.

12. The modus-operandi of the coal scam was as follows:

- The policy of competitive bidding for allocation of coal blocks was blocked and the legislative changes were delayed;
- Rampant allocation of coal blocks was made before the policy of competitive bidding was brought into force in the name of artificial urgency, which has been proved to be sham as most

of the allottees have not started mining or have even begun their end-use projects.

- Arbitrary selection by a Screening Committee was resorted to where favoritism, nepotism and corruption were rampant.
- The Screening Committee allocated coal blocks to a few favoured companies without any comparative evaluation of applicants and any verifying of their credentials. Few influential applicants were allocated several coal blocks through misrepresentation. Their eligibility as to the capacity of mining and setting up end use projects remained unverified, ultimately defeating the object of captive allocation to private players.
- Public servants allegedly deliberately concealed misrepresentations of the applicant companies and their doubtful credentials.
- Many of the allottees sold the coal blocks for profit after allotment or sub-let them
- Ministries of Government favoured certain coal block owners in getting environmental clearances and other statutory clearances.
- Coal blocks were not de-allotted and bank guarantee were not encashed in most of the cases where conditions of allotment were not complied with or the applicants were found to have misrepresented facts.

13. In 1976, the Coal Mines (Nationalization) Amendment Act, 1976 was enacted which *inter-alia* terminated all the mining

leases with the private lease holders. Only Iron and steel producers were allowed by the Act to carry on coal mining for captive use. Exception was made through amendment of the Coal Mines (Nationalization) Amendment Act, 1993 to allow companies engaged in generation of power, in addition to the iron and steel producers, to carry out coal mining for their captive use. Cement sector was notified as an end use by inserting an enabling provision in the Coal Mines (Nationalization) Act. On 14 July 1992 a Screening Committee was set up by MoC through an administrative order to consider applications made by various companies interested in captive mining and to allocate coal blocks for development, subject to the provisions of statutes governing coal mining. A number of coal blocks, which were not in the production plan of CIL and SCCL were identified and a list of 143 coal blocks were placed on the website of MoC for information. The successive United Front and NDA Governments had continued with this policy. In all, 39 captive blocks were allocated to private players until 2004.

14. The concept of allocation of captive coal block allocation through competitive bidding was first made public on 28.06.2004. However, vested interests within the coal ministry thwarted attempts to bring a transparent and fair policy of competitive bidding (auction) of captive coalmines at every turn. This was done to favour private companies and to continue with rampant arbitrariness in screening committee process for allocation of coal blocks. This is how the major part of the coal scam unfolded beginning with 2004. During

2004 to 2008, the draft Cabinet note proposing auctioning of coal blocks was amended about half-a-dozen times, ostensibly to address the concerns of those who were opposed to auctioning. The PM who was also in charge of Minister of Coal during this period intermittently, succumbed to these forces and allocated captive mines (scarce natural resources) without competitive bidding and in non transparent and arbitrary manner.

- I. June 2004: The Ministry of Coal referred the matter of introduction of bidding process for allocation of coal blocks to the Department of Legal Affairs (DLA) for seeking an opinion whether coal blocks could be allocated through auction/ competitive bidding route by making rules under the Coal Mines (Nationalisation) Act, 1973 read with Mines and Minerals (Regulation and Development) Act, 1957 and Minerals Concession Rules 1960.
- II. 16.07. 2004: The then Secretary (Coal) Mr. P. C. Parakh in his note on 'Competitive bidding for allocation of coal blocks' placed a comprehensive proposal on competitive bidding before the then Minister of State highlighting, among other things, the fact that the existing system would lead to windfall gains to allottees. He mentioned in his notes "*...since there is substantial difference between price of coal produced through captive mining, there is windfall gain to the persons who is allotted a captive block...*". The note further indicated that "*...the bidding system will only tap part of the windfall profit for the public purposes....*".

- III. 24.07. 2004: In the wake of an arrest warrant issued by a local court in a two-decade old case, Shri Shibu Soren, the then Coal Minister resigned from the Cabinet and the Prime Minister assumed charge of the coal ministry.
- IV. 28.07. 2004: In a note to the Secretary, the then Minister of State (MoS), Coal and Mines Mr. Dasari Narayana Rao sought various clarifications like what would be the likely opposition from the industry, particularly, the power sector; and the impact on price of power and obligations of the government.
- V. 30.07.2004: The Coal Secretary gave necessary clarifications. He explained that the present system of allocation in the changed scenario, even with modifications would not be able to achieve the objectives of transparency and objectivity in the allocation process.
- VI. 20.08.2004: The PMO [in charge of Ministry of Coal] directed the coal secretary to prepare a draft note on competitive bidding so that the Cabinet could deliberate upon it and take a decision.
- VII. 11.09.2004: The PMO forwarded a note detailing certain alleged disadvantages of allocation of coal blocks through competitive bidding (auction).
- VIII. 25.09.2004: The coal secretary replied that the arguments lacked merit. He also brought to the PM's notice that the screening committee was facing different kinds of pulls and pressures for allocation to some select companies and

recommended that all future allocation be done through competitive bidding.

- IX. 4.10.2004: The MoS wrote to the Secretary that the competitive bidding policy should not be pursued any further as it would invite further delay in allocation of blocks, considering that the Coal Mines (Nationalisation) Amendment Bill, 2000, envisaging competitive bidding for allocation of blocks for commercial purpose, was pending in the Rajya Sabha due to stiff opposition from trade unions and other concerns. The MoS disagreed with the view that Screening Committee could not ensure transparent decision making and added that this alone was not an adequate ground for switching over to a new mechanism. But Mr. Rao didn't put on the file that the political opposition to the proposed amendment was to the entry of private players in merchant coal mining per se, and not to competitive bidding as such. But by mixing the two issues, which were entirely different in nature, the MoS tried to nix the proposed policy of auction.
- X. 14.10.2004: Instead of putting its foot down on a crucial policy issue, the PM asked the Secretary (Coal) to respond to the issues flagged by Mr Rao (MoS).
- XI. 15.10.2004: The Secretary (Coal) stated that the policy of allotment of coal blocks through competitive bidding was discussed in the PMO and it was felt that since a number of applicants requested for allotment of blocks based on the current policy, it would not be appropriate to change the allotment policy through competitive bidding in respect of

applications received on the basis of existing policy. Therefore, the cut off dates for considering applications as per the current policy and the proposed revised policy was taken as 28.06.2004.

- XII. 01.11.2004: The PM directed the Secretary to amend the draft cabinet note for approval of the Minister (Coal and Mines). The PMO Stated “... *the change in the policy of allocation of coal blocks for captive mining will be made effective prospectively. Therefore there is no urgency in the matter. Accordingly, there is no need to bring in the required amendment in the Coal Mines (Nationalisation) Act through an Ordinance. It would be appropriate to bring in the required amendment through a Bill to be moved in the coming Parliament Session...*”
- XIII. 27.11.2004: Mr. Shibu Soren was re-inducted in the Cabinet and took over the charge of coal ministry from the PM, after he was released on bail.
- XIV. 23.12.2004: The Secretary placed the revised Cabinet note before MoS for approval.
- XV. 25.02.2005: But now, Mr. Soren (then Minister of Coal) and Mr. Rao joined forces to give the auction policy a quiet burial. On re-submission (23.12.2004) of the revised draft Cabinet Note, Minister (Coal) opined that he was in complete agreement with the views expressed by MoS in his note dated 04.01.2004 and as such the proposal need not be proceeded further.

- XVI. 2.03.2005: Mr. Soren resigned from the Union Cabinet to become Jharkhand Chief Minister. The PM once again took the charge of the coal ministry.
- XVII. 07.03.2005: With the change of guard at the coal ministry, the Secretary (Mr. Parakh) once again tried to revive the auction policy. He sent a note to the PM stating that decisions on all applications received till 28 June 2004 would be taken by the end of March 2005 and if the auction policy was not put in place quickly enough, pressures would once again mount on the government to continue with the existing procedure which might not be desirable in the interests of bringing about total transparency in allocation of coal blocks.
- XVIII. 16.03.2005: The PMO asked the Secretary (Coal) to update the draft Cabinet note and send it back urgently.
- XIX. 24.03.2005: The PMO approved the updated draft note after which it was circulated to different ministries like power and steel for their comments. The views of state governments were also sought. Letters written by the State Governments of Chhatisgarh (dated 28.03.2005), West Bengal (dated 31.03.2005), Rajasthan (dated 11.04.2005) and Orissa (dated 25.07.2005) opposing the introduction of competitive bidding are annexed as **Annexure P4 (Colly)**. (Pages _____)
- XX. 21.06.2005: The Secretary placed the draft Cabinet note incorporating the views of various state governments and comments of other ministries before MoS (Mr Rao) for the approval of the Minister (Prime minister) stating that it was

desirable that decision on allocation of captive block through bidding route was taken at the earliest so that the process of allocation of coal blocks could continue unhindered.

XXI. 4.07.2005: The MoS wrote to the PM that the power utilities were reluctant to participate in competitive bidding due to cost implications and that the auction policy needed to be considered in greater detail. But what he didn't elaborate was that there were also many Central government ministries, departments and state governments that were in favour of auction. The Planning Commission, Ministry of Mines, Department of Expenditure under the Ministry of Finance and the Ministry of Steel were in favour of competitive bidding.

XXII. 25.07.2005: A meeting was taken by PMO wherein it was decided that to effectuate the auction procedure, the Coal Mines (Nationalisation) Act would need to be amended. In a scandalous move on the ground that the said amendment was 'likely to take some time', it was decided that the coal ministry (MOC) would continue to allocate coal blocks for captive mining through the extant screening committee procedure till the new competitive bidding procedure would become operational. In the meeting the Secretary stated that "*...the competitive bidding procedure will only tap part of the windfall profit that accrued to the companies which were allocated captive coal blocks under Screening Committee procedure for public purposes*". However, as a result of the decision, 24 coal blocks with reserves of 3,754 million tonnes were allocated in 2005.

- XXIII. 09.08.2005: The PMO requested MOC to take urgent action as per the decision taken in the meeting held on 25.07.2005.
- XXIV. During 28.03.2005 to 06.09.2005, 13 allocations were made in favor of Private Companies.
- XXV. 12.01.2006: When the amended draft Cabinet note (proposing auction policy via amendment in the Coal Act) was again placed before Mr. Rao, the Minister of State stated that the PMO had taken a view to amend the Coal Mines (Nationalization) Act which was a time consuming exercise and as such allowed the department to proceed with the allocation of captive coal blocks under the extant mechanism. MoS stated that “...several applications received in coal and lignite blocks already put on offer and which were under process and as such there was no immediacy in the matter and that the note be resubmitted at an appropriate time keeping in view the issues involved.” But while Rao tried to put the policy change on the backburner, according to media sources, the correspondence between the PMO and the coal ministry reveals that the PM kept pressing for the submission of the Cabinet note.
- XXVI. 07.02.2006: Secretary Coal submitted a note to the Minister (Coal) through MoS stating that PMO had been pressing for expeditious submission of the Cabinet Note. The matter was seen by the Minister (Coal) on 07 March 2006.
- XXVII. 07.04.2006: In a meeting held in the PMO, it was decided that the system of competitive bidding would be made applicable to all minerals including coal via an amendment in

the Mines and Minerals (Development and Regulation) Act, 1957 so that the system of competitive bidding could be made applicable to all minerals covered under the said Act.

- XXVIII. 20.04.2006: Secretary (Coal) approved a draft note to the Ministry of Mines with a request to obtain comments of the Department of Legal Affairs on the legal feasibility of the proposed amendment to the MMDR Act, 1957 to address competitive bidding.
- XXIX. 27.04.2006: MoS (Mr. Rao) wrote on the file that *“the issue to amend the MMDR Act should be revisited as it involved withdrawing the current powers of the state governments and had the potential to become a controversial issue”*. The same day, Mr. Soren as Minister of Coal seconded Rao’s opinion and wrote that *“the views expressed by the minister of state were appropriate and the ministry of coal should refrain from making suggestions, which had implications for federal polity”*.
- XXX. 28.07.2006: After a long-drawn-out correspondence, and after giving express legal opinion on four different occasions between 2004 and 2006, the DLA stated that it was open to the government to introduce auctioning of coal mine blocks for captive use through competitive bidding as the selection process for allocation was possible by amending the administrative instructions and such a process could be governed by the Indian Contract Act, 1872. A copy of the letter of the DLA dated 28.07.2006 is annexed as **Annexure P5** (Pages_____). Copy of the note of Secretary (Coal) dated 17.08.2006 requesting the DLA to further

examine issue of legal advice for competitive bidding for allocation of coal, response of the DLA dated 22.08.2006 alongwith a note of Law Secretary dated 28.08.2006 are annexed as **Annexure P6. colly** (Page _____)

- XXXI. In the year 2006, 84 allocations were made in total out of them out of them 54 were made in favor of Private companies.
- XXXII. Because of constant obstruction by Mr. Soren and Mr. Rao, it took another two years before a Bill to amend the MMDR Act, 1957, was tabled in Parliament on 17 October 2008.
- XXXIII. 10.08.2009: A meeting was convened under the Chairmanship of Minister of State for Coal (Independent Charge) with the State Ministers in-charge of Mining and Geology Departments of States/UTs to discuss the 39 Report of the Standing Committee on Coal & Steel on MMDR Amendment Bill, 2008. Broad consensus was reached over the Amendment Bill. All states except the State of Andhra Pradesh expressed support for the Amendment Bill. A copy of the Minutes of the meeting held on 10.08.2009 to discuss the 39th Report of the Standing Committee on Coal & Steel on MMDR Amendment Bill, 2008 with State Governments is annexed herewith as **Annexure P7** (Pages_____).
- XXXIV. August 2010: The MMDR Amendment Act, 2010 was passed by both the Houses of Parliament in August 2010. However, till date, not a single coal block has been given through auction.

XXXV. 02.02.2012: Only after CAG started the process of audit of coal allocations and delay in the introduction of competitive bidding, MOC notified the Rules to give effect to the amendment made in August 2010.

Relevant chapters of the CAG's Performance Audit report (Chapters 4 and 5) are annexed as **Annexure P8**. (Pages _____). News report published in Tehelka Magazine dated 11.08.2012 stating that the allocation of coal blocks through competitive bidding was deliberately blocked by the vested interests in the Ministry of Coal is annexed herewith as **Annexure P9** (Pages_____).

15. The decision to allocate captive mines through a screening committee was taken by the government through an administrative order in 1992. Thus the decision to change the allocation procedure to competitive bidding could also have been taken through an executive order. There was nothing stopping the government from changing the screening committee procedure to auction. The CAG in the Performance Audit (Allocation of Coal Blocks Augmentation of Coal Production)-2012 states “ *In fact, it was left to the MOC to take action for introduction of Competitive bidding through administrative instructions. Amendment in the Act was advised by MoLJ (August 2006) on the request of the MOC that the process may be given legal footing.*” The CAG states further that “*...Competitive bidding could have been introduced in 2006 (as per the advice of DLA in 2006).*” He adds, “*...Despite such clear advice,*

MOC went ahead for allocation of coal blocks through Screening Committee and advertised in September 2006 for allocation of 38 coal blocks and continued with this process till 2009.”

16. As per the CAG's Audit as of June 2004, 39 Coal Blocks stood allocated. During the period from July 2004 to September 2006 (till the time the matter was referred to the Ministry of Mines for taking action on the issue of Amendment of MMDR Act for introduction of Competitive bidding), 71 more blocks were allocated. In all, since July 2004, 142 coal blocks were allocated to various public and private companies following the existing process of allocation that lacked transparency, objectivity and competition.

17. The circumstances as above stated suggest that this was done as per an elaborate conspiracy hatched between decision-makers and coal allottees. As per reports, 53 coal blocks with 17,792 million tonnes of reserve were allocated in 2006, 52 blocks with 11,862 million tonnes of reserve in 2007, 24 coal blocks with 3,550 million tonnes of reserve in 2008 and 16 coal blocks with 6,893 million tonnes of reserve in 2009 were allocated without competitive bidding. Copies of the list of details of coal blocks allocated till date and list of details of de-allocated coal blocks as on 23.06.2011 as published on the website of the Department of Coal are annexed herewith as **Annexure P 10 (colly)** (Pages_____).

18. CAG submits that delay in introduction of process of competitive bidding has rendered the existing process beneficial to a large number of private companies as has been observed by the Secretary (Coal) in July 2004 itself. The Government Auditor calculated financial gains to private parties in respect of 57 Open Cast or Mixed Mines as Rs. 185, 591.34 crore.

19. The undue delay in starting production and setting up end-use projects by the allottee companies exposes the 'artificial urgency' created to continue with the Screening Committee procedure for allocation of coal blocks. As per guidelines of MOC, the allotted captive blocks should commence production within 36 months (42 months for forest land) in case of open cast mines and 48 months (54 months for forest land) for underground mines from the date of issue of the allotment letter. Besides, a period of two years is allowed for commencement of production for unexplored and regionally explored captive blocks. CAG observes that the proposed competitive bidding procedure was intended to increase financial stakes of the allottees in the allotted blocks to bring the required sense of urgency in developing the blocks, end-use projects. Due to non-commissioning of end-use projects the private allottees reportedly diverted coal produced from captive blocks to the black market. Thus, in this way the whole objective of captive allocation was defeated. The Government on the other hand, kept on allotting the coal blocks in a completely non transparent manner through Screening Committee without establishing proper monitoring

system for captive mining to verify the compliance of the mandatory conditions of allotment.

20. The Guidelines for Allocation of Captive Blocks & Condition of Allotment through Screening Committee on allotment of captive coal blocks issued by Government of India and a note published on the website of Department of Coal as Guidelines for Selection of Captive Blocks are annexed as **Annexure P 11 (colly)** (Pages _____). The principles of allotment through Screening Committee were as follows:

- I) The allottee company must be technically and financially sound, ready with a project report duly appraised for the captive end-use project requiring coal.
- II) There are time limits for the mining plan and production. If these limits are infringed, the allotment is liable to be cancelled with liquidation of bank guarantees.
- III) Coal should be used only for the requirement of the pre-designated project and the excess coal to be transferred at the government controlled transfer price to CIL and its subsidiaries.

21. As per para 9 of the guidelines, the inter-se priority among competing applicants was to be decided as per the following criteria.

- I. Status (state) level of progress and state of preparedness of the projects;

- II. Net worth of the applicant company (or in the case of new SP/ JV, the net worth of their principles;
- III. Production capacity as proposed in the application;
- IV. Maximum recoverable reserve as proposed in the application;
- V. Date of commissioning of captive mines as proposed in the application;
- VI. Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;
- VII. Technical experience (in terms of existing capacities in coal/ lignite mining and specified end use);
- VIII. Recommendation of the administrative ministry concerned;
- IX. Recommendation of the State Government concerned (where the captive block is located);
- X. Track record and financial strength of the company.

22. The CAG states in its Performance Audit- 2012 that the Screening Committee recommended the allocation of coal block to a particular allottee / allottees out of all the applicants for the coal block by way of minutes of the meeting of the Screening Committee. However, there was nothing on record in the said minutes or in other documents on any comparative evaluation of the applicants for a coal block which was relied upon by the Screening Committee. Minutes of the Screening Committee did not indicate how each one of the applicant for a particular coal block was evaluated. Thus the Screening Committee allocated the coal blocks in an arbitrary manner and for extraneous considerations.

23. The meetings of the Screening Committee were conducted in a hurried manner. On a single day hundreds of applications were decided without recording comparative evaluation of the applicants or reasons for arriving at the decision. The basis of inter-se priority among the applicants as provided in Para 9 of guidelines for captive allocation was not examined. For instance, as per minutes of 35th meeting of the Screening Committee held on 20th to 23rd June 2007, 30th July 2007 and 13 September 2007 to consider coal blocks earmarked for power generation annexed as **Annexure P 12** (Pages _____), decision on 207 applicants companies were taken on a single day i.e. 13.09.2007 by the Screening Committee. The minutes only state that the Committee *“deliberated at length over the information furnished by the applicant companies in the application forms, during the presentations and subsequently (the Committee) also took into consideration the views/comments of the Ministry of Power, Ministry of Steel, State Governments concerned, guidelines laid down for allocation of coal blocks, and other factors as mentioned in paragraph 10 above.”* Para 10 of the minutes states, *“Based on the data furnished by the applicants, and the feedback received from the State Governments and the Ministry of Power, the Committee assessed the applications having regard to matters such as techno-economic feasibility of end-use project, status of preparedness to set up the end-use project, past track record in execution of projects, financial and technical capabilities of applicant companies, recommendations of the State Governments and the Administrative Ministry concerned etc.”*

However, nothing was recorded in the minutes to suggest any comparative evaluation of the applicants and reasons as to how the Committee arrived at the decision. Minutes of 36th Screening Committee meeting held in 2008 are annexed as **Annexure P 13**(Pages_____).

24. The Coal Mines (Nationalisation) Act was amended to introduce the exceptional case of entry of private companies only to the extent of captive mining. However, in clause 8 (ii) and (iii) of the guidelines of MoC, a window for violating the Act was provided by allowing an independent private coal mining company to mine coal and supply it to an approved end-user through a firmed up commercial agreement. This created scope for further unintended relaxations. The lack of transparency in allotment and the artificial spurt in demand for coal, subjectivity, nepotism and corruption crept into the system. The procedures prescribed in the guidelines were deviated from. The conditions of allotment were infringed. Some instances are given below:

- I. According to the scheme, once a captive block is allotted, the allottee alone can mine and use it for the pre-determined captive purpose. However, in several cases, the allottees transferred their interest to others, evidently at a huge price, as they themselves had no expertise or interest or both. For example, coal blocks viz. Madanpur (north) in Hasdeo Anand in Chattisgarh (see S.No. 102) was allotted to Nav Bharat Coalfield

Ltd., not a well known company but the block was transferred by that company to KSK Energy at Hyderabad without MOC's authorization. The same was the case of Gujarat Mineral Development Corporation (S.No. 135 Morga II block, S.No 174 Naini block), PIPDICL of Pondichery (S.No. 175 Naini block) and Maharashtra State Mining Corpn. (S.No. 193 Warora in Wardha). All these blocks landed into the lap of KSK.

- II. The Puducherry Industrial Promotion Development and Investment Corporation (PIPDICL) itself is reported to have got the block through a senior politician of Pondichery who is now a Minister of State of Information and Broadcasting at the Centre. The Minister's company (J.R. Power Gen Pvt Ltd) reportedly formed a joint venture with (PIPDICL). The PIPDIC got the Naini coal block allotted at Talcher Orrissa on July 2005. Later the Puducherry government through PIPDICL entered into a Memorandum of Understanding with J.R. Power Gen Pvt Ltd on January 1, 2007. The PIPDIC, thus, sub allotted the coal block to the J.R. Power Gen Pvt Ltd which was only five days old at the time of agreement and had no experience in the sector. Media reports say that J.R. Power had sold 51 per cent of the stakes to K.S.K. Energy Ventures Ltd, a Hyderabad-based company. The news reports relating to KSK published in The Hindu dated 08.09.2012 and

in Live Mint dated 13.09.2012 and are annexed as **Annexure P14** (colly) (Pages_____).

III. The Conditions of Allotments of captive blocks are silent on the point of change of ownership. According to an investigation done by Economic Times the allottees used the allotment as licenses and sold or transferred it for profit at the cost of exchequer. The ET investigation has thrown up enough instances of sale of blocks to suggest this is a national phenomenon. One such example is the Lohara (East) block, where Grace Industries sold its 58% share along with some more assets to Sanvijay Rolling and Engineering, for an enterprise value of Rs109 crore. Another is Field Mining and Ispat, where the Taneja family, the original majority shareholders, have sold their entire stake to Wardha Power Company. News report of Economic Times dated 02.08.2012 is annexed as **Annexure P15** (Pages_____).

IV. Allotments to PSUs too created scope for corruption as their blocks were often diverted to private companies. According to reports, Tadicherla I block in SCCL in Andhra Pradesh allotted to APGENCO was diverted to a private company to the detriment of the PSU.

- V. In this non-transparent system of allotment, a few influential companies cornered a large number of coal blocks without any due diligence being exercised by MOC on whether they had the necessary technical and financial capability and whether they had firmed up captive uses. For example, the Jindal group was allotted 14 blocks at Sl. Nos. 6, 11,12, 27, 66 67, 97, 158, 211, 217, 235, 253, 274 & 283. This group had no adequate captive uses for which the coal would be needed. Each time MOC had allotted a new block, it was incumbent on it to review the status of mining in the earlier blocks to see whether the company was merely sitting on a valuable asset without commensurate benefit accruing to the economy or not. Apparently, this was given a go by due to the influence wielded by Mr. Jindal who is a Congress MP. **Annexure P 16** (Pages_____) are news reports dated 07.09.2012 and 12.09.2012 that show that several coal blocks were allotted to Jindal group in violation of the guidelines for allotment of coal blocks.
- VI. Several reports are in air to show that politicians in power used their influence over the Coal Ministry to get coal blocks allocated to their favored one. For example, the then Union Minister and Ranchi MP Mr. Subodh Kant Sahay requested the Prime Minister on 05.02.2008

to allot coal blocks in Jharkhand and Chattisgarh to his younger brother Mr. Sudhir Kant Sahay's company SKS Ispat and Power. On the request of Mr. Sahay, a letter was sent from the PMO to the coal secretary on 02.06.2008, allotting coal blocks to the firm. News reports of TOI dated 30.08.2012 and 31.08.2012 and of The Pioneer dated 01.09.2012 are attached as **Annexure P17 (colly)** (Pages_____).

- VII. A company new to the steel business, IST Steel & Power (an associate company of IST Group) was registered in 2005. It is owned by the sons of Rashtriya Janata Dal leader Shri Prem Chand Gupta. It applied for a coal block on January 12, 2007, when he was the Union minister for Corporate Affairs (between May 2004 and January 2006, he was the minister of state holding independent charge in the ministry of corporate affairs. He was then elevated to Minister, a post he held till May 2009). The company was awarded coal block on June 17, 2009, which has reserves of 70.74 million tonnes. The reserves it controls are more than the combined reserves held by much larger companies - Gujarat Ambuja and Lafarge. Gujarat Ambuja has reserves of 36 million tons while Lafarge has 25.26 million tonnes. IST Steel, along with cement majors Gujarat Ambuja and Lafarge, was allocated the Dahegaon /

Makardhokra IV block in Maharashtra. News report of Economic Times dated 07.09.2012 relating to IST Steel are annexed as **Annexure P 18** (Pages_____).

- VIII. In recent news reports on the basis of FIRs lodged by CBI it has come into light that Congress MP Mr. Vijay Darda and his brother Mr. Rajendra Darda, education minister in Maharashtra, were actively involved in the affairs of the JLD Yavatmal, one of the firms accused in the FIR. The FIRs reveal Dardas and partner Manoj Jayaswal wrongly claimed that large financial institutions like IL&FS and IDFC were partners in order to inflate their net worth and become eligible to bid for coal blocks. Media report of TOI dated 07.09.2012 relating to Darda and Manoj Jayaswal is annexed as **Annexure P19** (Pages_____).
- IX. A recent report dated 29.09.2012 in the magazine Tehelka reveals massive corruption in the allocation of coal blocks in the State of Chhatisgarh. The said report is annexed as **Annexure P 20**. (Pages_____)
- X. According to media sources allegations have been made against the present Minister of Coal that the mandatory condition of sanction of screening committee was also violated by the Ministry. It has come to light that as many as 35 coal blocks have been allotted to private companies without the sanction of Screening Committee. According to reports the last screening committee meeting was held in 2008. However, the

Government cleared 35 blocks after that. News report dated 18.09.2012 of India TV alleging Minister of Coal allocated 35 coal blocks without screening since 2009 is attached as **Annexure P 21** (Pages_____).

25. The CAG has indicated the possibility of transfer of surplus coal from the captive coal blocks, in which the coal production materializes before the commissioning of the end- use projects. CAG's report on Ultra Mega Power Projects-2012 reveals that in the case of the coal blocks allotted to the developer of Sasan UMPP(Ultra Mega Power Projects), the Ministry initially allotted two coal blocks, Moher and Moher-Amlohri. These blocks are at S.Nos. 152 & 153 of the list. Later, on the developer's insistence, the government considered allotting a third block, Chatrasal, at NTPC's expense. This is at S.No. 154 of the said list. In August 2008, the private coal developer came up with the the argument of improved technology to justify the transfer of surplus coal from the two Moher blocks. The government then bent backwards to allow the developer to sell the surplus to another private company for a windfall profit, making a mockery of the 'captive' concept. In fact, the two Moher blocks allotted to Sasan were not isolated blocks, as they constituted extensions of the Moher-Amlohri coal stratum, already being developed by NCL, a coal PSU. The boundaries between the NCL and Sasan having been being left fuzzy, the NCL permanently lost access to 57 million tonnes of extractable coal, in addition to what it had already conceded to Sasan as a result of the allotment.

26. The CAG has also pointed out how a coal from a captive coal block allocated to a Ultra Mega Power Projects (UMPP) in Sasan was allowed to be diverted which amounted to a huge post-bidding concession to the private company. Executive summary and the relevant chapter 5 of a separate CAG report No. 6 of 2012-13 on UMPPs is annexed herewith as **Annexure P22 (colly)**(Pages_____).

27. The Representation of People Act and the Companies Act permit corporate donations to political parties. In a more recent decision, the government has allowed the political parties to claim tax concession on such donations. It now turns out that the private companies which benefited from the allocation of coal blocks by the government also happen to be the most prominent donors to the two big national parties. According to a report recently released by the Association for Democratic Reforms, private companies have contributed immensely to the coffers of the Congress as well as the Bharatiya Janata Party. During 2006-12, these donations totalled to Rs. 1786 crores in the case of congress and Rs.890 Crores in the case of BJP. The Association for Democratic Reforms (ADR) has compiled the corporate donations to political parties on the basis of the “contribution reports” displayed at Election Commission of India (ECI) website. The News reports based on ADR report on donation to political parties published in Daily Mail UK dated 17.09.2012 and in Mail Today dated 18.09.2012 are annexed as **Annexure P 23 (colly)** (Pages_____). In practice, this has given rise to quid

pro quo in several sectors including in the allotment of coal blocks. Allotment orders at Sl. Nos. 242 (Aditya Birla), S. Nos 55, 56, 121, 199, 212 and 257 (Tatas), S.Nos. 78, 205 and 219 (Vedanta Group companies) are examples of this. KSK has donated to Congress. In particular, donations from foreign companies as defined in Foreign Contributions Regulation Act (FCRA) are prohibited if the donees are either political parties or individual candidates. The donations given by any company of the Vedanta Group to a political party is therefore illegal. During the last few years, according to the disclosures made by Vedanta in its Annual Reports, the company donated US\$ 8.29 million to the major political parties.

28. The CAG's draft report in March 2012 revealed extension of undue benefits to commercial entities in coal block allocations between 2004 and 2009. Subsequently complaints were filed before Chief Vigilance Commissioner (CVC) against the irregularities in the coal block allocations. Copies of Complaints made by Member of Parliament Shri Prakash Javedkar and Shri Hansraj Ahir to the CVC dated 14.03.2012 and 23.03.2012 are annexed herewith as **Annexure P 24 (colly)** (Pages_____). The CVC having regard to the nature of the issue raised therein, forwarded the complaints to CBI for a preliminary enquiry. A copy of the letter dated 17.05.2012 of the Secretary, CVC is annexed as **Annexure P 25** (Pages_____). Preliminary Enquiry was initiated by Central Bureau of Investigation (CBI) on the reference of CVC in the matter of allocation of coal blocks to the private companies

during period 2006-2009. CBI after more than 3 months of enquiry filed 5 separate FIRs on 03.09.2012 against various companies, persons relating to those companies and unnamed public servants of Coal Ministry and some State Governments. Allegations made out in of each of the FIRs are given as under:

- i. FIR No. RC 219 2012 E 0008 dated 03.09.2012, which is annexed as **Annexure P 26** (Pages_____), relates to allocation of Mehuagarhi Coal Block by 35th Screening Committee meeting, concluding its deliberations on 13.09.2007, to Calcutta Electricity Supply Co. Ltd (CESC) and M/s Jas Infrastructure Capital Pvt. Ltd (JICPL) for their proposed power plants in the State of Jharkhand and West Bengal respectively. FIR states, *“The above information prima facie, discloses commission of offence of Criminal Conspiracy, Cheating and Abuse of Official Position. Therefore Regular case is registered under sections 120 B IPC and 13(2) r/w 13(1) PC Act, 1988 against M/s Jas Infrastructure Capital Pvt Ltd (JICPL), its director viz Manoj Kumar Jayaswal, Abhishek Jayaswal with unknown servants of Ministry of Coal and others unknown.”* Facts disclosed as under in the FIR highlights the irregularities prevalent in the allocation through Screening Committee as stated in the present Petition.

“ The Enquiry revealed that M/s Jas Infrastructure Capital Pvt. Ltd (JICPL) had misrepresented/ concealed facts in the application form in order to qualify and obtain wrongful gains/

undue benefits in connivance with unknown public servants.

... M/s Jas Infrastructure Capital Pvt. Ltd (JICPL) in order to embellish its claim for allocation of coal blocks fraudulently claimed in its application that M/s Jas Infrastructure Capital Pvt. Ltd (JICPL) was an Special Purpose Vehicle (SPV) managed by M/s Inertial Iron & Steel Industries Pvt Ltd and IL & FS Group and claimed net worth of Rs. 812.03 Crores of IL& FS Group and Rs. 206.48 Crores of M/s Inertial Iron & Steel Industries Pvt. Ltd in its support. It is important to note that the Central Electricity Authority (CEA) on whose analysis the Ministry of Power made its recommendations to the Ministry of Coal had kept minimum net worth of Rs. 0.5 crores per Mega Watt of the maximum capacity of the proposed power plant as a pre-qualification criteria for the applicant companies. The company M/s Jas Infrastructure Capital Pvt. Ltd, (JICPL) with a proposed capacity of 1200 Mega Watt, would not have pre-qualified for the recommendation of the Ministry of Power but for this deception.

...The group companies of JICPL had previously been allocated 07 coal blocks between 1999 and 2005. However, the company fraudulently and willfully concealed the fact of previous allocations to the group companies with an object to avoid scrutiny on this count which would have weakened its claim.

Enquiry also revealed that officials of Ministry of Coal, in pursuance of criminal conspiracy, willfully and purposefully,

did not scrutinize the aforesaid documents regarding the false claims/ concealment of facts by JICPL and thus facilitated JICPL getting undue advantage in allocation of the Mahuagarhi Coal Block.”

- ii. FIR No RC 219 2012 E 009 dated 03.09.2012, which is annexed herewith as **Annexure P 27** (Pages_____), relates to allocation of Bander coal block in Maharashtra by 36th Screening Committee Meeting, concluding its deliberations on 03.07.2008. Through this FIR a regular case is registered under sections 120 B IPC and 13(2) r/w 13(1) PC Act, 1988 against M/s AMR Iron and Steel Pvt Ltd, Nagpur, its Directors namely Sh. Arvind Kumar Jayaswal S/o- B L Shaw, Sh. Manoj Jayswal and Sh. Ramesh Jayswal, Sh. Devendra Darda s/o Vijay Darda, along with unknown public servants of Ministry of Coal and unknown others. Allegations made in this FIR clearly stipulates the role of then MOS of Coal, besides other identical allegations, as above stated, of misrepresentation of net worth and fraudulent and willful concealment of previous allocation of 5 coal blocks to the accused company. FIR states,

“ The representative of M/s AMR Iron and Steel Pvt Ltd attended the meeting on 19.09.2008 with the Minister of State for Coal in his Chamber, wherein it claimed that it was not a part of Jayaswal Group, but its equity was held by Lokmat Group, Ms Abhijeet Infrastructure Ltd and IL& FS. The company also admitted that it was allocated 5 coal blocks

earlier as on the date of application during the meeting dated 18.09.2008. These facts regarding earlier allocation of coal blocks to the group/ associate companies and the equity participation by IL & FS and Lokmat Group were concealed / misrepresented by M/s AMR Iron and Steel Pvt Ltd in its application/ feedback form. The company further misrepresented when it claimed in writing that it was not a part of Jayaswal Group vide its letter dated 22.09.2008.

8. Enquiry revealed that despite having taken note of the earlier allocations to the group companies of M/s AMR Iron and Steel Pvt Ltd, the public servants in the Ministry of Coal in pursuance of Criminal conspiracy, willfully did not take the enquiry to its logical conclusion, thus allowing undue advantage to M/s AMR Iron & Steel Pvt Ltd.”

It is noteworthy that despite clear evidence stated in the FIR against then Minister of State (Coal) he was not named in the FIR.

- iii. FIR No. RC 219 2012 E0010 dated 03.09.2012, which is annexed as **Annexure P28** (Pages_____), related to allocation of Fatehpur East Coal Block through 35 Screening Committee meeting, jointly to M/s JLD Yavatmal Energy Ltd, M/s R.K.M. Powergen Pvt Ltd, M/s Visa Power Ltd, M/s Green Infrastructure Power Ltd and M/s Vadana Vidyut Ltd for their proposed power plants in the states of Maharashtra and Chhattisgarh respectively. According to the FIR, Ministry of Power recommended for allocation of coal block to four

companies including M/s JLD Yavatmal Energy Ltd. Despite the fact that that the Government of Chattisgarh (State where coal block was located) had not recommended M/s JLD Yavatmal Energy Ltd for allocation of Coal Block. FIR states as under:

“ 5. The Enquiry revealed that M/s JLD Yavatmal Energy Ltd. had misrepresented / concealed facts in the application form in order to qualify and obtain wrongful gains/ undue benefits in allocation of fresh coal block.

6. ... M/s JLD Yavatmal Energy Ltd in order to embellish its claim for allocation of coal blocks, fraudulently claimed in its application that M/s JLD Yavatmal Energy Ltd has been jointly promoted, controlled and managed by Lokmat Group and IDFC Ltd and claimed net worth of Rs. 2544.19 Crores of M/s IDFC Ltd. and Rs 73.38 Crores of M/s Lokmat Group in support. It is important to note that Central Electricity Authority (CEA) on whose analysis the Ministry of Power made its recommendations to the Ministry of Coal had kept a minimum net worth of Rs. 0.5 crores per MW of the maximum capacity of the proposed power plant as a pre-qualified criteria for the applicant companies. The Company M/s JLD Yavatmal Energy Ltd. with a proposed capacity of 1215 MW, would not have pre-qualified for the recommendation of the Ministry of Power but for this deception.

7... The Group of Companies M/s JLD Yavatmal Energy Ltd. had previously been allocated 04 coal blocks during the year

1999-2005. However, the company fraudulently and willfully concealed the fact of previous allocations to the group companies with an object to avoid scrutiny on this count which would have weakened its claim.

8. Enquiry also revealed that officials of Ministry of Coal, in pursuance of criminal conspiracy, failed to carry out scrutiny of the aforesaid documents regarding the false claims / concealment of facts by M/s JLD Yavatmal Energy Ltd. for which M/s JLD Yavatmal Energy Ltd got undue advantage in allocation of the Fatehpur East Coal Block.”

9. Whereas, the above information, Prima facie, discloses commission of offences of Criminal Conspiracy and Cheating. Therefore, a regular case is registered under sections 120 B r/w 420 IPC against M/s JLD Yavatmal Energy Ltd. its Directors viz. Mr. Vijay Darda, s/o- Vijay Darda, Mr. Manoj Jayaswal, s/o- B.L. Shaw, Mr. Anand Jayaswal, s/o Arbind Jayaswal, Mr. Abhishek Jayaswal, s/o- Manoj Jayaswal along with others unknown.”

It is pertinent to note that despite recording the involvement of public servants in Ministry of Coal no case has been registered against those officials, neither any case is registered under Prevention of Corruption Act in this FIR.

iv. FIR No. RC 219 2012 E0011 dated 03.09.2012, which is annexed as **Annexure P29** (Pages_____), related to

allocation of Rampia and Dipside Rampia Coal Blocks through 35 Screening Committee meeting, jointly to 6 companies namely M/s Sterlite Energy Ltd, M/s GMR Energy Ltd. and Lanco group Ltd., M/s Mittal Steel India Ltd, M/s Reliance Energy Ltd. and M/s Navabharat Power Pvt. Ltd for their proposed Power Plants. The letter of allotment was issued on 17.01.2008. Following irregularities and illegalities emerged from the FIR, which substantiates the Petitioners' contention:

“ 5. The enquiry revealed that M/s Navabharat Power Pvt Ltd. had misrepresented concealed facts in the application form in order to qualify and obtain wrongful gains/ undue benefits in connivance with unknown public servants.”

6. ...M/s Navabharat Power Pvt. Ltd in order to embellish its claim for allocation of coal block, fraudulently claimed in its application that it was supported by M/s Globelq Singapore Ltd, M/s Navbharata Ventures Ltd and Malaxmi Group Ltd and claimed net worth of Rs. 307.12 Crores of M/s Nava Bharat Ventures Ltd and Rs. 1778.14 Cr. Crores of M/s Globelq Singapore Pte Ltd. Subsequently in the Feed Back form submitted by the Company and during its presentation before the Screening Committee on 23.06.2007, the company claimed net worth of Rs. 307.12 Crores of M/s Nava Bharat Ventures Ltd and Rs. 1,05,740 Crores of M/s Suez Energy International Pvt Ltd. Enquiry was revealed that M/s Navabharat Power Pvt Ltd had no legal basis in form of any

document, presented to the Screening Committee or enclosed with application, between itself and M/s Suez Energy International Pvt Ltd on the strength of which it could have claimed their net worth. It is important to note that Central Electricity Authority (CEA) on whose analysis the Ministry of Power made its recommendations to the Ministry of Coal had kept a minimum net worth of Rs. 0.5 crores per Mega Watt of the maximum capacity of the proposed power plant as a pre-qualification criteria for the applicant companies. The Company M/s Navabharata Power Pvt Ltd with a proposed capacity of 2240 Mega Watt would not have pre-qualified for the recommendation of the Ministry of Power but for its deception.

7. Enquiry also revealed that officials of Ministry of Coal in pursuance of Criminal Conspiracy, willfully and purposefully did not scrutinize the aforesaid documents regarding the false claims/ concealment of facts by M/s Nav Bharat Power Pvt Ltd and thus facilitated the Company in getting undue advantage in allocation of the Rampia and Dip Side of Rampia Coal blocks.

8. Enquiry also revealed that allocation of the coal block, the promoters and shareholders of M/s Navabharat Power Pvt Ltd. sold off their entire shareholdings in July 2010 to M/s Essan Power Ltd and its subsidiary company at huge profit of Rs 200 Crores.”

Regular case has been registered for offence of Criminal

Conspiracy, Cheating and Abuse of Official Position u/s 120 B IPC r/w 420 IPC and 13(2) r/w 13(1)d of PC Act against M/s Navabharat Power Pvt Ltd, its Directors along with unknown public servants under Ministry of Coal and unknown others.

- v. FIR RC 219 2012 E 0012 dated 03.09.2012, which annexed herewith as **Annexure P-30** (Pages_____), relates to 36th Screening Committee meeting, concluding its deliberations on 03.07.2008. Through this meeting recommendations were made for allotment of Rajhara North (Central and Eastern) Coal block jointly to M/s Mukund Ltd and M/s Vini Iron & Steel Udyog Ltd. for their proposed Steel plants in the states of Karnataka and Jharkhand respectively. Facts in the FIR reveals that *“Ministry of Steel recommended for allocation of the Rajhara North (Central and Eastern) Coal block to M/s Zoom Vallabh Steel Ltd. Government of Jharkhand had not recommended M/s Vini Iron & Steel Udyog Ltd, for allocation of any Coal block, thus M/s Vini Iron and & Steel Udyog Ltd was not having recommendation of either State of Jharkhand or Ministry of Steel initially. However, the then Chief Secretary, Govt. of Jharkhand, who attended the 36th Screening Committee meeting on 03.07.08, had signed minutes of the Screening Committee, which had recommended the allocation in favour of M/s Vini Iron & Steel Udyog Ltd.”*

Following allegations have been made in this FIR against the

accused company.

“5...M/s Vini Iron & Steel Udyog Ltd. had misrepresented / concealed facts in the application form in order to qualify and obtain wrongful gains/ undue benefits in connivance with unknown public servants.

6... M/s Vini Iron & Steel Udyog Ltd in order to embellish its claim for allocation of coal blocks, fraudulently claimed in its application the networth and turnover of 15 so called Group Companies of Rs. 85.79 Crores and Rs. 763.73 crore respectively. Enquiry also revealed that only 06 of those companies were the Group companies of M/s Vini Iron and Steel Udyog Ltd and actual turnover and networth of the companies was Rs. 37.26 crores (approx) and Rs. 27.58 crores (approx) respectively, based on the control/ management of the companies. Enquiry has also revealed that Chartered Accountant had submitted false certificate regarding group association of M/s Vini Iron & Steel Udyog Ltd.

7. Enquiry also revealed that ownership of the M/s Vini Iron & Steel Udyog Ltd. had changed hands during the intervening period of the 36th Screening Committee. Enquiry also revealed that change of ownership of the company coincided with the change of view of State Govt. which was reflected in Chief Secretary, Govt. of Jharkhand consenting for allocation of Rajhara North (Central & Eastern) coal block in favour of M/s Vini Iron & Steel Udyog Ltd.

8. Enquiry also revealed that officials of Coal, in pursuance of the Criminal conspiracy, willfully and purposefully, did not scrutinize the documents regarding the false claims by M/s Vini Iron & Steel Udyog Ltd. and thus facilitated M/s Vini Iron & Steel Udyog Ltd in getting undue advantage in allocation of the Rajhara North (Central and Eastern) Coal Block.”

On the basis of information as above stated Regular case has been registered against u/s 120B r/w 420 of IPC and 13(2) r/w 13(1)(d) of PC Act against named directors of M/s Vini Iron & Steel Udyog Ltd and Sh Navin Kumar Tulsyan Chartered Accountant along with unknown public servants of Ministry of Coal, Govt. of India and the state Govt of Jharkhand and others unknown.

29. The allegations mentioned in the FIRs mentioned as above reveals that the investigation of CBI does not cover the full amplitude of the scam in the coal block allocation. By and large it only covers the allegations of misrepresentation by allottee companies. The enquiry and consequent FIRs by CBI cover only miniscule of the Criminal Conspiracy of the high level Public servants, under whose authority officials of the CBI are bound to function. Following shortcomings of the CBI's investigation is apparent from the FIRs.

- i. The Criminal Conspiracy hatched in the Ministry of Coal to thwart attempts to bring transparency in the allocation process

by introducing competitive bidding remains untouched.

- ii. CBI seems to have ignored the role of Screening Committee, which has recommended for allocation of coal blocks to selected companies in the most arbitrary fashion without comparative evaluation among several applicants, ignoring the guidelines for allocation.
- iii. The CBI has also overlooked the favoritism/ nepotism shown by Ministries, State Governments/ Politicians and influential persons in recommending companies for allocations for coal blocks, without verifying any regard to the credentials of the company.
- iv. Change in the ownership of allottee companies and subletting of mines for huge profits have remained untouched by and large.
- v. Willful delay in production and setting up end-use projects by allottee companies has not been enquired into.
- vi. Diversion of surplus coals in the black market for profit at the cost of exchequer has not been gone into.
- vii. Despite clear evidences against then MOS (Coal) and other public servants in the Ministry of Coal FIRs have made accused to 'unknown public servants'. It highlights the incapacity of CBI to investigate the role of senior ministers and influential individuals.
- viii. Willful violation of the conditions of allotment by the

allottee companies and criminal conspiracy and abuse of official position by public servants in ignoring such violation has not been gone into by the CBI.

- ix. Role of public companies in sub-letting or diverting coal mines to private entities has not been enquired.
- x. Certain allotments were made even without going through the process of Screening Committee. This aspect also needs to be investigated.

A contrast of the coal scam FIRs can usefully be made to the FIR filed in the 2G case where the allocation per se and the resultant loss to the exchequer was being investigated. A copy of the said 2G FIR dated 21.10.2009 made after a CVC reference is annexed as **Annexure P 31**. (Page _____).

30. The Ministry of Coal by Office Memorandum dated 03.07.2012 has reconstituted Inter Ministerial Group (IMG) to undertake periodic review of the development of coal / lignite blocks allotted, to consider the replies where the show cause notices have been given and recommend action against the allocate companies and to recommend action as to deduction of Bank Guarantee, if required. Copies of the Office Memorandum issued by Ministry of Coal dated 03.07.2012 and Minutes of the Meeting of IMG dated 03.09.2012 are annexed herewith as **Annexure P 32 (Colly)** (Pages_____).

31. Under these circumstances, petitioners humbly submit to this Hon'ble court that the entire process of allotment of coal blocks was non-transparent, unfair and tainted with all kinds of violation of rules and procedures. This was done by blocking the policy of competitive bidding by the public servants under Ministry of Coal. Even according to the CBI FIRs, crimes under Prevention of Corruption Act were committed during allotment of coal blocks. As per the most conservative estimate of CAG, private companies had windfall gains of Rs. 1.86 lakh crores. A copy of the report published in the Hindu dated 20.09.2012 is annexed as **Annexure P33**(Pages_____), states that the actual windfall gain could be even more than the estimates of the CAG. That the arbitrary allocation of coal blocks resulted in a windfall gain to few private parties in violation of settled principles, running into tens of lakhs of crores of rupees, and a corresponding loss to the public exchequer, and it is essential that this loss is redeemed. The very basis of the allotment of the coal blocks through the Screening Committee without following the competitive bidding process is against the doctrine of trusteeship and the Constitutional mandate under Article 14, as interpreted by this Hon'ble Court in the 2G case (2012) 3 SCC 1. Thus, the allotment of captive coal blocks after 1993 by the Government be cancelled in its entirety and coal blocks be freshly allotted by a transparent auction process. A court monitored thorough investigation by a Special Investigation Team is warranted to uncover the entire magnitude of the scam. The Government of India should also be directed to recover from the allottees the windfall profits they may have received by selling the

coal blocks, or as equity in companies in which the sole or substantial asset is the captive coal mines obtained through irregular means.

31. That huge losses have been caused is clear from the report of the According to a report of the Central Empowered Committee (CEC, expert committee appointed by this Hon'ble Court) made in I.A. No. 2167 made to the Forest Bench regarding the loss from the allocation of just one coal mine in State of Madhya Pradesh. CEC estimated the loss at a whopping Rs. 80,000 crores from just one mine, and therefore recommended that the agreement entered between the mining company and the state government be cancelled. A copy of the said CEC report is annexed as **Annexure P34**. (Page _____) The CEC and the MoEF, Govt of India thereupon made a joint recommendation to this Hon'ble Court to cancel the said agreement. A copy of the said joint recommendation is annexed as **Annexure P35**. (Page _____). Thereafter this Hon'ble Court vide order dated 20.02.2009 directed the MoEF to take requisite steps, pursuant to which the said agreement was cancelled. A copy of the press release issued by the PIB on this is annexed as **Annexure P36**. (Page _____).

32. The Petitioners have not filed any other writ, complaint, suit or claim in any manner regarding the matter of dispute in this Hon'ble court or any other court or tribunal throughout the territory of India. The petitioners have no better remedy available.

GROUNDS

- A. That the scarce natural resource of coal was alienated by the Union of India for commercial exploitation to private profiteers without any competitive process and in the most arbitrary and opaque manner, resulting in a complete violation of rule of law, doctrine of trusteeship of public resources and Article 14 of the Constitution.
- B. That the allocation of captive mines through the Screening Committee without comparative evaluation among applicants and without proper verification of the credentials of the applicants as to the compliance of the prescribed guidelines is marred by arbitrariness, mala fides and multiple illegalities.
- C. That the arbitrary allocation of coal blocks resulted in a windfall gain to few private parties in violation of settled principles and a corresponding loss to the public exchequer running into tens of lakhs of crores of rupees and it is essential that this loss is redeemed. The same is contrary to the law declared by this Hon'ble Court in the 2G case and the opinion dated 27.09.2012 given in Spl Ref 1 of 2012.
- D. That the companies that got the coal blocks allocated out of turn or on the basis of misrepresentation or flawed procedure cannot be the beneficiaries of their own wrong. It is in the fitness of things that the entire coal block allocation be set

aside and then the Government be directed to put to auction those blocks as per Section 11A of MMDR Act so that scarce and precious natural resources can be fairly and transparently allocated giving proper revenue to the national exchequer.

E. That investigation of CBI at the instance of CVC is partial and does not cover the full magnitude of the coal scam. The alleged conspiracy in blocking the policy of competitive bidding and the manner in which the screening committee functioned need to be investigated thoroughly, which involves senior ministers including the highest executive office of the country. The involvement of senior ministers, public servants, different departments of Government of India and concerned State Governments, alleged corruption and bribery by beneficiary companies needs to be investigated. Considering the magnitude of investigation and possibility of involvement of high public offices, including PMO, and the fact that CBI functions under the same very Government it is supposed to investigate, a court-monitored investigation by an SIT is required to ensure proper investigation in the matter.

F. That as per the law propounded in the 2G case ((2012) 3 SCC 1), the State, as a trustee, is legally bound to get the true value of a natural resource, and all arbitrary allocations of natural resources are illegal and void. The same has been confirmed in the opinion dated 27.09.2012 in Spl Ref 1 of 2012 by stating that natural resources cannot be allocated to

private profiteers without a corresponding gain to the public, and windfall gains are clearly impermissible. It states that when “*precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution.*”

G. That the prevailing corruption in the country in high places seriously impairs the right of the people of this country to live in a corruption free society governed by rule of law. This is a violation of Article 21 of the Constitution. The right to life guaranteed to the people of this country also includes in its fold the right to live in a society, which is free from crime and corruption.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon’ble Court in public interest may be pleased to: -

a. Issue appropriate writ quashing the entire allocation of coal blocks to private companies made by the Union of India from 1993 to 02.02.2012.

OR

Issue appropriate writ quashing the entire allocation of coal blocks to private companies made by Union of India from June 2004 to 02.02.2012.

b. Issue appropriate writ declaring all the joint venture agreements made between public sector undertakings holding coal blocks with private companies wherein private companies are given right to mine or some other interest in coal blocks, or wherein full or partial benefit of the coal block came to a private company as void.

c. Issue an appropriate writ to direct a thorough investigation by an SIT or a court-monitored investigation by the CBI & ED into the entire allocation of coal blocks by the Central Government made between 1993 to 2012, covering all aspects including investigation of the allocation process followed by the Government and the recommendations made by the State Governments, and also direct an investigation into how coal block allocated for captive use of UMPP were allowed to be diverted for non-captive use allowing windfall gains to a private party.

d. Issue appropriate writ directing the Union of India to recover punitive damages from companies that made false claims or declarations in their applications for allocation of coal blocks and from those companies/ JV/ Firms which defaulted the condition of allotment and undertakings given to the government.

- e. Issue appropriate writ directing the Government to cancel the permission granted to captive coal block users for UMPP to divert coal for other purposes
- f. Issue appropriate writ directing the Union of India to recover windfall profits that may have been obtained through sale of coal blocks or as equity in companies whose sole or substantial asset is the captive coal blocks allocated by the Government.
- g. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper in the facts of the case and in the interest of probity and rule of law.

PETITIONERS
THROUGH

PRASHANT BHUSHAN
(COUNSEL FOR THE PETITIONERS)

Drawn By: Ramesh K Mishra
Pranav Sachdeva

Drawn & Filed On: October 2012
New Delhi