IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO. 2 OF 2013

IN
WRIT PETITION (CIVIL) NO. 463 OF 2012

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

COMMON CAUSE & ORS …… Petitioners

Versus

UNION OF INDIA & ORS …… Respondents

APPLICATION FOR DIRECTIONS

ON BEHALF OF THE PETITIONERS

To,

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

The humble application of the petitioner above named:

1. The above petition relates to a massive scam in the allocation of the precious natural resource of coal, causing a potential loss to the public exchequer running into tens of lakhs of crores of rupees. Coal blocks containing hundreds of million tonnes of reserves were arbitrarily assigned to a few select private profiteers without any corresponding benefit to the public. A scarce national resource was conferred on private companies to the exclusion of other claimants by adopting a completely opaque and arbitrary, and hence wholly unconstitutional process.

2. It has become clear that serious criminal offences including corruption, cheating, breach of trust, fraud and criminal conspiracy were committed in the allocation of coal blocks. The Central Vigilance Commission (CVC) had directed the CBI to investigate the process of allocation pursuant to which the CBI has registered 14 FIRs for offences of corruption, cheating, and criminal conspiracy against several companies and public servants. It is also beyond doubt that the persons who are the subject matter of the investigation are extremely influential and powerful. The involvement of the PMO, the Ministries of Coal, Steel and Power, the State Governments and big corporate houses would need to be investigated as they were either deeply involved in the allocation of coal blocks or are the beneficiaries of the said allocations. The petitioners have, therefore, prayed, *inter alia*, for a thorough court-monitored investigation by a Special Investigation Team (SIT).

3. The above petition, which arrays the Union of India, the CVC, the CBI, and the Directorate of Enforcement (ED) as respondents, was listed on 19.11.2012 when this Hon'ble Court was pleased to issue notice only to the Union of India & the CBI. At that stage, it was felt that notice to the ED was not necessary. However, the developments in the case leave no room for doubt that the ED must be asked to explain the status of its investigations in the coal block allocation cases.

4. The ED is a specialized agency with a mandate to investigate offences under the Prevention of Money Laundering Act, 2002 (PMLA) and the Foreign Exchange Management Act, 1999 (FEMA). This agency has expertise in investigation of cases involving complicated financial transactions of various kinds.

5. According to the information available with the petitioners from reliable sources, the ED has till date registered only 5 to 7 cases under the PMLA in the coal scam case, whereas the CBI has registered over 14 FIRs. As per the scheme of the PMLA, which deals with the proceeds of a crime, the coal blocks/mining leases in question are liable to be attached under Section 5 of the PMLA in view of the fact that the allocation of the blocks allegedly involved the commission of offences scheduled under the PMLA,. To the best of the petitioners' information, no attachment orders have been issued till date. It may be submitted here that in the 2G Spectrum case, investigations by the CBI and the ED had proceeded concurrently and provisional attachment orders were passed by the ED under the PMLA.

6. The criminal activities committed by accused persons in securing the allotment of coal blocks *prima facie* disclose offences of criminal conspiracy, cheating and abuse of official position are punishable under section 120 B of the Indian Penal Code (IPC) read with section 420 of the IPC and section 13(2) of the Prevention of Corruption Act, 1988. The offences are included in paragraph 1 and paragraph 5 of part B of the schedule of the

PMLA as defined under section 2(1)(y) of the said Act. Thus, the public servants and the private entities, which have secured allocations of coal blocks in a *mala fide* manner, have committed the offence of Money Laundering as defined under Section 3 of the PMLA and punishable under Section 4 of the said Act.

7. The investigation by the ED has acquired great relevance and urgency because unravelling the intricate financial transactions involved is in the domain and core competence of the ED. Moreover, since the ED works under the Ministry of Finance, and hence susceptible to political pressure from, it is essential that in a sensitive case like the present one, the investigation carried out by ED is also monitored by this Hon'ble Court, just like the one being carried out by the CBI. This Hon'ble Court may also direct the two agencies to share information with each other in order to ensure that the entire coal block allocation scam case is thoroughly investigated.

PRAYERS

In these circumstances the Petitioner prays that during the pendency of this petition, the Hon'ble Court may be pleased to pass the following ad-interim directions:

(i) Direct the issuance of notice to the Directorate of Enforcement (ED), Through Its Director, 6th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110003, i.e. Respondent No. 4 in the case.

(ii) Direct the ED to submit periodic status reports on their investigations in the coal block allocation cases to this Hon'ble Court.

(iii) Pass other or further orders, as may be deemed fit and proper in the interest of a fair, impartial and thorough investigation in the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Petitioners
Through

PRASHANT BHUSHAN
Counsel for the Petitioners

Drawn & Filed On: November 2013
New Delhi