2025 INSC 1103

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 11793 OF 2025
(Arising from SLP (C) No. 21888 of 2012)

COAL INDIA LTD. AND ORS. ...APPELLANT(S)

Versus

M/S RAHUL INDUSTRIES AND ORS. ...RESPONDENT(S)

WITH

T.C.(C) No. 10/2016
T.C.(C) No. 9/2016
T.C.(C) No. 11/2016
T.C.(C) No. 27/2016
T.C.(C) No. 28/2016
T.C.(C) No. 26/2016
T.C.(C) No. 33/2016
T.C.(C) No. 35/2016
T.C.(C) No. 36/2016
T.C.(C) No. 34/2016
T.C.(C) No. 39/2016
T.C.(C) No. 37/2016
T.C.(C) No. 40/2016
T.C.(C) No. 41/2016

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:

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1. Leave granted in Special Leave Petition (C) No. 21888 of 2012.

2. Since the issues raised in the captioned appeal and the transferred cases are the same, those were taken up for hearing analogously and are being disposed by this common judgment and order.

3. This appeal arises from the Judgment and Order passed by the High Court at Calcutta dated 04.04.2012, in A.P.O. No. 10 of 2011 (the "**impugned judgment**"), by which the division bench of the High Court dismissed the appeal filed by the appellant herein and thereby affirmed the order passed by a learned Single Judge dated 25.11.2010 in the Writ Petition No. 44 of 2007, holding that the appellant herein had no authority to frame and notify the Interim Coal Policy dated 15.12.2006 and thereby collect an excess of 20% amount over and above the notified price of coal from the linked consumers falling in the non-core sector, in light of this Court's dictum in ***Ashoka Smokeless Coal India (P) Ltd. v. Union of India*****,** reported in **(2007) 2 SCC 640**.

A. FACTUAL MATRIX

4. The appellant herein is a public sector undertaking involved in the mining, production and marketing of coal and its products. It falls under the administrative control of the Ministry of Coal, Government of India. The

respondents herein (original writ petitioners) are private limited companies engaged in the business of manufacturing of smokeless fuel for which coal is the raw material.

5. The respondents had challenged the Interim Coal Policy notified by the appellant on 15.12.2006, increasing the notified price of coal by 20% for the non-core linked sector. The Interim Coal Policy was introduced after this Court struck down the e-auction methodology of pricing in ***Ashoka Smokeless*** *(supra).*

6. For a better understanding of the pivotal issue involved in the case in hand, we find it apposite to provide a background of the coal sector.

7. The coal sector was primarily a private sector entity post-independence till the early 1970s. In 1972-73, the industry was nationalized in terms of the Coking Coal Mines (Nationalization) Act, 1972 (the "**Act, 1972**") and the Coal Mines (Nationalization) Act, 1973 (the "**Act, 1973**"), whereby all privately held coal assets were acquired by the Government of India. Thereafter, a state-owned enterprise Coal India Limited (CIL), the appellant herein, was formed to manage almost all of India's coal mining operations. To this effect, the Central Government issued appropriate notifications by and under which, the coal mines both in terms of the Act, 1972 and the Act, 1973 were vested in the public sector undertakings, namely the appellant

herein and its various subsidiaries. Even after the rapid liberalization phase in the early 1990s, the appellant stayed a largely government owned entity and the coal sector retained its monopolistic characteristic.

8. After the nationalization of the sector, the consumers of coal were broadly categorized into two sectors – core and non-core sectors. The classification was solely based on their role in the economic development of the country. The core sector consumers include the vital sectors imperative for the economic and industrial development of the country like the power, steel, cement, defence, fertilizer, railways, paper, aluminium, export, etc. These sectors occupy more than 95% share of the consumer base for coal. All other remaining industries or consumers comprise the non-core sector like the manufacturers of smokeless fuel or briquettes, glass manufacturers, etc.

9. Historically, the Government of India did not allow the market forces to shape the prices of coal whereby the sellers could negotiate prices and volumes with independent buyers. Instead, the coal in India was distributed through a linkage system by way of which individual coal consumers were linked with particular mines.

10. The power of price fixation by way of notification by the Central Government flowed from the pre-independence era enactment of the Colliery Control Order, 1945 (the "**CCO, 1945**") under the Defence of India

Rules. Section 4 of the CCO, 1945 empowered the Central Government to notify the sale price of coal or fix a maximum or minimum price threshold for the same, subject to which the coal was to be sold by the colliery owners. Similarly, Section 8 of the CCO, 1945 empowered the Central Government to also regulate the disposal of coal stocks of any colliery including the quantity to be sold and to whom the coal stocks were to be sold to.

11. The linkage committees were composed of stakeholders from a variety of areas, including the appellant, railways and the erstwhile planning commission, etc. Initially, the linkage system was extended only to the core sector, however, after noticing huge demand of coal by the non-core sector, the same was introduced for the consumers falling under the said category. It is noted that a "linkage" did not vest any right in the linked unit to claim coal from a particular company, coalfield or source. The system was introduced for logistical ease, and "linkage" acted only as a clearance to the linked coal company (either the appellant or one of its subsidiaries) to supply coal to a unit subject to availability of the commodity as well as regulatory directives given in respect of such unit or linked coal mine.

12. It is pertinent to note that the classification of core and non-core sectors as well as the linkage system is now dispensed with after the introduction of the New Coal Distribution Policy, 2007. However, for the purpose of

answering the issues arising in this litigation, it is necessary for us to bear in mind the modalities of the aforesaid mechanisms.

13. After about two decades of following the linkage system, it was observed in 1998 that linkages were being granted by the authorities indiscriminately without due regard to the availability of coal, transport capacity and actual consumption. This led to a mismatch with the demand being several times higher than the actual availability. The appellant, therefore, introduced the Open Sales Scheme for the class of consumers not covered by the linkage scheme with a view to curb the purchase of coal in the black market. However, even the said scheme was unable to ensure adequate supply in comparison to the demand received for the commodity.

14. A partial deregulation of coal came to be done by the Central Government by enactment of the Colliery Control Order, 2000 (the "**CCO, 2000**") on 01.01.2000 under Section 3 of the Act, 1955 (the "**Act, 1955**"). Though the CCO, 2000 replaced the CCO, 1945, yet it preserved the Central Government's power to categorise classes, grades and sizes of coal and to regulate the disposal of coal stocks of any colliery by issuing directions. However, the enactment made a significant departure from the CCO, 1945 and deregulated the price fixation mechanism adopted under the CCO, 1945 and the Central Government was no longer the authority to notify prices for

various grades and sizes of coal. After the CCO, 2000 came into force, it was the appellant that issued the notified price of coal for both core and non-core sectors. Thereafter, in 2001, the appellant further decentralized the process of notification of prices and authorized its subsidiaries to decide their own policy of sale of coal to the non-core sector.

15. When it was noticed that the schemes of linkage, sponsorship or open sales scheme were unable to meet the demand which was majorly artificial and man-made, a new policy of e-auction scheme was introduced in 2003-04 to liberalize the sector as well as to provide a pragmatic and transparent system of distribution of coal to the non-core sector. The e-auction system made coal accessible for the consumers in the non-core sector at a market price for the variety of coal that they required as per the quantity earmarked for them by the Government.

16. The e-auction scheme was introduced to increase the accessibility of coal to the consumers however, it was observed that the prices of the same, as determined by the market rates, were significantly higher than the prices notified by the appellant and its subsidiaries. This affected the linked consumers of the non-core sector disproportionately. Therefore, the e-auction system was challenged before several High Courts and was ultimately challenged before this Court in ***Ashoka Smokeless*** *(supra)*

wherein the system of sale by way of e-auction was struck down on 01.12.2006. This Court also directed for the formation of a committee comprising of the Secretary, Ministry of Coal and technical experts, with a view to evolve a viable policy for sale of coal.

17. The said expert committee gave its recommendations on the coal policy of the country pursuant to which, the New Coal Distribution Policy was introduced in October, 2007. In the meantime, the appellant notified an Interim Coal Policy on 15.12.2006 to govern the period between 01.12.2006 and October 2007 as no policy was in place for this period and this Court in ***Ashoka Smokeless*** *(supra)* remained silent on this aspect. In the Interim Coal Policy, the appellant issued the price of coal for the linked consumers of the non-core sector at a rate 20% higher than the price notified on 15.06.2004 i.e., before the e-auction system was brought into place, and at a rate 30% higher than the previously notified price for the non-linked consumers of the non-core sector.

18. It is pertinent to note that coal was omitted from the list of essential commodities under the Essential Commodities (Amendment) Act, 2006 on 26.12.2006 and was therefore, no longer subject to the restrictions envisaged by the Act, 1955.

19. Aggrieved by the price increase, an association of 22 manufacturers of smokeless fuel and soft coke filed a writ petition bearing no. 44 of 2007 before the High Court at Calcutta on 12.01.2007 challenging the Interim Coal Policy on the following grounds:

i) The Interim Coal Policy was in contravention of this Court's dictum in ***Ashoka Smokeless*** *(supra)* as the procedure prescribed in the judgment for formulating a policy for the sale of coal was not followed by the appellant. This Court in the said judgment directed the formation of an expert technical committee to decide on a viable policy, and the appellant did not have any authority to notify an interim measure in this regard.

ii) The natural corollary of this Court's judgment in ***Ashoka Smokeless*** *(supra)* was that the regime of notified prices existing prior to the e-auction system would be revived. Thus, the Interim Coal Policy had no legal sanctity.

iii) The 20% hike in price of coal for the linked non-core sector consumers was a measure of profit-making for the appellant and in light of the Act, 1972 and Act, 1973 respectively, the Central Government as well as the coal companies were duty bound to act as a welfare state and not as a profit earning concern.

iv) The coal companies including the appellant herein, were under a constitutional mandate to fix fair and reasonable prices under Article 298 of the Constitution, to subserve the common good, especially because coal was an essential commodity listed in the Act, 1955. However, the Interim Coal Policy neither subserved the common good nor ensured equitable distribution of resources as mandated by Article 39(b) of the Constitution.

v) The 20% price increase merely permitted the appellant to enhance its profit margins at the cost of linked consumers of the non-core sector which constituted about 1% of the entire consumer base of coal.

vi) The price increase of 20% was not based on any market study or consumer pattern. The hike overlooked the effects on the end consumers of the coal. The action of the appellant in notifying the Interim Coal Policy, without conducting a study of the impact of the sudden increase of price was liable to be struck down on the touchstone of Article 14 for being arbitrary and unreasonable.

vii) The appellant failed to assign any cogent reasons in the Interim Coal Policy for the price increase of 20% only for the linked consumers of the non-core sector as no such measure was adopted in respect of the linked consumers of the core sector. There was no rational basis for such classification between the consumers of the core and non-core

sectors, therefore, such classification was arbitrary, discriminatory and in violation of Article 14 of the Constitution.

viii) Linkage was granted to the respondents herein to share the burden of the coal companies in manufacturing and supplying smokeless fuel and were, as a consequence of such linkage, being charged the same notified price as for the core sector industries. The appellant could not have discriminated between the core and non-core linked consumers after providing the same benefit to both for a significant period of time. Therefore, the action of the appellant was hit by promissory estoppel.

20. A learned Single Judge of the High Court allowed the writ petition filed by the respondents herein and set aside the Interim Coal Policy. The learned Single Judge framed the following questions to answer the issues raised by the respondents:

i. Whether the appellant and its subsidiaries were competent to notify the Interim Coal Policy?

ii. Whether the price increase of 20% over and above the price notified in 2004 was a reasonable exercise of power for the purpose of price fixation?

iii. Whether this Court's dictum in ***Pallavi Refractories v. Singareni Collieries Co. Ltd.,*** reported in **(2005) 2 SCC 227**, was applicable to the present litigation?

21. The aforesaid questions were answered by the learned Single Judge as follows:

a) On the first issue, the learned Single Judge observed that this Court in its judgment in ***Ashoka Smokeless*** *(supra)* had issued clear directions for the constitution of a committee comprising of the Secretary, Ministry of Coal and other technical experts for the purpose of evolving a viable policy for sale of coal. In terms of this direction, the appellant herein could not have imposed a price different from the one prevailing before the e-auction system without adhering to the deliberations of the expert committee. It was observed that this Court did not necessarily imply that for the interim period, price fixation was supposed to be done by the appellant unilaterally and without following the principles laid down in ***Ashoka Smokeless*** *(supra).* Therefore, the Interim Coal Policy could not have been framed by the appellant alone.

b) It was held that the only price that could have been charged for the coal distributed by the appellant and its subsidiaries, was the one notified on 16.06.2004 i.e., prior to the e-auction system.

c) The learned Single Judge, while addressing himself on the second issue, observed that the reasonableness of the 20% price increase was in question because the appellant stated that such an increase was necessary to neutralize the overall increase in the input costs by 23.84% to make the operation, maintenance and development of the appellant company and its coal mines sustainable. It was the appellant's assertions that by charging an increased price from the linked consumers of the non-core sector, it could mitigate 1.2% of the overall increase of 23.84% in the input costs. The respondents herein had impugned the increase in prices by contending that the same would lead to an appreciable increase in the cost of the end product causing undue hardship to the small consumers which was impermissible in terms of the Act, 1955. The learned Single Judge was of the view that the appellant had introduced the Interim Coal Policy with a view to earn profits which was impermissible in terms of this Court's decision in ***Ashoka Smokeless*** *(supra)* and that the appellant's attempt to compensate its input costs at the expense of only 6% of the consumer base of coal was unreasonable. It was held

that the appellant had failed to strike a balance between its financial interests, the interests of the respondents herein and the ultimate consumers of the end product, that is the rural population.

d) On the third issue of whether the decision rendered in ***Pallavi Refractories*** *(supra)* was applicable to the present case, the single judge held that though the observations therein permitted dual pricing and allowed for classification between the core sector and unlinked non-core sector, yet the same was not an issue in the present set of facts and the decision was distinguishable on this count itself.

e) The learned Single Judge also ordered a refund of the additional 20% paid by the respondents herein along with interest @ 10% per annum in case of delay in payment of the same.

22. Aggrieved by the judgment and order passed by the learned Single Judge, the appellant preferred a writ appeal before the Division Bench of the High Court. The Division Bench dismissed the appeal and passed the impugned judgment on the following counts:

a) The 20% price hike by the appellant was not in consonance with the principles enunciated in ***Ashoka Smokeless*** *(supra)*. It was observed that this Court in ***Ashoka Smokeless*** *(supra)* had held that the coal companies had a duty to fix the price of essential commodities in a

manner that would subserve the common good in terms of the constitutional scheme adumbrated under Articles 14 and 39(b) respectively. The appellant herein and its subsidiaries could not have taken any steps that would defeat constitutional obligations. The introduction of the e-auction system was not in conformity with the constitutional goal of equitable distribution of essential natural resources as the object of the said system was to obtain the maximum price of coal with a view to earn profits. Thus, the e-auction system was declared to be *ultra vires* and invalid.

b) The Division Bench also observed that ***Ashoka Smokeless*** *(supra)* had directed the Central Government for the constitution of an expert committee comprising of the Secretary, Ministry of Coal and technical experts with a view to evolve a viable policy for the distribution of coal, especially to the manufacturers of hard coke and smokeless fuel. However, it was clarified that the Central Government in collaboration with the coal companies would be at liberty to evolve a policy that would meet the requirements of public interest vis-à-vis the interest of consumers of coal. The judgment expressly stated that the Central Government along with the coal companies would be entitled to lay down such norms as may be found fit and proper.

c) However, it was observed that ***Ashoka Smokeless*** *(supra)* did not empower the appellants to formulate an interim sales policy till a viable policy was evolved by the formation of the committee.

d) It was further held that the 20% price hike was not supported by any rationale or legal basis as the same was a measure taken by the appellant to protect its financial interests. Such justification could not have been the sole basis for introducing the Interim Coal Policy as the object of nationalization of the coal companies was not to enable them to earn profit but to expand the object of a welfare State.

e) The Division Bench rejected the appellant's contention that the increase in price was to mitigate the increase of 23.84% in input costs of the appellant to the extent of 1.2%. It was held that such justification had not been established before the court by way of documentary evidence and the appellants had not pleaded anywhere that they were suffering losses. It was concluded that the 20% increase over and above the previously notified prices was done by the appellant only with a view to protect its financial interests and make profits at the cost of the welfare of the State.

f) It was further held that coal was deleted from the list of goods mentioned under the Act, 1955 with effect from 24.12.2006 whereas the Interim Coal Policy was notified on 15.12.2006. Therefore, the

Interim Coal Policy was passed when the coal was governed by the Act, 1955 and the price fixation of the same was supposed to be done keeping in mind the welfare of the consumers.

g) As regards the judgment delivered in ***Pallavi Refractories*** *(supra)*, the division bench was of the opinion that though differential pricing for the core and non-core sector was permissible, yet it had no application in the case on hand. This is because charging an additional 20% over and above the notified price upon the non-core sector community for the distribution of an essential commodity like coal did not find any support from the spirit and ratio of the decision in ***Pallavi Refractories*** *(supra)*.

h) It was further held that the appellant's reliance on ***Duncan Industries Ltd. v. Union of India*****,** reported in **(2006) 3 SCC 129** was misplaced as judicial review could be extended to pricing policy if it was found that such policy did not reflect any reasonable basis and justification.

i) The division bench relied on the Patna High Court's judgment in ***Maa Mundeshwari Carbon Pvt. Ltd. v. Central Coalfields Ltd.*** reported in **2010 SCC OnLine Pat 2674** wherein it was held that the 20% increase in price of coal for the linked non-core sector consumers by virtue of the Interim Coal Policy was arbitrary and discriminatory, as the same was introduced without any observation and authorization

by this Court in ***Ashoka Smokeless*** *(supra)*. Therefore, realization of excess price only from linked consumers of the non-core sector was equivalent to creation of a class within a class, which was not permissible.

j) As regards the question of refund of the 20% additional amount charged by the appellant to the respondents, the bench relied upon Patna High Court's judgment in ***Maa Mundeshwari*** *(supra)* and this Court's order in ***Domco Smokeless Fuels Pvt. Ltd. v. Bharat Coking Coal Ltd.,*** reported in **2010 SCC OnLine Jhar 847** to say that charging a 20% increase over and above the notified price was illegal and liable to be refunded to the parties (the respondents herein). The bench also relied upon this Court's judgment in ***Eastern Coalfields Ltd. v. Tetulia Coke Plant (P) Ltd.,*** reported in **(2011) 14 SCC 624** wherein the refund of an extra 20% over and above the notified price was upheld.

k) The appellant had also contended that the refund of the impugned amount would unjustly enrich the respondents as they had not proved in any way that they had not transferred the burden of this increment to the consumers and were operating at a loss during the time period for which the Interim Coal Policy was notified. The Division Bench declined to accept such contention on the ground that the burden was

upon the appellants to prove that the respondents were benefitted by the doctrine of unjust enrichment by establishing that the price burden was passed to the end consumers of the product manufactured by the respondents.

23. In such circumstances referred to above, the appellants are here before this Court with their present appeals.

24. This Court *vide* its order dated 09.08.2012, had issued notice confined to the plea of unjust enrichment thereby confining the *lis* to the issue of refund. The appellant filed an application for the modification of the said order by way of the I.A. No. 1 of 2015 and prayed that the order dated 09.08.2012 be modified to include the question of validity of the Interim Coal Policy. The appellant submitted in the said I.A. that modification of the order was necessary as the legal contours of the controversy on hand came to be settled by a Constitution Bench of this Court while answering the presidential reference in ***Natural Resources Allocation, In re, Special Reference No. 1 of 2012*****,** reported in **(2012) 10 SCC 1**. This Court *vide* the orders dated 12.10.2015 and 24.09.2024 respectively directed for the listing of the said I.A. along with the main matter. Therefore, the I.A. No. 1 of 2015 shall also stand decided by this judgment.

B. SUBMISSIONS OF THE PARTIES

(a) Submissions of the appellant in its petition under Article 136, I.A. No. 1 of 2015 and additional affidavits

25. The learned counsel appearing on behalf of the appellant addressed himself on the following four issues:

i. Price fixation is a legislative act and the courts are not empowered to replace the economic policy introduced by the Government or the coal controller as the same is in the domain of the executive.

ii. The appellant company was empowered to introduce the Interim Coal Policy.

iii. The differential pricing adopted for linked industries of the core and non-core sector was an instance of reasonable classification with a legitimate objective.

iv. The respondents herein are not entitled to a refund of the 20% increase in prices notified by the Interim Coal Policy as the same will amount to unjust enrichment.

26. At the outset, it was submitted that the impugned judgment of the High Court fell in error by not considering the dictum of this Court in ***Union of India v. Cynamide India Ltd.*** reported in **(1987) 2 SCC 720** and ***Shri Sitaram Sugar Co. Ltd. v. Union of India*** reported in **(1990) 3 SCC 223** wherein it was held that price fixation is neither the function nor *forte* of the courts. The

courts ought not to interfere in policy decisions as well as the fixation of rates. The courts are empowered to make a limited inquiry into the question whether the considerations that underlie a policy decision are relevant or not. In this respect, the courts have to only examine whether the price determined was with due regard to the provisions of the relevant statute, regulations or guidelines enacted.

27. In continuation to this argument, the appellant also submitted in its I.A. No. 1 of 2015 that the judgment of this Court in the presidential reference ***Natural Resources Allocation, In re, Special Reference No. 1 of 2012***, reported in **(2012) 10 SCC 1**, settles the contours of law on the issue of the extent to which the courts can make an inquiry into an economic policy decision of the executive. It was submitted that it is incumbent upon the courts to respect the mandate and wisdom of the executive branch of the government as regards the formulation of economic policies and therefore, not endeavour to evaluate the efficacy of one policy compared to another. The courts are empowered to look into a policy decision only if the same perpetuates hostile discrimination against a particular section of society or when it is not backed by a social or welfare purpose.

28. Further, the power of judicial review stands exhausted once the courts come to the conclusion that the authority fixing the prices determined the same on

a rational basis. Thereafter, no re-evaluation of the prices and the considerations underlying it is possible even if the prices are found to be demonstrably injurious to some manufacturers and producers.

29. As regards the question whether the appellant company was authorized to fix the interim price of coal, it was submitted that the coal ceased to be a controlled commodity by virtue of the CCO, 2000. As a result, the appellant was empowered thereunder to fix the price of coal and it could not be precluded from fixing appropriate prices including, dual pricing, if deemed necessary. Therefore, a writ of mandamus could not be issued to the appellant to charge lesser prices or adopt a uniform price for all classes of industries/consumers.

30. It is the case of the appellant that a number of economic factors such as the financial health of the PSU, operational costs and the relative importance of certain industries in the larger national interest, go into the decision of price fixation. Therefore, there is no bar on the appellant to adopt dual prices and charge a higher price from the non-core sector.

31. The learned counsel also submitted that merely because an industrial company was completely owned by the Government cannot mean that it can be deprived of the right to conduct its functions in a commercially expedient manner.

32. As regards the issue of whether the different prices adopted for the core and non-core sector industries were correct in the eyes of the law, it was submitted that such dual pricing was an instance of reasonable classification bearing a rational nexus to the objective sought to be achieved.

33. We were informed that the core sector industries constituted nearly 90% of the total consumer base of the appellant company and other coal companies. These industries catered to the public at large by providing goods and services essential to the common man in everyday use *viz.* electricity, steel, cement industries, etc. Coal, being an essential raw material for these industries, constitutes a significant amount of the costs incurred in production activities of these core-sector industries. Therefore, any increase in the price of coal for the core sector would surely lead to a cascading effect on a huge section of the population of the country. On the other hand, since the goods manufactured by the non-core sector industries which constituted a small percentage of the consumer base of the appellant, were not for everyday use, the impact of increased cost would not be felt as acutely by the end consumers of such goods.

34. It was submitted that it was while keeping the inherent difference between the two sectors in consideration, that the appellant company made a policy

decision to keep price levels intact for the core sector industries and to increase the notified prices for the linked non-core sector industries by 20%.

35. The learned counsel submitted that the objective of dual pricing was to ensure that the core sector industries are not unduly burdened with higher prices but at the same time, the appellant company also receives adequate return for its products in order to cover the mounting financial deficit. The appellant has submitted that the object of increasing the price of coal for the non-core linked sector by 20% was to mitigate the increase in operational costs so as to maintain an adequate supply of coal in the market.

36. On the question of whether a refund of the additional 20% amount charged over and above the notified prices could be granted to the linked industries of the non-core sector, it was submitted by the appellant that such entitlement to refund arises only in the event the respondents prove that they have not passed the burden of the increased price onto the consumers. The subsidiaries of CIL who are also the appellants herein placed reliance on this Court's judgments in ***Union of India v. Solar Pesticides (P) Ltd.,*** reported in **(2000) 2 SCC 705** and ***Union of India v. ITC Ltd.*****,** reported in **1993 Supp (4) SCC 326** to submit that when a refund is claimed from the State, the burden of proof is on the person claiming the refund to establish that they

have paid the amount in question to the State but the loss or impact caused by the same has not been transferred to a third party (consumers in this case).

37. If an order for refund is granted without examining and establishing the same, it would amount to unjust enrichment of the respondents. The learned counsel submitted that the plea of unjust enrichment is required to be kept in mind especially in the present case, as the respondents have failed to disclose the selling price of the smokeless fuel after the Interim Coal Policy was introduced.

38. The appellant submitted that it is a public sector undertaking and a government company which has graduated to the status of State as understood under Article 12 of the Constitution. The monies that it deals with is public money, not to be used for the profit motive of the select few in the company but rather to be used for the social and welfare purpose for which the PSU was established. Having regard to the fact that the money to be refunded is public money, the plea of unjust enrichment cannot be rejected on perfunctory grounds.

(b) Written submissions of the respondents

39. The learned senior counsel appearing on behalf of the respondents submitted that the Interim Coal Policy was introduced on 15.12.2006 and remained

operational till 31.03.2008. In the said policy, the appellant had fixed the price for the linked industries of the non-core sector at 120% of the notified prices to the extent of their Maximum Permissible Quantity (MPQ) for linked units and allocations for NCCF and State agencies.

40. It was submitted that the policy was formulated by the appellant company in teeth of the directions issued by this Court in paragraphs 190 and 193 of ***Ashoka Smokeless*** *(supra)*. It was directed by the Court that the Central Government should constitute an expert committee with Secretary, Ministry of Coal at its helm along with technical experts and coal companies to evolve a viable policy for distribution of coal. Therefore, the appellant had no authority to issue the Interim Coal Policy.

41. Further, the sole objective behind formulating the Interim Coal Policy was to illegally recoup the amounts refunded by the appellant to the smokeless fuel industries in compliance of the directions of this Court in ***Ashoka Smokeless*** *(supra)*, ***Tetulia Coke*** *(supra)*, ***SJ Coke Industries Private Ltd v Central Coalfields Ltd.,*** reported in **(2015) 8 SCC 72** and ***Horra Coke Industries v. Central Coalfields Limited & Ors.*** bearing **Civil Appeal No. 9615/2024**.

42. As regards the prayer for modification of the order dated 09.08.2012 wherein a limited notice was issued confined only to the question of unjust

enrichment, it was submitted by the learned senior counsel that the I.A. No. 1 of 2015 was solely based on the dictum of this Court in the presidential reference ***Natural Resources Allocation*** *(supra)*. It was submitted that the appellant had misread the said judgment. The presidential reference, instead of diluting the opinion of this Court in ***Ashoka Smokeless*** *(supra)*, further strengthens the proposition that coal, as a natural resource, need not necessarily be sold only by auction. There can be other methods for sale of coal.

43. Additionally, the learned senior counsel submitted that the judgment rendered in the presidential reference had no relevance to the issue of validity of the Interim Coal Policy. Therefore, the observations in ***Natural Resources Allocation*** *(supra)* cannot be treated as a valid ground to reopen the challenge to the Interim Coal Policy, in respect of the legality thereof.

44. In this regard, the learned senior counsel placed reliance on this Court's judgment in ***Biswajit Das v. CBI*****,** reported in **2025 SCC OnLine SC 124** wherein it was observed that when a limited notice is issued by a bench on an appeal/petition, more often than not, the view taken is tentative. There could be occasions when the claim of the party succeeding before the court below is demonstrated to be untenable because of a patent infirmity in the findings recorded in the impugned judgment, or a glaring error in the

procedure followed having the effect of vitiating the proceedings is shown to exist, at any subsequent stage of the proceedings, which might have been overlooked by the Bench when it issued limited notice.

45. Therefore, for the order issuing limited notice to be modified, it was incumbent on the appellant company to show that there was a 'patent infirmity' in the impugned judgment or a 'glaring error' that would warrant re-opening of the whole conspectus of issues. This was not shown by the appellant. In such circumstances, the I.A. No. 1 of 2015 deserves to be dismissed.

46. As regards the question whether the doctrine of unjust enrichment was applicable to the case on hand or not, it was submitted that this Court has consistently held that the doctrine of unjust enrichment will not apply in cases relating to refund of excess price illegally collected in a contract for sale of goods. This has been distinguished from cases where a refund is sought on account of illegal collection of tax, excise, custom duty etc. in this Court's judgments in ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)*, ***Horra Coke*** *(supra)* and ***Maa Mundeshwari*** *(supra)*.

47. The respondents also placed reliance on this Court's judgment in ***Domco Smokeless Fuels (P) Ltd. v. State of Jharkhand,*** reported in **2024 SCC OnLine SC 181** to submit that though the coal companies had taken the

argument during the hearing of the said matter that the benefit of refund should be denied to the petitioner therein on account of the pendency of the present case, yet the Court rejected the said plea. Therefore, the question of refund stood determined in terms of the said judgment.

48. It was submitted that the coal companies had also not taken the plea of unjust enrichment when contesting the refund sought for in respect of the excess price collected under the e-auction policy. The entirety of the excess price therein has already been refunded. Thus, the question of refund of excess monies collected under the Interim Coal Policy ought to be treated at parity.

49. Without prejudice to the aforesaid arguments, it was submitted by the respondents that they had not enhanced the sale price of their goods to include the interim increase of 20% over the notified price and therefore, had not passed on the burden of the additional cost onto the end consumers. In this regard, the respondents had filed additional documents on record including CA certifications therefor.

50. Accordingly, the learned senior counsel prayed that the petition by the appellant be dismissed by holding that the respondents are entitled for refund of the excess price collected under the Interim Coal Policy along with an interest of 10% per annum thereupon.

C. ISSUES FOR DETERMINATION

51. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

i. Whether the appellant had the authority to notify the Interim Coal Policy, in terms of the dictum of this Court in ***Ashoka Smokeless*** *(supra)*?

ii. Whether the increase of 20% over and above the notified price introduced in the Interim Coal Policy for the linked consumers of the non-core sector was valid in terms of Article 14?

iii. If the answer to the second question is in the negative, then whether the respondents are entitled to refund of the 20% additional cost?

D. ANALYSIS

52. Before adverting to the rival submissions canvassed on either side, we must look into few judgments of this Court to better understand the legal backdrop in which the present dispute has arisen.

(i) Analysis of the observations of this Court in *Ashoka Smokeless (supra)*

53. This Court in ***Ashoka Smokeless*** *(supra)* was faced with the question whether the e-auction system introduced by the appellant and other coal companies for the consumers of the non-core sector, was valid on the touchstone of Article 14 of the Constitution.

a. Objective of the e-auction system

54. It was argued by the coal companies that the linkage system operating with the notified price mechanism was being manipulated for procurement of coal by consumers who were not in requirement of the same. Such coal was then being sold in the open market in black at a significant premium because of an artificial gap between the demand and supply. Therefore, the e-auction scheme was introduced purportedly to meet the liberalisation policy of the Central Government in respect of the import of coal and to provide a pragmatic and transparent system of distribution of coal. The objective of the said scheme is reproduced below:

> *"Objectives*
> *The present system of sale of coal to non-core sector consumers needs to be made more pragmatic and transparent by accommodating the following changes:*
>
> *(a) A consumer having requirement of specified quality of coal from a particular colliery/source and siding/pilot*

should have an access to buy coal by paying the market determined price for the same.

(b) This approach would enable the non-core sector consumers to receive coal of their choice, on payment of market price, determined through auction confined to non-core sector consumers."

55. Certain consumers of the non-core sector were exempted from paying the price of coal at the weighted average of the e-auction price. These included tiny units and the National Cooperative Consumers' Federation (NCCF) who were to be supplied coal at the floor price of 20% above the notified price. A similar benefit was extended to the agencies of the Central and State Governments.

b. Submissions of the petitioners in ***Ashoka Smokeless*** *(supra)*

56. The petitioners therein had submitted that the introduction of the e-auction system was an arbitrary exercise of power of price fixation for the following reasons:

a) The e-auction system was not in consonance with Article 14 read with Article 39(b). Coal, being an essential commodity as well as raw material for several manufacturing units, was required to be distributed at a fair and reasonable price. Fixation of an arbitrary price of a scarce commodity like coal would give rise to unhealthy competition amongst various

manufacturers, which would be contrary to the object and spirit of Article 39(b) of the Constitution as the end consumers would be highly prejudiced.

b) The classification between NCCF and other non-core sector consumers was unreasonable, hence, the dual pricing done in this regard could not be said to be a proper exercise of price fixation.

c) The price decided through the e-auction system was an artificially inflated price and the same had caused uncertainty as a result of which, the manufacturers were unable to fix a price for their products.

d) The coal companies, being "State" within the meaning of Article 12 of the Constitution, could not have resorted to high profiteering at the cost of the public at large. The government companies could not be permitted to forsake their public duty and their dealings with the consumers must be fair and non-discriminatory.

c. Reasonableness of dual pricing of coal

57. As regards the issue of reasonableness of dual pricing, this Court observed that though dual pricing, having regard to a distinct classification between core sector and non-core sector, would be permissible in terms the dictum in ***Pallavi Refractories*** *(supra)*, yet the State, when it is involved in the distribution of a commodity which would attract Article 39(b), would stand

on a different footing. This is because the Central Government as well as the coal companies were visualised not as profit-earning concerns but as an extended arm of a welfare State. The Act, 1972 and the Act, 1973 respectively, mandated the coal companies to harmonise the business potential of the country to benefit the public at large and therefore, a constitutional obligation was placed on them to fix a reasonable price for coal. The relevant paragraphs of ***Ashoka Smokeless*** *(supra)* are extracted below:

> *"89. While fixing the price of an essential commodity like coal, the capacity to bid of small manufacturers may also be taken into account. The court exercising a power of judicial review in a given situation may determine the question on the basis of the material brought on record. (See Gujarat Ambuja Cement Ltd. [(1998) 8 SCC 208])*
>
> *90. However, dual pricing having regard to a distinct classification between a core sector and non-core sector is permissible. (See Pallavi Refractories [(2005) 2 SCC 227] .)*
>
> *91. The State, however, while distributing its largesse at a price, if involved in distribution of a commodity, which would attract the provision of Article 39(b) of the Constitution of India, would stand on a different footing.*
>
> *92. "Business" is a word of wide import. It, in the context of application of a statute governing a monopoly concern and also with an essential commodity, would indisputably stand on a different footing from the business concern or a private person. The Central Government as also the coal companies having regard to the provisions of the Nationalisation Acts*

must be visualised not as profit-earning concerns but as an extended arm of a welfare State. They are expected to harmonise the business potential of a country to benefit the common man. The power of the Central Government to carry on trade or business activities emanates from the constitutional provisions contained in Article 298 of the Constitution of India. The coal companies, therefore, were under a constitutional obligation to fix a reasonable price. They must differentiate themselves from the private sectors which thrive only on a profit motive. As public sector undertakings, the coal companies, thus, would have a duty to fix the price of an essential commodity in such a manner so as to subserve the common good. Although the provisions of Section 3(2)(c) of the Essential Commodities Act are not attracted in relation to coal in view of the deregulation of price by the Central Government under the 2000 Order, the reasonable attributes for the purpose of fixing the price of coal should be borne in mind.

93. While fixing such price, ordinarily the State acts in the same manner as a public utility would conduct itself in this regard. This Court in ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat [1990 Supp SCC 397] opined that the price fixed should be the minimum possible as the customer or consumer must have the commodity for his survival and cannot afford more than the minimum. Therein this Court further noticed: (SCC p. 430, para 34)

> *"34. In another article on 'The Public Sector in India', quoted in Issues in Public Enterprise by Shri K.R. Gupta, Dr. Rao is quoted as saying (at p. 84):*
>
> > *'... the pricing policy should be such as to promote the growth of national income and the rate of this growth ... public enterprises must make profits and the larger the share of public enterprises in all enterprises, the greater is their need for making profits. Profits constitute the surplus available for savings and investment on the one*

hand and contribution to national social welfare programme on the other; and if public enterprises do not make profits the national surplus available for stepping up the rate of investment and the increase of social welfare will suffer a corresponding reduction; .... Hence the need for giving up the irrational belief that public enterprise should, by definition, be run on a no-profit basis.' "

94. In dealing with the fixation of tariff under the Electricity (Supply) Act, 1948, this Court in Hindustan Zinc Ltd. [(1991) 3 SCC 299] opined that the tariff cannot be fixed in such a manner by the Board while acting as a private trader and shedding its public utility character. It was observed: (SCC p. 319, para 26)

"In other words, if the profit is made not merely for the sake of profit, but for the purpose of better discharge of its obligations by the Board, it cannot be said that the public enterprise has acted beyond its authority."

95. In Dr. P. Nalla Thampy Thera v. Union of India [(1983) 4 SCC 598] this Court observed: (SCC p. 609, para 25)

"25. We have said earlier that the Railways are a public utility service run on monopoly basis. Since it is a public utility, there is no justification to run it merely as a commercial venture with a view to making profits. We do not know—at any rate it does not fall for consideration here—if a monopoly based public utility should ever be a commercial venture geared to support the general revenue of the State but there is not an iota of hesitation in us to say that the common man's mode of transport closely connected with the free play of his fundamental right should not be."

96. In S.N. Govinda Prabhu and Bros. [(1986) 4 SCC 198] this Court observed that profit is not to be shunned but that

service and not profit should inform actions of a Board. It was further observed: (SCC p. 208, para 5)

> *"We do not think that either the character of Electricity Board as a Public Utility Undertaking or the provisions of the Electricity Supply Act preclude the Board from managing its affairs on sound commercial lines though not with a profit-thirst."*

97. As regards limitation of judicial review of price fixation after referring to the decision of the Constitution Bench of this Court in Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] this Court in ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat [1990 Supp SCC 397] observed: (SCC p. 431, para 36)

> *"It is, however, not necessary here to enter into a discussion of this and the earlier cases because those cases were primarily concerned with the question whether the price fixation had been made in consonance with the requirements of the relevant legislation fixing prices of essential commodities in the interests of the general public and also because ONGC does not deny that, as a State instrumentality, its price fixation should be based on relevant material and should be fair and reasonable. None of these decisions hold that the cost plus method is the only relevant method for fixation of prices. On the contrary, there are indications in some judgments to indicate that not a minimum but a reasonable profit margin is permissible. Even in relation to a public utility undertaking like the State Electricity Boards where the duty not to make undue profits by abusing its monopoly position is clear…."*
>
> *98. The action on the part of the State even in the matter of fixation of price of an essential commodity, thus, must be viewed from different angles, some of which we shall advert to hereinafter."*

(Emphasis supplied)

58. This Court also relied upon ***Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.,*** reported in **(1983) 1 SCC 147** to observe that the nationalisation of coking coal mines and coke oven plants was done with a view to secure the object of Article 39(b) of the Constitution that is, to ensure that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Though it was recognised by this Court that an action which was not in consonance with Part IV of the Constitution cannot be held to be *ultra vires* on only that count, yet there was no doubt that the principles contained therein would form a relevant consideration for determining a question regarding price fixation of an essential commodity. It was held that when the State exercises its power of price fixation in relation to an essential commodity, it has to see that the ultimate consumers obtain such commodity at a fair price. It was recognised that the principle of distributive justice enshrined in Article 39(b) acted as an interpretative guide for construing fundamental rights and statutory rights of a citizen. The relevant portion of the judgment in ***Ashoka Smokeless*** *(supra)* is reproduced below:

> "*109. It may be true that prices are required to be fixed having regard to the market forces. Demand and supply is a relevant factor as regards fixation of the price. In a market governed by free economy where competition is the buzzword, producers may fix their own price. It is, however, difficult to give effect to the constitutional obligations of a State and the principles leading to a free economy at the same*

time. A level playing field is the key factor for invoking the new economy. Such a level playing field can be achieved when there are a number of suppliers and when there are competitors in the market enabling the consumer to exercise choices for the purpose of procurement of goods. If the policy of the open market is to be achieved the benefit of the consumer must be kept uppermost in mind by the State.

110. Can the consumer be expected to derive any such benefit from a monopoly concern? Would a situation of this nature lead to a hybrid situation where a coal company is allowed to fix its own price which may not be a fair price? These are some of the questions which were required to be kept in mind by the coal companies before formulating a policy of fixing price of an essential commodity.

111. The State when it exercises its power of price fixation in relation to an essential commodity, has a different role to play. Object of such price fixation is to see that the ultimate consumers obtain the essential commodity at a fair price and for achieving the said purpose the profit margin of the manufacturer/producer may be kept at a bare minimum. The question as to how such fair price is to be determined stricto sensu does not arise in this case, as would appear from the discussions made hereinafter, as here the Central Government has not fixed any price. It left the matter to the coal companies. The coal companies in taking recourse to e-auction also did not fix a price. They only took recourse to a methodology by which the price of coal became variable. Its only object was to see that maximum possible price of coal is obtained. The appellants do not question the right of the coal companies to fix the price of coal. Such prices had been fixed on earlier occasions also wherefor legally or otherwise the Central Government used to give its nod of approval. The process of price fixation by the Central Government in

exercise of its powers under the 1945 Order continued from 1996 to 2004.

112. Does e-auction ultimately lead to fixation of a price? The answer to the said question that must be rendered is a big emphatic "No", as by reason thereof even the coal companies would not know what would be the price of different varieties of coal. The issue must be determined from the perspective as to whether the coal companies can be allowed to say that despite their monopolistic character and they being "State" can fix a price which would otherwise be unfair or unreasonable.

113. The State or a public sector undertaking plays an important role in the society. It is expected of them that they would act fairly and reasonably in all fields; even as a landlord of a tenanted premises or in any other capacity. (See Baburao Shantaram More v. Bombay Housing Board [(1953) 2 SCC 845 : AIR 1954 SC 153 : 1954 SCR 572] SCR at p. 577, Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293 : (1989) 2 SCR 751] SCR at pp. 760, 762 and Pathumma v. State of Kerala [(1978) 2 SCC 1 : (1978) 2 SCR 537] SCR at p. 545.)

114. E-auction is not a mode to fix price. It is only a mode to obtain maximum price. In other words, deriving the optimum benefit by sale of coal is the goal. While doing so the State does not have to follow the principles of fixation of price. It is not required to apply its mind as to its effect. It treats coal like any other commodity. It treats itself like a private trader. A distinction must be borne in mind when a State intends to part with a privilege or a largesse as a competitor in the market and when it is expected to fulfil its constitutional goal enshrined under Article 39(b) of the Constitution."

(Emphasis supplied)

59. Having discussed the constitutional requirement of reasonable pricing of essential commodities like coal, this Court in ***Ashoka Smokeless*** *(supra)* observed that:

a) *First*, coal was an essential commodity in terms of Section 3(1) of the Act, 1955. This occasioned the introduction of the Colliery Control Orders for regulating the price fixation of the said commodity. The Colliery Control Orders read with Article 39(b) of the Constitution placed a constitutional as well as a statutory mandate on the coal companies to distribute coal equitably and at a fair price.

b) *Secondly*, the coal companies, being "State" under Article 12 of the Constitution, could not be actuated purely by a profit motive in fixing the price of coal. However, it was also observed that it could not be the law that the public sector undertakings must suffer loss while selling essential commodities. The principle adumbrated under Article 39(b) read with Article 14 is that the essential commodities ought to be made available to the public at a fair price.

c) *Thirdly,* while fixing a fair and reasonable price in terms of the Act, 1955, it was imperative that the price was actually fixed. Therefore, it was vital that the price of coal was actually fixed and not kept variable.

d. E-auction system is unconstitutional

60. This Court was apprised of several advantages and disadvantages of the e-auction system by the parties, however, it was held that such enumerations of the merits/demerits of the system may not be decisive, as the courts were concerned only with the constitutionality of the new price fixation process. Thus, what was in contention was not the e-auction system itself but rather how the system would operate. A perusal of this Court's dictum in ***Ashoka Smokeless*** *(supra)* indicates that the price fixation mechanism for an essential commodity must be based on a determinable criteria or basis and must be such so as to allow consumers or manufacturers an opportunity to take an informed decision as regards the purchase strategy or business policy. The relevant paragraphs of the judgment are reproduced below:

> "*141. It is accepted that coal is a scarce commodity and the government companies are not in a position to supply coal as per demand of the same, which may be enormous, despite the fact that a certain level of import of coal is also permitted.*
>
> *142. However, the advantages of e-auction per se or disadvantages thereof may not be decisive as this Court is concerned with the constitutionality thereof. It has not been denied or disputed that by reason of e-auction price of coal is not fixed. The concept of price fixation is that all persons who are in requirement of the commodity should know the basis or criteria thereof. If a price is fixed, they would be able to lay down their own business policy in such a manner so that they can have a level playing field in the market of competition and such competition is not only between the*

persons whose end-product is similar or otherwise based on coal but who produce other products not based completely on coal. Variability in the price of coal would affect all who have to depend on coal e.g. we may notice that hard coke is considered to be vital in the manufacturing process of steel. If the price of coal is not fixed, the price of hard coke cannot be fixed, which may give rise to uncertainty in the price of steel or smokeless coal which caters to the needs of the small consumers both for domestic use also for use in the small hotels and/or use in rural areas. It was, therefore, necessary that the price of coal be made known. The contention of the coal companies is that having regard to the availability of LPG, smokeless coal is no longer in use. Ex facie, the said plea is unacceptable.

143. Moreover, even fixation of price of LPG in turn would depend upon the fixation of oil products in other countries. The Central Government, it is well known, having regard to the effect that may be caused to the people in general, takes all precautions before fixing the price thereof. The Central Government has never increased the LPG price exorbitantly.

144. While adopting a policy decision as regards the mode of determining the price of coal, either fixed or variable, the coal companies were bound to keep in mind social and economic aspect of the matter. They could not take any step which would defeat the constitutional goal. (See Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752])

145. Even while fixation of tariff for the supply of electric energy in terms of the provisions of Section 49 of the Electricity (Supply) Act, 1948, only a reasonable profit is contemplated and not profiteering. (See S.N. Govinda Prabhu [(1986) 4 SCC 198] and ONGC [1990 Supp SCC 397] .)

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163. E-auction is not a policy decision of the Central Government. Such a policy decision on the part of the executive of the Central Government must be strictly construed in terms of Article 77 of the Constitution of India. Its exercise of such powers has nothing to do with the price fixation by a policy. The State while exercising its power under the Essential Commodities Act, fixes the price keeping in mind several factors, in particular the larger interest of the people. Price fixation of an essential commodity, therefore, is determined on the touchstone of public interest. While doing so the State is expected to follow a rational and fair procedure and for the said purpose may collect data, obtain public opinion, and may appoint an Expert Committee.

164. In the facts and circumstances of the case, however, the approach of the coal companies, who according to the Union of India had been given a free hand to determine its price for coal, is only earning profit. It has been accepted that three subsidiary companies and Coal India Ltd. who were sick companies, like Bharat Coking Coal Ltd. (BCCL), have started e-auction. It has succeeded in its attempt to a great extent as the said coal companies are no longer sick companies. They have proceeded only to safeguard their own interests, as dealer and not as a State. Recourse to e-auction had been taken primarily by way of a profit motive. No public opinion was sought for and no Expert Committee was appointed. The statutory and constitutional duties had not been kept in view. Conveniently, while making the said policy decision, the coal companies did not remind themselves that as they are instrumentalities of the State, they are bound to adhere to the Directive Principles of the State Policy and the prime object for which the Nationalisation Acts were enacted.

165. Good governance and good corporate governance are distinct and separate. Whereas good governance would mean protection of the weaker sections of the people; so far as good corporate governance is concerned, the same may not be of much relevance. Even the coal companies in taking recourse to e-auction did not give effect to the concept of corporate social responsibility.

166. What would be profiteering has been noticed in T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481] ; Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697] and P.A. Inamdar v. State of Maharashtra [(2005) 6 SCC 537] . In these decisions, it has been held that although education is an industry, and those who impart education do so as a part of their fundamental right in terms of Article 19(1)(g) of the Constitution of India, profiteering should not be taken recourse to.

167. In fact the decisions of this Court on price fixation also point out that although a reasonable profit may be permissible, profiteering would not be."

(Emphasis supplied)

61. What is discernible from the aforesaid is that the e-auction policy was held to be violative of Articles 14 and 39(b) respectively, on the ground that the coal companies had abdicated their responsibility of price fixation to a process that used market forces of demand and supply to arrive at the most profitable price. Such a system introduced an element of variability for an essential commodity like coal which was used regularly by smokeless fuel manufacturers and rural consumers. This Court observed that the lack of

determinability in coal prices would be contrary to the provisions of the Act, 1955 read with Article 39(b). Since such variability was not accompanied by an objective that would subserve the common good and was only being introduced by the coal companies with the intention to earn profits, this Court was of the view that such a mechanism of price fixation was arbitrary and not in consonance with Article 14 of the Constitution.

62. While holding the e-auction system to be untenable on the touchstone of the constitutional values enshrined in Article 39(b), this Court, by placing reliance on ***Kerala SEB v. S.N. Govinda Prabhu and Bros.*** reported in **(1986) 4 SCC 198** and ***Sitaram Sugar*** *(supra)*, clarified with a view to obviate any confusion, that a prohibition on profiteering cannot be taken to mean that even reasonable profits are not allowed. Further, it was observed that it cannot be the law that public sector undertakings must suffer losses or distribute subsidies to make an essential commodity available to the public at the least price possible. A perusal of this Court's dictum in the aforesaid judgments indicates that what is envisaged by the principles contained in Articles 14 and 39(b) read with the provisions of the Act, 1955 is that the consumers should be able to purchase a commodity at a fair price and not at the least possible price fixed at the cost of the financial health of a PSU.

e. Coal companies empowered to notify the price of coal

63. This Court, in ***Ashoka Smokeless*** *(supra)* laid down the contours of the powers delineated in favour of the Central Government and the coal companies in respect of regulation of supply of coal and regulation of price thereof respectively. It was held that any action of the Central Government was required to be within the four corners of the CCO, 2000. Since, the CCO, 2000 had deregulated the power to fix price and delegated the same to the coal companies, the Central Government could not have introduced the e-auction policy which was essentially a policy for price determination of coal in the garb of supply regulation thereof.

64. In order to understand the distinct regulatory powers of the Central Government and the coal companies, we find it apposite to refer to Clauses 4 and 8 of the CCO, 1945 respectively as well as Clause 6 of the CCO, 2000.

Relevant clauses under CCO, 1945	**Corresponding clauses in CCO, 2000**	**Remarks**
Clause 4: "*4. The Central Government may by notification in the official Gazette, fix the sale price at which, or the maximum or the minimum sale price or*	–	The omission of the power to regulate price of coal from the powers assigned to the Central Government in the CCO, 2000 is indicative of the fact that though coal was

both, subject to which coal may be sold by colliery owners and any such notification may fix different prices – *i) for different grades and sizes of coal and* *ii) for different collieries.*"		still an essential commodity, yet the operations and decisions pertaining thereto were sought to be delegated to the coal companies so as to ensure that pricing of coal is based on ground realities of mining and production of coal. Therefore, the power to regulate prices of coal ceased to remain with the Central Government and vested in the coal companies after the enactment of the CCO, 2000.
Clause 8: "*8. The Central Government may from time to time, issue such direction as it thinks fit to any colliery owner regulating the disposal of his stocks of coal or of the expected output of coal in the colliery during any period including direction as to*	Clause 6: "*6.* ***Directions to regulate the disposal of coal stocks.–*** *The Central Government may, from time to time, issue such directions as it may deem fit to any owner of a colliery regulating the disposal of stocks of coal or of the expected output of coal*	As regards the power to regulate the supply and disposal of coal stocks, the Central Government retained the same under CCO, 2000 *albeit* in an altered manner.

the class, grade, size and quantity of coal which may be disposed of and person or class or description of persons to whom coal shall or shall not be disposed of, the order of priority to be observed in such disposal and the stacking of coal on Government account."	*in the colliery during any period.*"	

65. This Court, cognizant of the changes introduced in the CCO, 2000, observed that the Central Government had no say in the introduction of the e-auction system as the same was a measure of price regulation. The relevant paragraphs of ***Ashoka Smokeless*** *(supra)* are reproduced below:

> "*168. The coal companies evolve price fixation but admittedly, they have been doing so at the instance of the Central Government. The Central Government seeks to exercise its statutory power. Such a power, however, is confined to four corners of the 2000 Order. When there is no control over price, the Central Government is forbidden to issue any direction which will have an impact thereover.*
>
> **---xxx---**
>
> *170. In relation to fixation of price or other related matters, the Central Government, therefore, had no say. Under the Colliery Control Order, 2000, the power of the Central Government is merely to regulate supply and not to regulate*

price, the price of coal, it will bear to state, having been deregulated.

171. Supply and/or disposal of coal which would come within the purview of the Colliery Control Order, 2000, would, thus, take within its sweep only: to whom the supply would be made, what would be the quantity, the mode, period or the source of supply. Such a power to issue directions would not include fixation of price. E-auction is not related to policy for supply of coal. It is essentially the price therefor. The Central Government in that view of the matter, either directly or indirectly, while purportedly exercising its power under clause 6 read with clause 9 of the Colliery Control Order could not have issued any direction in the garb of disposal of coal by way of e-auction. The Central Government itself says that it allowed the coal companies to fix their own price; if that be so in terms of the statute it could not issue any direction which would have direct or indirect impact on price of coal. It, as indicated hereinbefore, directed that 10 lakhs MT coal be sold through e-auction; but while doing so stricto sensu, its power and control to regulate supply of coal could not be exercised in that sense. Apart from the fact that it also does not satisfy the attributes of supply, as noticed hereinbefore, the supply of coal itself has not been brought within the purview thereof. Furthermore no notification has been issued by the Central Government regulating supply of coal."

(Emphasis supplied)

66. It is in the aforesaid context that the conclusion drawn by this Court in ***Ashoka Smokeless*** *(supra)* must be construed. It was concluded therein that an expert committee should be constituted by the Union of India with the

Secretary, Ministry of Coal at its helm, to evolve a viable policy for distribution of coal. However, it was also clarified in the same breath that the Central Government along with the coal companies would be at liberty to evolve a policy that would balance public interest and the interest of coal consumers. The relevant portion of the judgment is reproduced below:

> "*190. With a view to evolve a viable policy, a committee should be constituted by the Union of India with the Secretary of Coal being the Chairman. In such a committee, a technical expert in coal should also be associated as most of the projects involve consumers of coal, particularly manufacturers of hard coke and smokeless fuel. In our opinion, it may not be difficult to find out, having regard to the technologies used therein as regards the ratio of the input vis-à-vis the output, with a balance and 10% margin. On the basis of such finding alone, apart from the requirements of five years, supply should form the basis of MPQ. We may, however, hasten to add that the Central Government in collaboration with the coal companies would be at liberty to evolve a policy which would meet the requirements of public interest vis-à-vis the interest of consumers of coal. They would be entitled to lay down such norms as may be found fit and proper. They would be entitled to fix appropriate norms therefor. In the event, any industrial unit is found to violate the norms, it should be stringently dealt with."*
>
> (Emphasis supplied)

67. What is forthcoming from the above exposition is that the coal companies were not barred from evolving a policy that, in their opinion, would meet the requirements of public interest but at the same time, would balance the

interest of consumers of coal. Though the recommendations provided by the expert committee in respect of the maximum permissible quantity of coal for which sale could be made to a particular consumer, were required to be followed, yet the other aspects of the supply of coal including price thereof were to be decided as per the statutory mandate prescribed in the CCO, 2000. Thus, the coal companies were still empowered to regulate the pricing of coal in terms of the CCO, 2000.

f. Conclusions reached in ***Ashoka Smokeless*** *(supra)*

68. A comprehensive reading of the decision rendered by this Court in ***Ashoka Smokeless*** *(supra)* indicates the following:

i. Though dual pricing is permissible in terms of this Court's dictum in ***Pallavi Refractories*** *(supra)*, yet the principles of price fixation of essential commodities are required to be kept in mind to ensure that the constitutional and statutory goals enshrined in Article 39(b) and Act, 1955 respectively, are met.

ii. It was clarified that the concept of distributive justice contained in Article 39(b) and the Act, 1955 placed an obligation on the State to ensure a fair price for the consumers. Such fair price cannot be taken to mean the least possible price without due regard for operational and production costs incurred by the State or the PSUs. While the State

and its authorities cannot be actuated by profit motive, they are not barred from earning reasonable profit.

iii. While exercising the power of price fixation, the State and its authorities must fix the price in such a manner that the consumers are able to plan their purchase strategy or business policy. The State cannot abdicate the responsibility of price fixation in favour of a mechanism that is actuated by profit motive and does not subserve the common good. The e-auction system was considered to be arbitrary for the reason that it made the prices of coal determinable on the basis of market forces so as to enable the State to receive the maximum possible price of coal and, introduced variability in the said prices, thereby hindering the consumers from evolving a suitable business policy.

iv. The e-auction system, though introduced as a mechanism to regulate the supply of coal, was in actuality a regulation of the price of coal. Thus, it could not have been introduced by the Central Government in light of the de-regulation of prices effected by the CCO, 2000. The expert committee was to be formed with a view to evolve a viable policy for distribution of coal, more particularly the supply aspect. This Court was, however, circumspect in precluding the coal companies from regulating the price of coal. In our considered view,

the dictum in ***Ashoka Smokeless*** *(supra)* can, in no way, be taken to mean that this Court disempowered the coal companies from regulating the price of coal by way of a judicial pronouncement, in contravention to the statutory scheme of CCO, 2000.

(ii) Analysis of the observations of this Court in *Pallavi Refractories (supra)*

69. This Court's decision in ***Pallavi Refractories*** *(supra)* pre-dates the judgment rendered in ***Ashoka Smokeless*** *(supra)*. It is, however, relevant for the purposes of understanding the pricing distinctions made by the coal companies between the core and non-core sector consumers.

70. The limited issue before this Court in ***Pallavi Refractories*** *(supra)* was the challenge posed to the differential prices notified by the appellant herein for the consumers of core and non-core sectors respectively.

71. The Government of India, by its notification dated 22.03.1996 issued under Clause 3(2) of the CCO, 1945 deregulated the price and distribution of non-coking coal of Grades 'A', 'B' and 'C' respectively. It was also clarified by the Central Government that the Board of the appellant company herein would determine the economic price to be charged for the coal produced from time to time. Thereafter, the appellant herein issued the price

notification dated 13.03.1997 wherein it was provided that the unlinked consumers and industries of the non-core sector were required to pay 20% additional price over and above the prices previously notified.

72. The petitioners therein had contended that the levy of an additional amount only on the unlinked consumers of the non-core sector was discriminatory and violative of Article 14 of the Constitution as the differentiation between linked and unlinked industries for the purpose of pricing was irrational and did not constitute intelligible differentia. It was also averred that such substantial price variation under the guise of an additional levy amounted to dual pricing which was arbitrary and excessive.

73. The High Court of Andhra Pradesh rejected these arguments and found no infirmity in the differential pricing adopted by the coal companies on the ground that the extent of bulk consumption of coal by the core/linked sector industries called for special treatment. It was observed that the core sector consumers were afforded the benefit of lower prices due to their intrinsic importance in nation-building activities and provision of services in the capacity of public utilities. Therefore, any substantial increase in the price of coal would have a ripple effect and adversely impact the end consumers' purchasing power, especially for goods and services that are consumed in bulk all over the country *viz.* electricity, cement, etc. On the other hand, since

consumption of coal by the non-core sector was minimal as compared to the core sector industries, it would not result in an appreciable increase in the cost of the goods and services manufactured by the unlinked industries in the non-core sector. Thus, dual pricing could not be said to be irrational and hence, arbitrary.

74. Resultantly, this Court, at the instance of the aggrieved writ petitioners, was faced with the controversy of whether the dual price fixation by classifying customers into core sector/linked sector and non-core sector/unlinked sector industries was irrational and was an instance of hostile discrimination.

75. This Court prefaced its judgment with the observations given in ***Cynamide India*** *(supra)* and ***Sitaram Sugar*** *(supra)* wherein it was held that price fixation is neither the function nor the forte of courts and that the courts should not be concerned with pricing policy and rates fixed. The only situation in which the courts can enquire into the price fixation process and the result thereof is when the legislature has laid down the pricing policy and prescribed the factors that should guide the determination of the price of a commodity. The relevant paragraphs of the judgment in ***Pallavi Refractories*** *(supra)* is reproduced below:

> "***13.*** *This Court in Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720 : AIR 1987 SC 1802] has held that price fixation is generally a legislative activity. It may*

occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of the goods is compelled to sell goods to the Government or its nominee and the price is to be determined according to the statutory guidelines laid down by the legislature. In such situations, the determination of price may acquire a quasi-judicial character but, otherwise, price fixation is generally a legislative activity. After observing thus, the Court held that price fixation is neither the function nor the forte of the court. The court is neither concerned with the policy nor with the rates. But in appropriate proceedings it may enquire into the question, whether relevant considerations have gone in and irrelevant considerations kept out while determining the price. In case the legislature has laid down the pricing policy and prescribed the factors which should guide the determination of the price then the court will, if necessary, enquire into the question whether policy and factors were present to the mind of the authorities specifying the price. The assembling of raw materials and mechanics of price fixation are the concern of the executive and it should be left to the executive to do so and the courts would not revaluate the consideration even if the prices are demonstrably injurious to some manufacturers and producers. The court will however examine if there is any hostile discrimination. It was observed as under: (SCC p. 734, para 4)

> *"4. We start with the observation, 'price fixation is neither the function nor the forte of the court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the*

pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-evaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The court will, of course, examine if there is any hostile discrimination. That is a different 'cup of tea' altogether."

(emphasis supplied)

14. A Constitution Bench of this Court in Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223 : AIR 1990 SC 1277] (in paras 57 & 58) has held that in judicial review the court is not concerned with the matters of economic policy. The court does not substitute its judgment for that of the legislature or its agent as to the matters within the province of either. The legislature while delegating the powers to its agent may empower the agent to make findings of fact which are conclusive provided, such findings satisfy the test of reasonableness. In all such cases, the judicial enquiry is confined to the question whether the findings of facts are reasonably based on evidence and whether such findings are consistent with the laws of the land. The court only examines whether the prices determined were with due regard to the provisions of the statute and whether extraneous matters have been excluded while making such determination. It was further observed that price fixation is not within the province of the courts. Judicial function in respect of such matters stands exhausted once it is found that the authority

empowered to fix the price has reached the conclusion on a rational basis."

(Emphasis supplied)

76. What has been conveyed by this Court in so many words is that the matters of economic policy and price fixation are in the domain of executive action and the courts ought not to interfere in such decision-making unless it is shown that such policy does not conform to pre-existing legislative mandate or causes hostile discrimination.

77. In ***Pallavi Refractories*** *(supra)*, the petitioners had argued that dual pricing caused hostile discrimination to the detriment of the non-core/unlinked sector. Therefore, this Court examined whether the imposition of the 20% additional price on the non-core/unlinked sector was discriminatory in terms of Article 14 of the Constitution. It was observed therein that:

a) *First*, the core sector industries constituted nearly 90% of the entire consumer base of the appellant company herein and their usage of coal was of paramount importance to nation-building activities. Since, the industries belonging to the core sector produced and provided essential goods and services, any increase in the price of coal which was used as a raw material or energy source for such industries would lead to a cascading effect on every category of consumer. An increase in price of coal which in itself was an essential commodity at that point of time

would result in higher prices for majority of goods and services and thus, increase the basic cost of living for a large section of the population. On the other hand, increasing the price of coal for industries in the non-core/unlinked sector that were involved in the production of goods such as paint, lime, etc. would not result in an adverse cost impact on the end consumers, as such products are not of everyday concern for the common man.

b) *Secondly*, the consumption of coal in the core sector industries such as electricity, cement, steel, etc. was quite high whereas, in the case of unlinked industries, the coal consumption was minimal. Therefore, an increase in the price of coal for the unlinked/non-core sector would not result in any appreciable increase in the cost of products manufactured by the industries therein.

c) *Thirdly*, the avowed objective of dual pricing was to ensure that the appellant company herein could get an adequate return for its products and cover its financial deficit without placing an undue burden of price increase on a large section of the public.

d) *Lastly*, it could not be said that dual pricing was an exercise inherently at loggerheads with any law. The only test to ensure that there was no arbitrariness or unfair discriminatory practices at play, was to see

whether such dual price fixation was based on reasonable classification in terms of Article 14 of the Constitution.

The relevant paragraphs of the judgment in ***Pallavi Refractories*** *(supra)* are reproduced below:

> "*17. Core sector industries are of intrinsic importance to the economy of the country. They are given assured supply of coal by the Standing Linkage Committee which is a committee formed as per the guidelines of the Ministry of Coal, Government of India. The core sector industries consume nearly 90% of the entire production of the respondent Company. In fact, the power sector consumes nearly 75% and the other industries consume nearly 15% of the entire production and only 10% or less is being drawn by other medium/small-scale industries. As per the averments made in the counter-affidavit, for electricity, which is being generated by the power sector, the quantity of coal consumed amounts to 75% of the product cost. To generate one unit of electricity, 0.5 kg to 1 kg quantity of coal is consumed. In case of cement, steel and fertilisers, the percentage of cost of coal in the entire cost of production is ranging from 15% to 25%. Keeping in view the several factors, the Board of Directors after due deliberations felt that the core sector industries are of intrinsic importance to the building of the nation and to the common man in general. It was thought fit to keep the price increase at particular levels for the core industries and charge a bit extra from other industries. This was a policy decision taken by the respondent Company with regard to price fixation. Any increase in prices for the core sector industries will automatically affect market economy. Taking an instance, increase in the price of coal, to the Electricity Board, will have a serious impact on every institution or an individual consuming electricity. Electricity has become an essential commodity and is required for running industry,*

commercial activity, locomotives, agriculture and for domestic use. Every category of consumer shall have to pay more resulting in cascading effect of increasing the price of every commodity. This is not the case of industries like paints, lime, etc. which are used once in a while. By any increase in the price of coal supply to them, the common man would not be affected much. Even otherwise, the increase in the price is passed on the consumers by the appellants. Their end product does not have a national bearing. The products of these industries are not of everyday concern for the common man.

18. The primary consideration for placing the seven industries in the core sector is their intrinsic importance to the economy of the country and the role which they play in the nation-building activities. The same consideration will hold good for charging lesser price from them. The requirement of coal in the core sector is on the higher side either for captive power generation or for other uses for the manufacturing operations. Any substantial increase in the price of coal shall have a substantial effect on the cost of finished products of vital importance and the cost of services to the public. Counsel for the respondent has submitted before us that 70% of the cement manufactured by the country is utilised by the Central or State Governments for the construction of projects, bridges, roads, etc. Any increase in the price of coal supplied to the core industries would result in the increase of cost of essential commodities such as electricity, cement, and steel. The consumption of coal is quite high and is a major input of these industries. In the case of non-linked industries the coal consumption is minimal and the increase in the price will not result in any appreciable increase in the cost of products manufactured by non-linked sector industries.

19. Keeping in view the intrinsic importance of the core sector consumers and their importance in the nation-building activities and the extent of consumption of coal either for

captive power generation or for use in manufacturing operations legitimately calls for a special treatment as far as these industries are concerned. For charging lesser prices or evolving a dual price policy, it cannot be said that equals are treated unequally or that the classification does not rest on rational basis. The objective of dual pricing purportedly is to ensure that core sector industries or customers are not unduly burdened with price increase while at the same time the respondent gets adequate return for its products so as to cover the financial deficit. There is no such law that a particular commodity cannot have a dual fixation of price. Dual fixation of price based on reasonable classification from different types of customers has met with approval from the courts. Monopolistic organisations like Electricity Boards and Petroleum Corporations are having dual price fixation. It is a common feature that Electricity Boards which generate power sell the power at different rates to different types of customers such as domestic, agricultural and industrial consumers. Even different types of industries are charged different rates.

20. Keeping in view the law laid down by this Court in Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720 : AIR 1987 SC 1802] and Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223 : AIR 1990 SC 1277] in our opinion, the High Court did not fall into an error in upholding clause 10 of the price notification dated 14-3-1997. The High Court rightly came to the conclusion that clause 10 of the price notification did not violate the equality clause of Article 14 of the Constitution. By evolving the dual price policy and charging lesser price from the core sector industries the respondent has not treated equals as unequals; nor could it be said that the classification made was not rational."

(Emphasis supplied)

78. On a plain reading of the observations of this Court in ***Pallavi Refractories*** *(supra)*, it is limpid that the classification of the consumer base of the appellant company herein, into core and non-core sector industries, was not an instance of treating equals unequally. Therefore, the plea of hostile discrimination by the petitioners therein was of no avail to them.

(iii) The general rule as regards the scope of enquiry by courts into the economic policy of the State

79. Having discussed the observations and findings rendered in ***Ashoka Smokeless*** *(supra)* and ***Pallavi Refractories*** *(supra)* in detail, we now consider it apposite to address ourselves on the issue whether the courts are empowered to enquire into the economic policy of the State.

80. The appellant, in I.A. No. 1 of 2015, has submitted that the validity of the Interim Coal Policy must be answered by this Court in view of the judgment delivered in the presidential reference, ***Natural Resources Allocation*** *(supra)*. In the said reference, the President invoked the advisory jurisdiction of this Court under Article 143 of the Constitution seeking to clarify *inter alia*, what would be the permissible scope of interference by courts with policymaking by the Government, including the disposal of natural resources. This Court, while answering the issue, made certain observations

in respect of Articles 14 and 39(b) respectively. The relevant paragraphs containing such observations are reproduced below:

> "*107. From a scrutiny of the trend of decisions it is clearly perceivable that the action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of Article 14 of the Constitution. A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity as McDowell case [(1996) 3 SCC 709] has said. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution. The action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14. This is the mandate of Article 14 of the Constitution of India.*
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> *116. The learned counsel for CPIL argued that revenue maximisation during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be channelised to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. Auctions may be the best way of maximising revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy*

subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).

118. In Bennett Coleman & Co. v. Union of India [(1972) 2 SCC 788] , it has been held by this Court that : (SCC p. 845, para 162)

> *"162. ... The only norm which the Constitution furnishes for distribution of the material resources of the community is the elastic norm of the common good."*

Thus "common good" is a norm in Article 39(b) whose applicability was considered by this Court on the facts of the case. Even in that case, this Court did not evolve economic criteria of its own to achieve the goal of "common good" in Article 39(b), which is part of the directive principles.

119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick—it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method. Where revenue maximisation is not the object of a policy of distribution, the question of auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations."

(Emphasis supplied)

81. What can be discerned from the aforesaid exposition of law is that the State is bound by Article 39(b) to ensure that common good is subserved

whenever it distributes or allots natural resources including coal. Further, such distribution must be in conformity to the principles of fairness, reasonableness and non-arbitrariness in terms of Article 14 of the Constitution. The principles expounded in the aforesaid are in consonance with the law settled in ***Pallavi Refractories*** *(supra)* and ***Ashoka Smokeless*** *(supra)*.

82. We find it apposite to note that while discussing the concept of 'common good' as per Article 39(b), this Court observed that there cannot be a constitutional yardstick for ensuring the same. Rather, it is the economic and political philosophy of the Government that would enable the courts to determine whether an executive action was fulfilling the objective of subserving the common good in terms of the economic and political philosophy of the Government. At this stage, we may, with a view to obviate any confusion, reiterate the dictum of this Court in ***Cynamide India*** *(supra)* and ***Sitaram Sugar*** *(supra)* that as a general rule, the courts ought not to interfere with the prices fixed by the State provided that such prices are determined in conformity with the principles enshrined in Articles 14 and 39(b).

83. This Court in ***Natural Resources Allocation*** *(supra)*, observed that the alienation of natural resources is the prerogative of the executive as it

involves making intricate economic choices for which the courts do not have the necessary expertise. Therefore, the courts should not endeavour to determine whether an instance of distribution of natural resources is economically or factually reasonable. The domain of the courts is limited to adjudging the reasonability of an economic policy decision to situations when such action is patently unreasonable in terms of the Constitution and/or the statute or regulations that are enacted to guide executive action in that regard.

> "*146. To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is*

fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.

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149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

(Emphasis supplied)

84. This Court in ***Balco Employees' Union v. Union of India*** reported in **(2002) 2 SCC 333** observed that the courts are not empowered to consider the merits of different economic policies and adjudge the relative efficacy thereof. Further, the courts must be circumspect in disturbing the conclusions reached by the executive in formulating an economic policy or

fixing of prices unless and until there is an illegality in the decision-making process itself. The relevant observations are reproduced below:

> "*93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts*.
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>
> *98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."*
>
> (Emphasis supplied)

85. In a recent decision, ***Kirloskar Ferrous Industries Ltd. v. Union of India*****,** reported in **(2025) 1 SCC 695**, a three-judge bench of this Court wherein one of us (J.B. Pardiwala J.) was a part of the bench, observed that the courts should exercise caution while adjudicating issues pertaining to economic policies formulated by the executive. The realm of the courts' exercise of judicial review is circumscribed to ensuring that such policies do not infringe upon citizens' rights or exceed the authority granted by law. The courts cannot extend their role to evaluating the wisdom of a particular

policy decision and the conclusions arrived at based on the same as such a task has been enjoined upon the legislature and executive wings of the State in terms of the scheme of governance envisaged by the Constitution. The relevant paragraphs of the said judgment are reproduced below:

> "*56. Policy decisions often require the expertise of professionals and specialists in fields such as economics, public health, national security, and environmental science. These domains involve specialised knowledge that Judges, as generalists in legal matters, may lack. For instance, in economic policy, the executive may decide on trade tariffs or subsidies based on extensive data and projections that aim to balance domestic industry support with global trade commitments. The courts, lacking the same level of economic expertise and without the authority to make trade-offs among competing policy objectives, are typically not equipped to second-guess these kinds of decisions.*
>
> *57. While courts have the power of judicial review to ensure that executive actions and legislative enactments comply with the Constitution, this power is not absolute. Judicial review is meant to act as a safeguard against actions that overstep legal boundaries or infringe on fundamental rights, but it does not entail a comprehensive re-evaluation of the policy's wisdom. The judicial review of policy decisions is limited to assessing the legality of the decision-making process rather than the substantive merits of the policy itself. For example, if a government policy infringes on fundamental rights or discriminates against a particular group, the courts have a duty to strike down such policies. However, in the absence of constitutional or legal violations, the courts should respect the policy choices made by the executive or legislature.*

58. The duty of the court in policy-related cases is primarily to determine whether the policy falls within the scope of the authority granted to the relevant body. If the policy decision is within the executive's legal authority and has been made following proper procedures, the courts should defer to the expertise and discretion of the policy-makers, even if the policy appears unwise or imprudent. This restraint ensures that the courts do not impose its own perspective on policy matters that are rightly the responsibility of other branches.

59. Economic and social policies often involve significant redistribution of resources, prioritisation of interests, and balancing of public needs, which requires careful consideration by those with specialised knowledge and broad perspectives. In the realm of economic policy, for instance, questions regarding the allocation of subsidies, fiscal deficits, or budget allocations are best managed by the executive, which has access to economic data and is accountable to the public for its financial management. Judicial interference in such areas risks creating disruptions in the economic balance that policy-makers are trying to achieve.

60. The courts should assume that policy-makers act in good faith unless there is clear evidence to the contrary. As long as the policy does not contravene the Constitution or violate statutory provisions, it is not the role of the courts to question the wisdom or fairness of such policy.

61. While judicial restraint is essential in respecting the boundaries of each branch of Government, it does not mean that courts abdicate their responsibility to protect constitutional rights. The courts must still intervene if a policy infringes on fundamental rights, discriminates unfairly, or breaches statutory provisions. The role of the court in such instances is to protect individuals and groups from unlawful actions while maintaining the overall integrity

of the policy-making process. This balance ensures that while courts do not interfere in matters of policy wisdom, they remain vigilant guardians of constitutional rights."

(Emphasis supplied)

86. The aforesaid exposition of law leaves no manner of doubt in our minds that the brightline rule as regards the adjudicating of a policy decision by the Government, especially an economic one, is that the courts must exercise judicial restraint and only consider the legality of the decision-making process in terms of the provisions of the Constitution and relevant statutes. In respect of price fixation of a natural resource, coal in the case on hand, the courts must confine themselves to the question whether the basis adopted for reaching a particular price is reasonable or not.

87. For the reasons in the aforesaid, we are inclined to decide the I.A. No. 1 of 2015 in favour of the appellant company and proceed to consider the validity of the Interim Coal Policy. Additionally, we may refer to a recent judgment of this Court in ***Biswajit Das*** *(supra)* with profit. It was held therein that even in a matter wherein notice was issued on a limited question, this Court is not denuded of the jurisdiction to decide the whole conspectus of legal and valid points. The relevant paragraph of the said judgment is extracted below:

"*16. We may now summarize the principles in view of the precedents noticed above. When a limited notice is issued by*

a bench on an appeal/petition, more often than not, the view taken is tentative. There could be occasions when the claim of the party succeeding before the court below is demonstrated to be untenable because of a patent infirmity in the findings recorded in the impugned judgment, or a glaring error in the procedure followed having the effect of vitiating the proceedings is shown to exist, at any subsequent stage of the proceedings, which might have been overlooked by the Bench when it issued limited notice. Justice could be a real casualty if the same or the subsequent Bench, in all situations of limited notice having been issued initially, is held to be denuded of its jurisdiction to rule on the merits of the contentions relatable to points not referred to in the notice issuing order. As it is, since exercise of jurisdiction under Article 136 is discretionary, notices on appeals/petitions are not frequently issued by this Court. Nonetheless, if in a given case, notice is issued which is limited on terms but the party approaching the Court is otherwise persuasive in pointing out that the case does involve a substantial question of law deserving consideration and the Bench is so satisfied, we see no reason why the case may not be heard on such or other points. In such a case, the jurisdiction to decide all legal and valid points, as raised, does always exist and would not get diminished or curtailed by a limited notice issuing order. However, whether or not to exercise the power of enlarging the scope of the petition/appeal is essentially a matter in the realm of discretion of the Bench and the discretion is available to be exercised when a satisfaction is reached that the justice of the case so demands. If this position is not accepted, Order LV Rule 6 of the Supreme Court Rules, 2013 read with Article 142 of the Constitution will lose much of its significance."

(Emphasis supplied)

(iv) Objective of the Interim Coal Policy subserved the 'common good'

88. Before we proceed further, we deem it fit to reiterate the dictum of the decisions of this Court referred to hereinabove in respect of the constitutional requisite that a policy decision or price fixation exercise must have an underlying objective that subserves the common good as per Articles 14 and 39(b) respectively. At this stage, it is imperative to identify the objective underlying the decision of the appellant herein to levy 20% additional amount over and above the price notified prior to the introduction of the e-auction system.

89. The appellant had submitted before the learned Single Judge of the High Court that the need to impose 20% additional amount over and above the notified price for the linked non-core sector industries, arose due to the increase in operational costs of the coal companies to the tune of 23.84%. It appears from the case from the appellant's pleadings that though the company was not running in losses considering that there had been a huge investment in the coal industry, yet the fixation of price 20% higher than the previously notified price was still necessary so as to ensure the sustainable operation, maintenance and development of the coal mines and production framework. It is pertinent to note that the impugned price hike for the linked

non-core sector industries mitigated the increase in operational costs only to the extent of 1.2%.

90. This conspectus of facts makes it necessary for us to look into the proposition of whether financial sustainability of operations of a PSU can be a reasonable basis for a price increase for a specific class of consumers. This Court in ***Shree Meenakshi Mills Ltd. v. Union of India*****,** reported in **(1974) 1 SCC 468** and ***Prag Ice & Oil Mills v. Union of India*****,** reported in **(1978) 3 SCC 459** had the occasion to address the issue of whether the price control measures adopted by the Government were in conflict with the fundamental rights i.e., Articles 19(1)(f) and 19(1)(g) respectively of the cotton textile mills and mustard oil producers respectively. We wish to clarify at the outset that the nature of price control was different in the ***Meenakshi Mills*** *(supra)* and ***Prag Ice*** *(supra)* from the nature of price increase in the case on hand. However, in our considered opinion, the principles expounded in these judgments are of common application. It was observed by this Court therein as follows:

a) *First*, the dominant purpose of the Act, 1955, more particularly Section 3 thereof is to ensure equitable distribution of an essential commodity at fair price. The object of equitable distribution includes within its fold not only fair prices but also maintenance or increase of supplies of an

essential commodity. Such purpose would be defeated if a producer's profit or return are kept in the forefront. Therefore, price regulation should not be actuated by profit motive unless and until the objective of a particular policy clearly stipulates so. The relevant paragraph of ***Prag Ice*** *(supra)* is reproduced below:

> "*39. We may also mention that the view we have taken of the dominant purpose of Section 3(1) of the Act is in accordance with the following elucidation of its purpose in Meenakshi Mills case: (SCC p. 490, para 65)*
>
> *"The question of fair price to the consumer with reference to the dominant object and purpose of the legislation claiming equitable distribution and availability at fair price is completely lost sight of if profit and the producer's return are kept in the forefront. The maintenance or increase of supplies of the commodity or the equitable distribution and availability at fair prices are the fundamental purposes of the Act."""*
>
> (Emphasis supplied)

b) *Secondly,* price control or fixation cannot be with a motive to safeguard the interests of industries engaged in the production of the essential commodity. Such price regulation must be based on economic factors with fair prices and availability of the commodity for the end consumers as the predominant considerations. The reasonableness of the exercise of price regulation cannot be determined on the grounds that a section of the population engaged in the industry, trade or

commerce of such essential commodity are facing losses. The relevant portion of the judgment in ***Prag Ice*** *(supra)* is reproduced below:

> "*64. This discussion will not be complete without reference to the decision of a Constitution Bench of this Court in Shree Meenakshi Mills Ltd. v. Union of India [(1974) 1 SCC 468 : (1974) 2 SCR 398] . The question which arose in that case was as regards the validity of a notification fixing fair prices of cotton yarn. It was contended on behalf of the petitioners therein that the price fixed was arbitrary because the fluctuation in the price of cotton was not taken into consideration, the price of raw materials, the liability for wages and the necessity for ensuring reasonable profit to the trader are not taken into accounts; and above everything else, the industry was not ensured a reasonable return on its investment. These contentions were rejected by this Court on the ground that, just as the industry cannot complain of rise and fall of prices due to economic factors in an open market, it cannot similarly complain of some increase in or reduction of prices as a result of a notification issued under Section 3(1) of the Essential Commodities Act because, such increase or reduction is also based on economic factors. Dealing with the contention that a reasonable profit must be assured to the manufacturers, the Court held that ensuring a fair price to the consumer was the dominant object and purpose of the Essential Commodities Act and that object would be completely lost sight of, if the producer's profit was kept in the forefront. Ray, C.J., speaking for the Court, observed: (SCC p. 490, para 66)*
>
> > *"In determining the reasonableness of a restriction imposed by law in the field of industry, trade or commerce, it has to be remembered that the mere fact that some of those who are engaged in these are alleging loss after the imposition of law will not render the law unreasonable. By its very nature, industry or trade or*

commerce goes through periods of prosperity and adversity on account of economic and sometimes social and political factors. In a largely free economy when controls have to be introduced to ensure availability of consumer goods like foodstuff, cloth and the like at a fair price, it is an impracticable proposition to require the Government to go through the exercise like that of a Commission to fix the prices."

Another passage from the judgment of the learned Chief Justice which has an important bearing on the instant case is to the following effect: (SCC p. 491 para 67)

"When available stocks go underground and the Government has to step into control distribution and availability in public interest, fixing of price cannot be only empirical. Market prices at a time when the goods did not go underground and were freely available, the general rise in prices, the capacity of the consumer specially in case of consumer goods like foodstuff, cloth etc. the amount of loss which the industry is able to absorb after having made huge profits in prosperous years, all these enter into the calculation of a fair price in an emergency created by artificial shortages.""

(Emphasis supplied)

91. The requirement of equitable distribution and the consequent necessity of fair pricing and sustainable availability of a commodity is echoed in the judgments discussed in the aforesaid. However, could it be said that 'fair pricing' by itself, excludes reasonable profits for the producer? In other words, are the two mutually exclusive? The answer in our opinion must be an emphatic 'No'. This Court has painstakingly clarified that only the executive actions that are actuated solely by profit motive at the cost of the

public, fall foul of the constitutional and statutory principles enshrined in Articles 14 and 39(b) as well as the Act, 1955 [See: ***Natural Resources Allocation*** *(supra)*].

92. A conjoint reading of the observations of this Court in ***Meenakshi Mills*** *(supra)* and ***Natural Resources Allocation*** *(supra)* indicates that reasonable profits when necessary to subserve the 'common good' including maintenance of or increase in supply of an essential commodity, do not infringe on the rights of the citizens.

93. In the case on hand, the appellant company had submitted that the 20% increase in prices for the linked consumers of the non-core sector was reasonable for the sustainable operation, maintenance and development of the coal mines in light of the increase in operational costs of the appellant company. Further, it is imperative to consider the Interim Coal Policy in the context in which it was introduced. Though the e-auction system was held to be a price regulation mechanism in the garb of a supply regulation, yet it cannot be denied that one of the objectives of the said policy was to ensure supply to a common man and curb the black market sale of coal. While we are in agreement with the decision in ***Ashoka Smokeless*** *(supra)* that the e-auction system was in contravention of Articles 14 and 39(b) respectively for want of reasonableness, we find it apposite to consider the situation

prevailing at the relevant point of time that necessitated the introduction of such a system. Once this Court struck down the e-auction system, the objective of maintenance of supply of coal remained unfulfilled and it became all the more important for the appellant company to ensure adequate production of coal.

94. In such view of the matter, we are of the considered opinion that the 20% increase over and above the notified prices was associated with the objective of maintaining the supply of coal and ensuring its availability in the market for all categories of consumers. Thus, it cannot be said that the action of the appellant in notifying price for the linked consumers of the non-core sector with an increase of 20% in the Interim Coal Policy, was actuated solely by a profit motive.

(v) Balancing between the respondents' fundamental rights and the interests of the public at large

a. Applicability of the Proportionality test vis-à-vis the Reasonable classification test

95. In ***Modern Dental College & Research Centre v. State of M.P.*****, (2016) 7 SCC 353,** this Court laid down the four-pronged test of proportionality to balance between the fundamental rights of a class of citizens and the

interests of the general public. The relevant paragraph of the said judgment is reproduced below:

> "*60. […] Thus, while examining as to whether the impugned provisions of the statute and rules amount to reasonable restrictions and are brought out in the interest of the general public, the exercise that is required to be undertaken is the balancing of fundamental right to carry on occupation on the one hand and the restrictions imposed on the other hand. This is what is known as "doctrine of proportionality". Jurisprudentially, "proportionality" can be defined as the set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law to be constitutionally permissible. According to Aharon Barak (former Chief Justice, Supreme Court of Israel), there are four sub-components of proportionality which need to be satisfied [Aharon Barak, Proportionality : Constitutional Rights and Their Limitation (Cambridge University Press 2012).], a limitation of a constitutional right will be constitutionally permissible if:*
> *(i) it is designated for a proper purpose;*
> *(ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose;*
> *(iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally*
> *(iv) there needs to be a proper relation ("proportionality stricto sensu" or "balancing") between the importance of achieving the proper purpose and the social importance of preventing the limitation on the constitutional right."*
>
> (Emphasis supplied)

96. A perusal of the dictum in ***Modern Dental*** *(supra)* shows that for an action which is in contravention to a fundamental right(s), to be constitutional and proper, it must fulfil the test of proportionality. In balancing the rights and interests of two sections of the population, the courts must be mindful of the four sub-components of 'proportionality':

(i) The action must be for a proper purpose that is, it should serve a legitimate aim;

(ii) Such action must have a rational nexus with the fulfilment of such aim or object;

(iii) Such action must be a 'necessity' insofar as it should be the best available measure with no other alternatives that may achieve the same purpose with a lesser degree of restrictions; and

(iv) The action should not have a disproportionate impact and the benefits must be balanced against the harm caused by the restrictive measure.

97. However, the employment of the test of proportionality is not to be done mechanically, rather, it has to be seen by the courts whether a legislative or executive action is of such a nature that it warrants the applicability of the said test. In this regard, we may refer to this Court's judgment in ***State of T.N. v. National South Indian River Interlinking Agriculturist Assn.***, reported in **(2021) 15 SCC 534** wherein the provision of loan waivers to

small and marginal farmers in the State of Tamil Nadu on the basis of land holding size was challenged as being violative of Article 14. It was observed therein that while non-classification arbitrariness is tested based on the proportionality test, classification arbitrariness is supposed to be tested on the basis of the rational nexus test. In other words, in case of the former, the courts must examine whether the means employed to achieve the stated objective are proportional to the same and are not arbitrarily excessive. Whereas, in the latter situation, it is sufficient for the courts to test if the means share a 'nexus' with the avowed objective. The relevant portions of the said judgment are reproduced below:

> *"20. The purpose of providing a waiver of agricultural loans for farmers is to uplift the distressed farmers, who have been facing the brunt of the erratic weather conditions, low produce, and fall in the prices because of the market conditions. The objective of promoting the welfare of the farmers as a class to secure economic and social justice is well recognised by Article 38. It needs to be determined if the classification based on the extent of landholding has a rational nexus to the object sought to be achieved.*
>
> *21. One of us (Dr D.Y. Chandrachud, J.) in Navtej Singh Johar v. Union of India [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] accentuated the inadequacies of the two-pronged test which seeks to elevate form over substance. The over-emphasis on the "objective" of the law, instead of its "effect"—particularly when the objective is ostensible—was observed not to further the true meaning of the equality clauses under the Indian*

Constitution. The traditional two-pronged classification test needs to be expanded for the Courts to undertake a substantive review of Article 14 violations, away from the formalistic tendency that the twin test leans towards. Within the broad parameters of the two-pronged test, we find it imperative to undertake a much more substantive review by focusing on the multi axle operation of equality and non-discrimination.

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29. The determination of whether the classification is under-inclusive is closely related to the test that is undertaken by the Court while determining the relationship of the means to the end. This Court follows the two-pronged test to determine if there has been a violation of Article 14. The test requires the Court to determine if there is a rational nexus with the object sought to be achieved. P.N. Bhagwati, J. (as the learned Chief Justice then was) in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] held that arbitrariness of State action is sufficient to constitute a violation of Article 14. Thus, it came to be recognised that the equality doctrine as envisaged in the Constitution not only guarantees against comparative unreasonableness but also non-comparative unreasonableness. [See Tarunabh Khaitan, "Equality : Legislative Review under Article 14" in Sujit Choudhry, Madhav Khosla, Pratap Bhanu Mehta (Eds.), The Oxford Handbook of the Indian Constitution (Oxford University Press, 2016).] This Court in Modern Dental College & Research Centre v. State of M.P. [Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353 : 7 SCEC 1] , invoked the proportionality test while testing the validity of the statute and rules that sought to regulate admission, fees and provided reservations for postgraduate courses in private educational institutions. In Subramanian Swamy v. Union of India [Subramanian Swamy v. Union of

India, (2016) 7 SCC 221 : (2016) 3 SCC (Cri) 1] , the Court used the proportionality test to determine if the offence of criminal defamation prescribed under Sections 499 and 500IPC violates the freedom of speech and expression under Section 19(1)(a). In K.S. Puttaswamy (Privacy-9J.) v. Union of India [K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1] , a nine-Judge Bench of this Court held that the right to privacy is a fundamental right. The proportionality standard was used in the context of determining the limits that could be imposed on the right to privacy. The Constitution Bench then dealt with the proportionality test in K.S. Puttaswamy (Aadhaar-5J.) v. Union of India [K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1] , to determine if the Aadhar scheme violated the right to privacy of an individual. Our Courts have used the proportionality standard to determine non-classificatory arbitrariness, and have used the twin test to determine if the classification is arbitrary.

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32. While non-classification arbitrariness is tested based on the proportionality test, where the means are required to be proportional to the object, classification arbitrariness is tested on the rational nexus test, where it is sufficient if the means share a "nexus" with the object. The degree of proof under the test would impact the judgment of this Court on whether the law is under-inclusive or over-inclusive. A statute is "under-inclusive" if it fails to regulate all actors who are part of the problem. It is "over-inclusive" if it regulates actors who are not a part of the problem that the statute seeks to address. The determination of under-inclusiveness and over-inclusiveness, and degree of deference to it is dependent on the relationship prong ("rational nexus" or "proportional") of the test.

33. The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a "rational nexus" to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision. The Indian courts do not apply the proportionality standard to classificatory provisions. Though the two-Judge Bench in Anuj Garg [Anuj Garg v. Hotel Assn. of India, (2008) 3 SCC 1] articulated the proportionality standard for protective discrimination on the grounds in Article 15; and Malhotra, J. in Navtej Singh Johar [Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 : (2019) 1 SCC (Cri) 1] held that less deference must be allowed when the classification is based on the "innate and core trait" of an individual, this is not the case to delve into it. Since the classification in the impugned scheme is based neither on the grounds in Article 15 nor on the "innate and core trait" of an individual, it cannot be struck down on the alleged grounds of under-inclusiveness and over-inclusiveness."

(Emphasis supplied)

98. What is discernible from the judgment in ***River Interlinking*** *(supra)* is that in situations where a legislative or executive action has prescribed a restriction on fundamental rights, the courts are required to bear in mind the following observations:

a) *First*, the instances of both classificatory and non-classificatory arbitrariness infringe on the equality mandate of the Constitution

enshrined in Article 14 though the tests to determine the same may be different. However, non-classificatory arbitrariness is tested on a stricter anvil of legitimacy as it has the potential to disrupt the rights of a larger section of the population.

b) *Secondly,* when the restriction is placed on the public at large without establishing the intelligible differentia between sections of the society on whom such restriction may be applicable, it would be a non-classificatory limitation. Where a challenge is posed to such kinds of restrictions on fundamental rights of the people, the courts are required to employ the proportionality test and ensure that the measures adopted to implement such restrictions are not disproportionate or excessive in achieving the objective or aim identified.

c) *Thirdly,* in a case where the legislative or executive restricts the fundamental rights of a specific class of persons, it would be an instance of classificatory limitation. To examine whether such restriction is in contravention of the constitutional mandate of equality, the courts are required to ensure that the classification is made on reasonable grounds and use the rational nexus test in order to determine whether the said restriction is an appropriate measure to achieve the objective identified.

d) *Fourthly,* it was recognised by this Court that the twin test or the rational nexus test may suffer from the problem of elevating form over substance if it concerns itself only with the aspect of 'rational nexus' between the classification and the avowed objective. It was held that the rational nexus test must take into account the legitimacy of the objective sought to be achieved and determine if the same affects the classes of persons whose rights would be impeded in a manner that may fall foul of the reasonableness requirement of Article 14. What has been conveyed by this Court in so many words is that the objective identified by the legislature or executive cannot be taken at face value without any examination of the effects of the same, similar to the requirement of the first sub-component of the proportionality test.

e) *Lastly,* the degree of scrutiny into the legitimacy of the objectives sought to be achieved by a restrictive measure would differ on the basis of the nature of the restriction and the test being used to examine the issue of arbitrariness. This Court, speaking through D.Y Chandrachud, J., described the tests of 'proportionality' and 'rational nexus' as those that determine the relationship between the measure being implemented and the objective sought to be achieved. When utilising the proportionality test, the degree of scrutiny of the perceived effects of the identified objective would be greater than the probing required

when the rational nexus test is employed. This is because the courts show a greater degree of deference to classification. This is because the legislature or executive can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision.

99. From a perusal of the observations of this Court in ***River Interlinking*** *(supra)* read with the judgments rendered in ***Ashoka Smokeless*** *(supra)* and ***Pallavi Refractories*** *(supra)* respectively, it is as clear as a noon day that we are required to employ only the rational nexus test while answering the issue whether the Interim Coal Policy created a reasonable classification between the linked consumers of the core and non-core sectors.

b. Applicability of the rational nexus test to the case on hand

100. The respondents herein have argued that the distinction between the linked consumers of the core and non-core sectors for the purpose of pricing of coal cannot be termed as a reasonable classification on the anvil of Article 14. It was the submission of the respondents who are linked industries of non-core sector that they were at par with the linked industries of the core sector. A single, fixed notified price was levied upon both till the time e-auction system was brought into existence. Though a different price might have been charged from the non-linked consumers of the non-core sector, yet the linked

consumers/industries of the non-core sector and the core-sector industries were considered to be part of the same class for the purpose of pricing of coal. Therefore, the Interim Coal Policy could not have discriminated against the linked non-core sector industries without any rational basis or objective.

101. The aforesaid submission is not appealing to us for the reason that the respondents have not clarified the modalities of how the linked consumers of the core and non-core sectors can be treated on the same footing. Except for the solitary ground that the notified prices for the two classes of industries have ordinarily remained the same, no other submission was canvassed in this regard. In such a view of the matter, we are compelled to deduce that the respondents considered the linkage system to be the common thread between the two classes of consumers and on the strength of the same, contended that they should be treated similarly to the linked core sector industries.

102. We are, however, not inclined to accept the allegations of discriminatory pricing made by the respondents on the ground that all linked industries/consumers must be treated alike. The linkage system as described in the aforesaid was a purely administrative decision and had no constitutional or statutory backing. It was introduced by the Government and

the appellant company to ensure a steady supply of coal reserves to the core sector and to certain industries or manufacturers of the non-core sector. The factum of linkage vested no right in a particular industry, manufacturer or consumer to receive a definite quantity of coal from a specific mine or company. "Linkage" acted only as a clearance to the linked coal company (either the appellant or one of its subsidiaries) to supply coal to a unit, subject to the availability of the commodity as well as regulatory directives given in respect of such unit or linked coal mine. Therefore, such system was a purely policy decision with logistical ease as its sole objective. Such policy was subject to the discretion of the Government and could be reversed at any point in time. It is noteworthy that the said system was in fact rolled back by the Government upon the introduction of the new Coal Distribution Policy, 2007. Thus, the factum of linkage cannot serve as the basis for treating the industries of the core and non-core sectors alike.

103. In such view of the matter, we are of the considered opinion that the dictum of this Court in ***Pallavi Refractories*** *(supra)* is squarely applicable to the case in hand and we need not reiterate our observations as regards the distinctions drawn between the core and non-core sector industries which have been recorded in Paragraphs 77 and 78 respectively of this judgment.

104. Further, we do not find any force in the submission of the respondent that the 20% price increase for the linked non-core sector industries was actuated by profit motive. The respondents had relied on ***Ashoka Smokeless*** *(supra)* to argue that pricing measures taken with the motive of profiteering were not permissible under Article 14 of the Constitution. However, the reliance on ***Ashoka Smokeless*** *(supra)* is of no avail to them as the measure impugned therein was the price determination mechanism and not the prices itself. It was held that by adopting the e-auction process, the State had not only abdicated its duty to ensure fair pricing but also brought into existence a measure that ensured maximum possible price available for the coal companies.

105. We are in agreement with the respondents to the limited extent that the natural corollary of the e-auction system being struck down was that the notified price system was brought back into existence. In other words, the striking down of the e-auction system left a vacuum in respect of the process by which prices were to be determined. This vacuum was occupied by the notified price system at least till the time a viable policy was being evolved by the committee formed in compliance with ***Ashoka Smokeless*** *(supra)*. However, we must stop here. We cannot proceed to agree with the respondents that the effect of the judgment in ***Ashoka Smokeless*** *(supra)* was that the notified prices of 2004 replaced the e-auction prices. This Court

is not empowered to stipulate either explicitly or implicitly, specific prices of a particular commodity as such a decision is purely an economic one and therefore, the prerogative of the legislature or the executive.

106. In such circumstances referred to above, we must see if the objective of the 20% price increase was legitimate or not. We have already discussed in the aforesaid parts of this judgment that reasonable profits for the purpose of ensuring maintenance or increase of supply of a commodity are considered to be an object subserving the common good. According to the appellant, the object of the Interim Coal Policy was to ensure sustainable operation, maintenance and development of the coal mines. We find the said objective to be legitimate in light of the increase in operational costs of the appellant company, and one that subserves the 'common good' of maintaining an adequate supply of coal in the market.

107. In view of the aforesaid reasons, we observe that the Interim Coal Policy made a reasonable classification between the linked industries of the core and non-core sectors and was introduced with the legitimate aim of ensuring an adequate supply of coal in the market by reinforcing the financial capabilities of the appellant company to sustainably operate and invest in the production of coal. Therefore, it can be no gainsaying that the Interim

Coal Policy fulfilled the test of reasonable classification and hence, was not contrary to Article 14 to this extent.

(vi) Determination of the issues framed

108. Having discussed the historical backdrop in which the Interim Coal Policy was introduced and the constitutional and legal principles necessary to address the issues arising in the matter on hand, we now proceed to decide the questions framed in the foregoing.

- *Whether the appellant had the authority to notify the Interim Coal Policy, in terms of the dictum of this Court in* ***Ashoka Smokeless*** *(supra)?*

109. In ***Ashoka Smokeless*** *(supra)*, it was held that the e-auction system, despite having the aim of regulating the supply of coal, was in effect a price regulation mechanism that enabled the coal companies to obtain the maximum possible price for coal based on the market forces. This Court, *inter alia,* held that the e-auction policy was illegal as the Central Government was not empowered to regulate the prices of coal in view of the deregulation of prices by virtue of the CCO, 2000. The said control order brought the regulation of prices into the realm of the powers enjoyed by the coal companies.

110. The respondents have only relied on the direction to the Central Government and the coal companies in ***Ashoka Smokeless*** *(supra)* to constitute an expert committee to evolve a viable policy for distribution of coal, to argue that the appellant was not empowered to decide interim prices till the time such a committee gave its recommendations. We find no force in the said submission as the dictum in ***Ashoka Smokeless*** *(supra)* is limpid insofar as the powers of the Central Government and coal companies respectively are concerned. Nowhere in the judgment was any restriction placed on the appellant company to notify prices. Even the direction for creation of an expert committee was made to provide suggestions in respect of a viable supply policy primarily. In continuation, the Court also granted liberty to the Central Government along with the coal companies to evolve a viable policy. This is evident from paragraphs 190 and 193 respectively of ***Ashoka Smokeless*** *(supra)*.

111. We may also look at this issue from one another angle. If we are to accept the respondents' contention that the appellant was not empowered to notify interim prices in light of the direction of this Court to constitute an expert committee, it would amount to this Court replacing the intention of the legislature and executive to deregulate prices by way of the CCO, 2000 with a policy decision of its own. In our considered opinion, it could not have been the intention of this Court to override a statutory enactment as the same

would tantamount to an egregious case of breaching the doctrine of separation of powers. It is a settled position of law that the courts are not expected to substitute themselves with the appropriate decision-making authority while finding fault with a specific process or policy along with the reasons assigned [See: ***South Indian Bank Ltd. v. Naveen Mathew Philip***, reported in **(2023) 17 SCC 311**].

112. Thus, we have no qualms observing that this Court placed no restriction on the appellant's powers to regulate prices through the process of price notification as the same was already governed by the CCO, 2000 and the appellant was competent to notify interim prices by way of the Interim Coal Policy.

- *Whether the increase of 20% over and above the notified price introduced in the Interim Coal Policy for the linked consumers of the non-core sector was valid in terms of Article 14?*

113. This issue has been discussed by us at length in the earlier parts of this judgment. We summarise our conclusions in this regard as follows:

a) We affirm the classification made by this Court between the core sector and non-core sector in ***Pallavi Refractories*** *(supra)*.

b) The respondents' submission that the factum of linkage put the linked non-core sector industries on the same footing as the core sector

industries is of no avail. The linkage system was merely an administrative policy introduced for logistical ease and steady supply. It did not vest any rights of receipt of coal in the linked industries and was dependent on the availability of coal and therefore, could not be a criteria for treating industries of the core and non-core sector at par.

c) A perusal of the objective of increasing the notified prices for the linked non-core sector consumers by 20% indicated that the appellant's action was not actuated by profit motive. It was a considered policy decision to ensure fair prices for the majority of the end consumers but not at the cost of the appellant's financial capability to maintain an adequate supply of coal. This Court in ***Sitaram Sugar*** *(supra)* had observed that not minimum but reasonable profits were permissible provided that such profits were associated with the objective of subserving the common good. The avowed object of the 20% price increase was to mitigate the increase in operational costs of the appellant company such that it was able to sustainably operate, maintain and develop the coal mines. In our view, these activities were essential to the maintenance of an adequate supply of coal in the market and thus were in conformity with the constitutional requirement of 'common good' enshrined in Article 39(b).

d) Since the challenge to the increase in interim price was on the ground of classificatory arbitrariness, the application of the proportionality test was not mandated and only the test of rational nexus was sufficient to reach a conclusion on whether the policy was arbitrary and discriminatory. Consequently, we need not probe into the necessity and effect of the restrictive pricing promulgated by the appellant in as much depth as would be required by the test of proportionality. We are of the considered view that the increase of 20% in the notified prices for the non-core linked sector which mitigated the increase in operational costs to the extent of 1.2% of the total increase, was a measure that fulfilled the objective of sustainable operation, maintenance and development of coal mines by the appellant without engaging in excessive profiteering.

e) The respondents' reliance on ***Ashoka Smokeless*** *(supra)* in this regard is misplaced as the classification in the said judgment was held to be unreasonable because different pricing processes were adopted for the core and non-core sectors. The notified price system in which a fixed price was prescribed, was continued for the core sector, however, the non-core sector was subjected to the e-auction system in which the price remained variable thereby making it difficult for the non-core sector industries to form viable business strategies. It was found that

such drastic difference between the treatment of the two classes bore no rational nexus with the objective of regulating the supply of coal. While we are in agreement with the application of the test of reasonable classification in ***Ashoka Smokeless*** *(supra)*, it is not lost upon us that the factual backdrop of the said matter and the case on hand are very different. Therefore, ***Ashoka Smokeless*** *(supra)* does not have any applicability to the instant set of facts for the purposes of employing the test of reasonable classification or rational nexus.

- *Whether the respondents are entitled to refund of the 20% additional cost?*

114. Since, we have answered the questions on the issue of validity of the Interim Coal Policy in affirmative, the issue of whether the respondents are entitled to receive a refund of the 20% additional cost is now moot. However, we find it apposite to observe that even if we would have found the Interim Coal Policy to be invalid, we would have declined to order for refund of the 20% additional amount to the respondents herein.

115. It is the case of the appellant company that the respondents herein would be unjustly enriched if the refund of 20% additional amount is granted to them as the respondents have not placed on record any evidence of whether they bore the adverse cost impact or passed the same onto the end consumers of

their products. On the other hand, the respondents have vociferously argued that such contention could not have been taken by the appellant during the stage of appeal.

116. The respondents have also have relied on a plethora of judgments to argue that the appellant was liable to refund the 20% additional amount. However, most of these decisions pertain to the refund of the excess price levied by the appellant under the e-auction system, which was granted by various High Courts and this Court. In ***Eastern Coalfields Limited v. Tetulia Coke Plant Private Limited and Ors.,*** reported in **(2011) 14 SCC 624**, this Court observed the following:

a) The writ petition bearing Writ Petition No. 1279 of 2005 was filed by several industries including Ashoka Smokeless Coal India (P) Ltd. to challenge the legality of the e-auction system introduced by the Union of India and adopted by the appellant herein.

b) During the pendency of the said writ petition in the High Court as well as some other writ petitions involving the same issue, the same were transferred to this Court. Before finally disposing of the matter in ***Ashoka Smokeless*** *(supra)*, this Court had the occasion to decide the interim application filed by the petitioners therein praying for a stay on the payment of the price differential between the notified prices as they

stood in 2004 and the prices determined by the e-auction process whenever they drew coal from the coal companies.

c) This Court was pleased to partially allow the same *vide* the interim order dated 12.12.2005 wherein the petitioners were directed to pay 33.33% of the total price differential and furnish security/bank guarantee for the remaining 66.66%. This was done to ensure that no permanent harm was caused to the appellant herein provided that the e-auction system was found to be constitutional and legal. It was also observed that in case the writ petition is decided by this Court in favour of the petitioners therein then the appellant herein would be liable to refund the said 33.33% amount forthwith. The relevant paragraph of the judgment in ***Domco Smokeless*** *(supra)* that states the said directions provided in the order dated 12.12.2005 is reproduced hereinbelow:

> "*15. Learned senior counsel representing the appellant drew our attention to the order dated 12th December, 2005 passed by this Court in a matter involving same controversy in the case of Ashoka Smokeless Coal Industries(P) Ltd. v. Union of India, to be specific, para 8 wherein following observations/directions were passed:—*
>
> > "*8. It is pointed out that in respect of some entities, coal was being supplied at the notified price enhanced by 20% thereof and this would be a guide for fixing the percentage of the excess price to be paid by the petitioners. It is pointed out that enhancement of the*

notified price only by 20% was in respect of very small consumers and in respect of Central and State Agencies and that cannot form the basis for supply of coal to the petitioners herein having a coal linkage with the coal companies. Taking note of the circumstances as a whole we feel that it would be just and proper to direct the petitioner companies/firms, having coal linkage, to pay in addition to the notified price, 33 1/3% of the enhanced price, each time they claim supply of coal to them based on the linkage and by furnishing security for the balance 66 2/3% of the enhanced price with an undertaking filed in this Court that the said part of the price will also be paid within 6 weeks of the decision of this Court in the writ petitions in case the writ petitions are decided against the petitioners. To protect the interest of the petitioners and to ensure that no permanent harm is caused to them we also think it proper to record the undertaking given on behalf of Coal India Ltd. and its subsidiaries that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to the petitioners within 6 weeks of the judgment of this Court with interest thereon at 12% per annum from the date of payment till the date of return to the petitioner concerned.'""

(Emphasis supplied)

d) This Court took up the matter relating to the legality of e-auction system for final hearing and disposed of the matter in ***Ashoka Smokeless*** *(supra)* by declaring the e-auction system unconstitutional on 01.12.2006. Therefore, on this date, the liability of the appellant to refund the 33% amount of the price differential materialised. However,

it is apparent from the several writ petitions filed all across the country that the appellant had not done so promptly and it was only after the intervention of the courts that the appellant refunded the said amount.

e) In ***Tetulia Coke*** *(supra)*, this Court held that the principle of unjust enrichment raised by the appellant had no application to the case of refund of 33.33% amount on two accounts:

- *First*, the coal company had not raised the argument of unjust enrichment before the court of first instance, that is the single judge of the High Court. Further, the said argument was not even pleaded in the memorandum of appeal before this Court and was introduced only at the argument stage.
- *Secondly*, the refund prayed for was for excess price paid by the petitioners therein and not in the nature of a tax or duty refund. Therefore, principally, a plea of unjust enrichment could not be held to be maintainable. It was also held that the plea of unjust enrichment could not override the requirement of law to refund monies to the parties from whom the excess amount has been realised if it is found that the law, in consequence of which such monies were collected, is invalid.

117. For the aforesaid reasons, this Court in ***Tetulia Coke*** *(supra)* granted the request for refund of the 33% amount collected in excess during the operation of the e-auction system. A similar line of reasoning was followed in several other judgments referred to by the respondent before this Court, to argue that the refund of 20% additional price collected by virtue of the Interim Coal Policy ought to be granted.

118. In this regard, the respondents relied on a judgment of the High Court at Patna in ***Maa Mundeshwari Carbon (P) Ltd. v. Central Coalfields Ltd.***, reported in **2010 SCC OnLine Pat 2674** wherein it was held that there was no cogent or valid explanation for charging the 20% excess amount over and above the prices notified in 2004, for the period prior to the introduction of the New Coal Distribution Policy. It was further observed that the 20% price hike was an innovation on part of the appellant herein to illegally compensate themselves for the outlay which they had to make by refunding 33.33% of the price differential paid by the private industries during the e-auction era.

119. We find ourselves not in agreement with the reasoning assigned by the High Court in ***Maa Mundeshwari*** *(supra)* as the same was not substantiated by the single judge therein. In our opinion, the single judge mechanically stated that there was a lack of valid explanation without properly considering the

objective of the Interim Coal Policy, the context in which it was introduced and the dictum of this Court in ***Ashoka Smokless*** *(supra)* and ***Pallavi Refractories*** *(supra)*. It is due to a superficial study of the policy objectives and its effects that perhaps the argument of *mala fide* off-setting of compensation impressed upon the bench. Therefore, the respondents' reliance on ***Maa Mundeshwari*** *(supra)* is of no avail to them in the case on hand.

120. In ***Domco Smokeless*** *(supra)*, this Court was seized with the issue of whether the coal company therein was in contempt of the High Court's order dated 22.09.2008 in Writ Petition (C) No. 3040 of 2005 which directed the coal company to refund the excess price charged during the period running from January, 2005 till October, 2007. It was also the case of the petitioner therein that the refund for the period between 01.01.2007 to March 2008 remained pending. It is pertinent to note that this period comprises the interim period before the introduction of the New Coal Distribution Policy for which the Interim Coal Policy was applicable.

121. The factual and legal findings in ***Domco Smokeless*** *(supra)* are summarised as follows for better exposition of law:

a) Admittedly, the Writ Petition (C) No. 3040 of 2005 was filed by the petitioner therein to pray for grant of refund of the excess price

collected by the M/s. Bharat Coking Coal Ltd. under the e-auction policy, in terms of the interim order dated 12.12.2005 in ***Ashoka Smokeless*** *(supra)*. The relevant findings in the said order are reproduced in paragraph 15 of ***Domco Smokeless*** *(supra)* and paragraph 116(c) of this judgment.

b) In the Writ Petition (C) No. 3040 of 2005, the petitioner therein filed the Interlocutory Application No. 4 of 2008 seeking a direction to refund the excess price paid over and above the notified price for the period between January, 2005 to October, 2007 along with 12% interest per annum. It is worth noting that this period includes the interim period after the striking down of the e-auction system on 01.12.2006 and prior to the introduction of the New Coal Distribution Policy (finally brought into effect from March 2008).

c) Interestingly, the single judge of the High Court of Jharkhand allowed the Interlocutory Application No. 4 of 2008 *vide* the order dated 22.08.2008, without going into the merits of the validity of the Interim Coal Policy and relied only on the undertaking provided by the learned Solicitor General of India in ***Somal Pipes (P) Ltd. v. Coal India Ltd.***, reported in **(2009) 16 SCC 721** wherein this Court *vide* the order dated 30.10.2007 directed for refund on the basis of the said undertaking of the Solicitor General. A perusal of the order dated 30.10.2007 indicates

that no period was stipulated by this Court while directing for refund, nor was any period mentioned by the Solicitor General according to the undertaking as recorded by the Court therein. The order dated 30.10.2007 in ***Somal Pipes*** *(supra)* is reproduced below:

> "*1. Let the amount deposited by Coal India Ltd. be invested on a short-term fixed deposit for sixty days.*
>
> *2. It is stated by the learned Solicitor General that Mr A.P. Singh, General Manager (Sales), CCL, has not been able to appear in Court today as his father has expired. His personal appearance is exempted. The learned Solicitor General appearing on behalf of the alleged contemnors tenders an unqualified apology on their behalf. The learned Solicitor General does not press the other IAs. He also does not press the other contentions raised in the affidavits of the respective alleged contemnors. It is submitted by the learned Solicitor General that the amount paid by the petitioners, in excess of the notified price shall be refunded to them upon verification of the documents which may be submitted in that behalf.*
>
> *3. We, while accepting the apology tendered by the alleged contemnors, direct as under:*
> *(i) The petitioners shall furnish all documents to the learned Advocates-on-Record of the respondents, showing the actual payments made to any of the subsidiaries of Coal India Ltd. and the difference between the amount paid and the amount notified by 12-11-2007.*
> *(ii) The documents furnished by the petitioners shall be verified by the officers of the coal companies concerned within four weeks thereafter.*

(iii) In case of any difference, the learned counsel would deliberate upon the matter so as to enable them to come out with an accepted solution.

(iv) The bank guarantee furnished by the petitioners shall stand discharged.

In view of the aforementioned directions, personal appearance of the alleged contemnors is dispensed with till further orders.

4. Post this matter for further orders, if any, on 8-1-2008."

(Emphasis supplied)

d) Despite the absence of the period for which the undertaking was provided, the single judge proceeded to grant refund to the petitioner in Writ Petition (C) No. 3040 of 2005 for the period covered by the Interim Coal Policy. When M/s Bharat Coking Coal Ltd. did not make payments towards the refund granted in the order dated 22.08.2008, the petitioner therein filed the Cont. Case (Civil) No. 247 of 2010 before the High Court.

e) While adjudicating the said contempt case, the High Court of Jharkhand *vide* order dated 29.05.2010 directed the coal companies to refund the excess amount charged during the period mentioned in the order dated 22.08.2008 including the period covered by the Interim Coal Policy on the ground that a similar issue was addressed by the High Court at Patna in ***Maa Mundeshwari*** *(supra)* by granting refund of the 20% excess price collected by the coal companies.

f) The order dated 29.05.2010 was challenged by the concerned coal company before this Court in SLP (Civil) No. 21019 of 2010 with the cause title ***M/s. Bharat Coking Coal Ltd. v. M/s. Domco Smokeless Fuels Pvt. Ltd.*** In the order dated 09.09.2010, this Court gave a short order wherein it found fit to not interfere with the proceedings before the High Court. The said order is reproduced below:

> "*In the order passed, the High Court had held that in the facts and circumstances of the present case, a prima facie case was made out for initiation of the contempt proceeding but instead of proceeding further, the High Court thought it appropriate to issue a direction to the petitioners herein to refund the amount collected in excess of the notified price together with interest. Having heard the learned counsel appearing for the parties and in the peculiar facts and circumstances of the present case, we do not find any reason to interfere with the impugned order and dispose of the Special Leave Petition without expressing any opinion on the merit of the case. The Special Leave Petition, is accordingly, dismissed.*"

g) Shortly thereafter, the petitioners therein filed another Cont. Case (Civil) No. 403 of 2011 to remedy the non-compliance by the coal companies of the orders dated 22.08.2008 and 29.05.2010. This contempt case was dismissed by the High Court. As a result, the petitioners filed an appeal before this Court in ***Domco Smokeless*** *(supra).*

h) This Court noted that for the period between 12.12.2005 to 01.12.2006, the excess amount had been refunded by the coal companies and only the issue as regards the interest payable on the refunded amount survived in respect of the said period.

i) As regards the question of refund for the remaining period till March 2008, the learned Bench in ***Domco Smokeless*** *(supra)* was not inclined to agree with the submission canvassed by the coal companies that the validity of the 20% increase over and above the notified price was under challenge before a different Bench of this Court in SLP (Civil) No. 21888 of 2012. It was held that the claim of the petitioner therein for refund of excess amounts charged during the period between 01.01.2007 and March 2008 stood concluded with the rejection of the SLP (Civil) No. 21019 of 2010 as the issue *inter se* the parties came to be decided by this Court's order dated 09.09.2010.

j) We find ourselves to be in agreement with the findings of the learned Bench in respect of the dispute regarding the interest component. Therefore, we need not go into the discussion as regards the percentage of interest to be charged.

122. However, with all due deference and humility at our command, we find it difficult to agree with the grant of refund for the period covering the Interim

Coal Policy because another court that is, another bench was already in *seisin* of the larger question regarding validity of the said policy and had passed the order dated 09.08.2012 in favour of the appellants herein wherein a stay had been granted in respect of the directions of the High Court for payment of refund.

123. As regards the argument of unjust enrichment raised by the appellant herein, we are conscious of the fact that this Court in ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)* and ***Horra Coke*** *(supra)* respectively has rejected the same on the basis of the reasons provided in ***Tetulia Coke*** *(supra)* which have been discussed in paragraph 116(e) of this judgment. However, a bare perusal of the factual background in which the argument of unjust enrichment was rejected in the aforesaid decisions indicates that there is a significant difference between the circumstances prevailing in those cases and the case in hand.

124. In ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)* and ***Horra Coke*** *(supra)* and other similar judgments, the petitioners therein were demanding a refund of the 33.33% of the excess amount paid by them for drawing coal under the e-auction system. However, it is worth noting that this excess amount was not paid by them to the coal companies in the normal course of transaction, rather it was paid in compliance of the direction of this Court in its interim

order dated 12.12.2005 during the pendency of ***Ashoka Smokeless*** *(supra)* along with an undertaking that the remaining 66.66% amount would be paid by them in the event the e-auction system was held to be constitutional. In such circumstances, we are of the opinion that the possibility of passing on the adverse cost impact to the consumers from the date on which coal was purchased by the e-auction process, seems unlikely, though not impossible.

125. On the other hand, the excess amount to the tune of 20% of the notified price has been paid by the respondents herein to the coal companies in the normal course of transaction and from the date on which they purchased coal under the Interim Coal Policy. Since the cost impact was in the nature of normal course of business, it is most likely that the respondents might have passed the same onto the end consumers. Such apprehension could have very well been addressed by the respondents by providing verified documents of sales made during the time period in which the Interim Coal Policy was in existence. However, the same was not done for reasons best known to them. In such a case, we do not find the appellant's apprehensions of unjust enrichment to be misplaced.

126. This Court in ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)* and ***Horra Coke*** *(supra)* respectively also rejected the argument of unjust enrichment on the ground that it was not raised before the court of first instance and was not

pleaded even in the memorandum of appeal. This reasoning has been used by the respondents herein to argue that the plea of unjust enrichment was taken at a belated stage even in the case at hand and therefore, deserves to be dismissed.

127. However, we do not agree with the respondents' submission in this regard. We are in fact dismayed to see that the division bench of the High Court dealt with the issue of refund at great length but chose to dismiss the plea of unjust enrichment raised by the appellant with absolutely no reasoning, despite the fact that both the submissions were made by the parties at a belated stage, that is during the stage of appeal. If we are to agree with the reasons of rejection of a plea given in ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)* and ***Horra Coke*** *(supra)* to only dismiss the belated plea of unjust enrichment, then analogously, we must also reject the request of refund made by the respondents herein. If we reject only one out of the two submissions made belatedly, then it would be a travesty of procedural justice. Considering that we are already in *seisin* of the issue of refund, we find ourselves compelled to give the argument of unjust enrichment equal weightage.

128. In this regard, we may refer to the judgment delivered in ***Mafatlal Industries Ltd. v. Union of India*****,** reported in **(1997) 5 SCC 536** wherein the concept

of ‘unjust enrichment’ in relation to transactions between the State and private parties or levies imposed by the State, was discussed by this Court.

129. The High Court, while dealing with ***Mafatlal*** *(supra)* made no observations as regards the applicability of the concept of unjust enrichment and dismissed the argument of the appellant in a mechanical and non-speaking manner. Therefore, we find it apposite to refer to the same in great detail to determine whether the plea of unjust enrichment holds any water.

130. The observations made in paragraph 83 and 308 of ***Mafatlal*** *(supra)* are summarized below:

a) The general principle of unjust enrichment requires a three-pronged determination: *first*, that a party has been enriched upon receipt of a benefit; *secondly,* such enrichment is at the expense of the other party; and *lastly*, that the retention of enrichment is unjust. Only when these three requisites are satisfied that a case for restitution of benefit is made out.

b) In the context of a refund, the party who is seeking the refund has to establish that it has not passed on the burden of the duty or similarly, the adverse cost impact to a third party. The burden of proof in this regard is necessarily on the person demanding the refund. If it is

established that the burden of a levy or an adverse cost impact was already transferred to a third party, then the refund cannot be granted.

c) It was recognized that if the burden of a duty is passed onto a third party, then the monies in possession of the State which are sought to be reclaimed by the person seeking refund, do not belong to either the State or such person asking for refund. It is the third party who is suffering the loss caused by the burden of duty or adverse cost impact. However, it may not always be possible to restore such third parties to the position in which they were prior to the shifting of burden on them.

d) In such cases also, it cannot be said that the State, by retaining the monies and not refunding the same to the person seeking refund, is getting enriched unjustly. It was held by this Court that the concept of unjust enrichment is not applicable on the State which is in position of *parens patrea*. In the event that the monies in question are unable to be restored to the third party that actually suffered the loss, it would be better for the State to retain the same even if it does not belong to it. This is because the State is obligated to use such monies for public purposes as against the party seeking refund, for whom such monies would only be a windfall. Therefore, in no circumstance was it possible to prefer the party seeking refund over the State for the purpose of retaining the monies lawfully belonging to a third party.

The relevant portion of the judgment in ***Mafatlal*** *(supra)* is reproduced below:

> "*83. We are also of the respectful opinion that Kanhaiya Lal [1959 SCR 1350 : AIR 1959 SC 135 : (1958) 9 STC 747] is not right in saying that the defence of spending away the amount of tax collected under an unconstitutional law is not a good defence to a claim for refund. We think it is, subject to this rider : Where the petitioner-plaintiff alleges and establishes that he has not passed on the burden of the duty to others, his claim for refund may not be refused. In other words, if he is not able to allege and establish that he has not passed on the burden to others, his claim for refund will be rejected whether such a claim is made in a suit or a writ petition. It is a case of balancing public interest vis-à-vis private interest. Where the petitioner-plaintiff has not himself suffered any loss or prejudice (having passed on the burden of the duty to others), there is no justice or equity in refunding the tax (collected without the authority of law) to him merely because he paid it to the State. It would be a windfall to him. As against it, by refusing refund, the monies would continue to be with the State and available for public purposes. The money really belongs to a third party — neither to the petitioner/plaintiff nor to the State — and to such third party it must go. But where it cannot be so done, it is better that it is retained by the State. By any standard of reasonableness, it is difficult to prefer the petitioner-plaintiff over the State. Taxes are necessary for running the State and for various public purposes and this is the view taken in all jurisdictions. It has also been emphasised by this Court in D. Cawasji [(1975) 1 SCC 636 : 1975 SCC (Tax) 172 : (1975) 2 SCR 511] wherein Mathew, J. not only pointed out the irrational and unjust consequences flowing from the holding in Bhailal Bhai [(1964) 6 SCR 261 : AIR 1964 SC 1006 : (1964) 15 STC 450] and Aluminium Industries [(1965) 16 STC 689 : 1965 Ker LT 517 (SC)] but also pointed out the*

adverse impact on public interest resulting from the holding that expending the taxes collected by the State is not a valid defence. (See paras 48 and 49). This would not be a case of unjust enrichment of the State, as suggested by the petitioners-appellants. The very idea of "unjust enrichment" is inappropriate in the case of the State, which is in position of parens patrea, as held in Charan Lal Sahu v. Union of India [(1990) 1 SCC 613] (SCC at p. 649). And even if such a concept is tenable, even then, it should be noticed that the State is not being enriched at the expense of the petitioner-plaintiff but at someone else's expense who is not the petitioner-plaintiff. As rightly explained by Saikia, J. in Mahabir Kishore v. State of M.P. [(1989) 4 SCC 1, 8 (para 11) : (1989) 3 SCR 596] , "the principle of unjust enrichment requires — first that the defendant has been 'enriched' by the receipt of a 'benefit'; secondly, that this enrichment is 'at the expense of the plaintiff'; and thirdly, that the retention of the enrichment be unjust. This justifies restitution." We agree with the holding in Air Canada [(1989) 59 DLR (4th) 161, Can SC] (quoting Professor George C. Palmer) that in such a case, "it seems preferable to leave the enrichment with the tax authority instead of putting the judicial machinery in motion for the purpose of shifting the same enrichment to the taxpayer". […]"

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308. It is open to the court to deny the equitable remedy of refund (restitution) in such cases. The attempt of persons who have passed on the liability in claiming refund is only to strike at a bargain — to make a fortune at the expense of innumerable unidentifiable consumers. Such persons have suffered no loss. On the other hand, if the State is allowed to retain the amount, it will be available to the community at large and could be made use of for public purposes. On this basis as well, the denial of refund or restitution is valid. There is nothing abhorrent or against public policy if refund or restitution is withheld in such a situation. It should also be

> *stated that in cases of indirect levy of tax which was passed on, this Court has negatived the claim for refund in a few cases, mentioned in para 300 (supra)* […].
>
> (Emphasis supplied)

131. What is discernible from the aforesaid exposition of law is that where there is an apprehension that the party who is seeking refund may have passed the adverse cost impact or burden of loss onto a third party, then in such cases, no refund ought to be granted. In such cases, the onus is on the State to retain such monies and use the same for public purposes in its role as *parens patrea*.

132. However, before we reach a conclusion as regards the plea of unjust enrichment, we must satisfy ourselves whether the understanding of the said plea in ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)* and ***Horra Coke*** *(supra)* respectively is correct or not. It was held in ***Tetulia Coke*** *(supra)* that the plea of unjust enrichment was not maintainable in cases of refund of excess price charged and that the same was applicable only in cases where the refund sought was of a wrongful levy of tax, duty or cess.

133. With all humility at our command, we disagree with the aforesaid reason. While we are conscious of the fact that the question of unjust enrichment due to refund was discussed in ***Mafatlal*** *(supra)* in the context of the levy of a duty, yet such difference of fact does not incapacitate the courts from

applying the principles expounded in the said judgment to other cases of retaining of monies by the State.

134. The principles of unjust enrichment are of general application and it is incumbent upon the courts to not to allow someone a benefit that is not due to them. This is evident from the this Court's judgment in ***State of M.P. v. Vyankatlal*****,** reported in **(1985) 2 SCC 544**, wherein the State of Madhya Pradesh had fixed the supply price of sugar higher than the ex-factory price. The difference between the two prices was supposed to be routed to the Madhya Bharat Government Sugar Fund with the purported purpose of augmenting the production of sugar. The refund of such difference between the two prices was claimed by sugar factories on the ground that the recovery of additional price was done to augment general revenues of the State and that the State had no legislative competence to fix additional prices for the purposes of a Sugar Fund. This Court agreed with the sugar factories and held the fixation of the additional price to be invalid. However, on the question of refund, it was observed by the Court that since the burden of the additional price was shifted to the end consumer, no refund was required to be granted to the sugar factories.

The relevant paragraphs of the said judgment are reproduced below:

> "*14. The principles laid down in the aforesaid cases were based on the specific provisions in those Acts but the same*

principles can safely be applied to the facts of the present case inasmuch as in the present case also the respondents had not to pay the amount from their coffers. The burden of paying the amount in question was transferred by the respondents to the purchasers and, therefore, they were not entitled to get a refund. Only the persons on whom lay the ultimate burden to pay the amount would be entitled to get a refund of the same. The amount deposited towards the Fund was to be utilised for the development of sugarcane. If it is not possible to identify the persons on whom had the burden been placed for payment towards the Fund, the amount of the Fund can be utilised by the Government for the purpose for which the Fund was created, namely, development of sugarcane. There is no question of refunding the amount to the respondents who had not eventually paid the amount towards the Fund. Doing so would virtually amount to allow the respondents unjust enrichment."

(Emphasis supplied)

135. In the case on hand, the respondents did not provide any evidence, declaration or undertaking that they had not passed the burden of loss onto the end consumers before either the learned Single Judge or the Division Bench of the High Court. It is only at the stage of second appeal that they have sought to rebut the burden of proof in this regard despite raising the said plea before the Division Bench. It is trite law that generally, parties are not allowed to introduce new documents in a second appeal because at this stage, the focus is on questions of law rather than on new evidence. While we do not approve of the conduct of the respondents in not adducing relevant evidence before the High Court when they first prayed for the relief of

refund, yet we may exercise our discretion and allow such additional documents for the purpose of properly addressing this issue.

136. The appellant company in its rejoinder, has further submitted that the additional documents brought on the record do not show the complete set of accounts with all relevant bills for the period annexed thereto. It is the case of the appellant that even the incomplete documents so submitted are not valid as the bills enclosed have not been certified by any authorised person and they do not carry printed serial numbers to justify their genuineness.

137. Upon a perusal of the additional documents provided by the respondents, we find that the CA certificates have been provided only in respect of the respondent nos. 1, 8, 9, 10, 11, 13, 14 and 16. As regards the bills attached, they have been provided only by respondent nos. 11 and 13, that too only nine and ten bills respectively. In our considered opinion, we cannot rely upon CA certificates of the balance sheets from the relevant period of time unless the same are bolstered by complete and irrefutable evidence. The burden of proof for showing that the excess amount has not been passed onto the end consumers, could have been satisfied only when the respondents brought on the record, a detailed description of all the transactions against which they wanted refund. Such demand ought to have been supported by the bills of all the transactions for which refund was sought.

138. When adjudicating questions of refunds to be made by the State or its instrumentalities, we must bear in mind that such refund will be granted from public money. Therefore, the relief of refund must be provided only when the same is corroborated by complete and irrefutable evidence. In the present case, only eight out of twenty-three respondents have placed additional documents before us. Unfortunately, such documents are also incomplete and do not evoke confidence in their veracity. In such circumstances, we are unable to place reliance on the additional documents put forth by the respondents.

139. Therefore, in view of the dictum of this Court in ***Mafatlal*** *(supra)*, we find merit in the submission canvassed by the appellant company.

140. We may, with a view to obviate any confusion, also reiterate that since the refund in terms of this Court's judgments in ***Tetulia Coke*** *(supra)*, ***SJ Coke*** *(supra)* and ***Horra Coke*** *(supra)* is not applicable to the case at hand, there is no occasion for us to deal with the issue of interest to be charged thereupon. Therefore, we do not touch upon the observations made by this Court in ***Domco*** *(supra)* at this point in that respect.

141. Before we part with the judgment, we must address a short but important fact brought to our notice by the respondents. It was brought to our attention that the learned Solicitor General had given an undertaking to this Court

when it was hearing the matter in ***Somal Pipes*** *(supra)* wherein he had stated that the refund of the excess amount charged for sale of coal prior to the notification of prices on 12.11.2007 would be granted provided that the parties seeking refund furnished the documents required by the appellant company for verification of purchase. As the period during which the Interim Coal Policy was in existence, that is 15.12.2006 to 31.03.2008, was included in such undertaking, the respondents herein have requested for refund.

142. We are of the view that such undertaking would hold good in the scenario where the validity of the Interim Coal Policy was not brought into dispute. Once the respondents herein filed the writ petition impugning the interim price determined by the appellant, the whole policy became sub-judice and the question of refund became contingent on the result of the litigation. Due to these developments, the undertaking of the learned Solicitor General paled into insignificance for the period between 15.12.2006 to 31.03.2008. Such undertaking, therefore, vests no right in the respondents to receive refund.

143. In such view of the matter, we are of the considered opinion that no refund could have been granted to the respondents herein even if we had declared

the Interim Coal Policy to be invalid. However, the said question is now moot.

E. CONCLUSION

144. For all the foregoing reasons, we have reached the conclusion that the High Court committed an egregious error in passing the impugned judgment. We are left with no other option but to set aside the impugned judgment and order dated 04.04.2012 passed by the High Court. In the result, the appeal succeeds and is hereby allowed.

145. We find that the question of validity of the Interim Coal Policy was important to be addressed, therefore, we allow the I.A. No. 1 of 2015.

146. For the reasons discussed in the foregoing, we find the Interim Coal Policy to be valid. As a consequence, the request of refund by the respondents' is dismissed.

147. The transfer cases tagged herewith are disposed of in terms of this judgment.

148. Pending application(s), if any, are disposed of.

…….J.
(J.B. PARDIWALA)

…….J.
(R. MAHADEVAN)

New Delhi.
12th September, 2025.