

A B.L.A. INDUSTRIES PRIVATE LIMITED

v.

UNION OF INDIA AND ANOTHER

(Writ Petition (Civil) No. 63 of 2015)

B AUGUST 17, 2022

**[N. V. RAMANA, CJI, KRISHNA MURARI AND  
HIMA KOHLI, JJ.]**

C *Mines and Minerals (Development & Regulation) Act, 1957 – Mineral Concession Rules, 1960 – Mines (Special Provisions) Ordinance, 2014 – Supreme Court in Manohar Lal Sharma v. Principal Secretary and Others [2014] 8 SCR 446 (the First Judgment) declared that the entire allocation of coal blocks, as per the recommendations made by the Screening Committee constituted by respondent no.1- Union of India (UOI) from 14th July, 1993 onwards and the*  
D *allocations made through the Government Dispensation Route after 1993 were arbitrary and illegal – Outcome of the illegal allocations was subject matter of subsequent judgment delivered in the same case reported as [2014] 12 SCR 110 (the Second Judgment) wherein Coal block allotments were divided in two categories on the basis of the documents furnished by UOI – First category of the allotments*  
E *was quashed outright as illegal and arbitrary – Second category comprised of 46 coal blocks mentioned in Annexure-1 and Annexure-2 that could possibly be “saved” from cancellation on imposition of certain terms and conditions, out of which 42 coal blocks were cancelled with a grace period of six months granted*  
F *for the said cancellation to take effect – Coal blocks allocated to the petitioner were mentioned in Annexure-1 extracted at the end of the Second Judgment – Petitioner’s name and mining lease area included by UOI in the Schedules appended to the 2014 Ordinance even though, the Screening Committee had not allocated any coal block to it – Held: Allocation of the coal block made in favour of*  
G *the petitioner did not run foul of the procedure prescribed in the MMDR Act and the MC Rules – Petitioner was not allocated the coal block either through the Screening Committee Route or the Central Government Dispensation Route, which fact was not pointed out by the UOI at the appropriate stage, that led to painting the*  
H *petitioner with the same brush as the other allottees listed in*

*Annexures- 1 and 2 – It was not a beneficiary of the flawed process, thus the consequences spelt out in the Second Judgment would not apply to it and thus, it cannot be called upon to pay penalty as compensatory payment, as demanded by UOI – UOI not entitled to claim payment of an additional levy for the coal extracted by the petitioner from the subject mine – Any such demand raised is set aside – Contempt Petition filed by UOI is also dismissed as meritless – Costs of Rs. 1,00,000/- be paid by UOI to the Petitioner – Deprecation.*

**Allowing the writ petition and dismissing the contempt petition, the Court**

**HELD: 1.1 The issue that requires to be answered in the instant case is whether the petitioner was allocated coal mines through the Screening Committee Route and/or the Government Dispensation Route. Only if the answer to the said question is in the affirmative, would the respondent No.1–UOI be entitled to claim compensatory payment from the petitioner in terms of the Second Judgment and not otherwise. [Para 14][196-B-C]**

**1.2 Admittedly, the petitioner had submitted a mining lease application to the Collector (Mining), Narsingpur, Madhya Pradesh on 8th November, 1994. The said application was forwarded to the Tehsildar, Gadarwara and the Mining Inspector, Narsingpur for seeking an inspection report for the area applied for. Ground work was done by the Tehsildar and the Mining Inspector who submitted a report of the proposed area which in turn was confirmed by the Mine Surveyor. The map of the applied area submitted by the petitioner was also certified by the Divisional Forest Officer and a consent from Chief Conservator of Forest was obtained. Additionally, a mineral analysis report was sought from the petitioner and after all the aforementioned information was gathered and analyzed, the Collector, Narsingpur addressed a letter dated 15th May, 1995 to the Principal Secretary, Mineral Resource Department, Bhopal (Madhya Pradesh) stating inter alia that if no Government authorized unit was prepared to operate in the area and the petitioner is granted the lease, it would result in development of the area and generation of employment. Therefore, the Collector (Mining) recommended**

- A grant of a mining lease for a period of 30 years to the petitioner in accordance with the Rules and the policy of the Government. Based on the aforesaid input received from the Collector (Mining), Narsingpur, the respondent No. 2–State Government wrote a letter dated 23rd December, 1995 to the respondent No.1
- B – UOI specifically stating inter alia that the petitioner had furnished all the relevant information as required under Rule 22 (3) (d) (e) (f) and (g) of the MC Rules, 1960 along with the coal mining plan of the specified area and after examination, the petitioner was found to be eligible under the Rules for grant of a mining lease. Stating that prior approval of the Central
- C Government was necessary under Section 5(1) of the MMDR Act, the respondent No. 2 – State Government requested the respondent No. 1–UOI to grant requisite approval in favour of the petitioner. It was in the aforesaid background that the recommendation received from the respondent No.2-State Government was acted on by the respondent No. 1–UOI and the
- D letter dated 27th August, 1997 was issued granting approval of the mining lease in favour of the petitioner. The aforesaid sequence of events belies the plea taken by the respondent No. 1–UOI that the mining lease was granted in favour of the petitioner solely on the basis of the recommendations made by
- E the Screening Committee. Simply because the petitioner had participated in the meetings conducted by the Screening Committee cannot be held against it. Participation in the said meetings can also not be taken to mean that the petitioner had applied directly to the respondent No. 1–UOI for grant of the mining lease. In fact, the records reveal that the letter dated
- F 21st June, 1996 issued by the respondent No. 1 – UOI stating that the petitioner’s proposal for identification of the captive mining block for supply of coal to the 24 MW captive power plant in Madhya Pradesh was considered in the meeting of the Screening Committee and was approved, never found its way to
- G the respondent No. 2 – State Government. This position is borne out on a perusal of the copies of the said letter endorsed by the respondent No. 1 – UOI to different authorities. At Serial No. (iv), the name of the “Chief Secretary, Government of Maharashtra, Mumbai” has been endorsed instead of the “Chief Secretary, Government of Madhya Pradesh” which fact stand
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confirmed from the reply dated 10th April, 2015 issued by the respondent No. 1 – UOI to an RTI query received by it. A similar stand has been taken by the respondent No. 2- State Government in its reply dated 6th April, 2015 to an RTI query received by the concerned department. The petitioner had also clarified that it had applied to the State Government for grant of a mining lease through the District Collector, Narsingpur, Madhya Pradesh in the prescribed form and it was the said proposal that had been recommended by the State Government to the respondent No. 1 – UOI for necessary approval. The said position is apparent from the letter dated 3rd July, 1996 addressed by the petitioner to the respondent No. 1 – UOI. [Paras 16, 17][197-A-H; 198-A-E]

1.3 Another relevant aspect that tips the scale in favour of the petitioner is the counter affidavit filed by the respondent No. 2 – State Government which is in consonance with the plea taken by the petitioner that the decision to grant the mining lease in its favour was not based on any allocation letter issued directly by the Central Government and/or the Screening Committee, but was founded on an independent consideration of the petitioner’s application made by the State Government and done in accordance with the provisions of the MMDR Act read with the MC Rules. Respondent No. 2 – State Government has also referred to its earlier affidavit dated 28 th October, 2013 filed before this Court in the connected matters decided by the First Judgment, wherein it had explained the procedure adopted for allocation of coal blocks by the Screening Committee constituted by the Central Government and had categorically averred that the said procedure was followed in all cases “Other than one”, where the application was made directly to the State Government and not to the Central Government. The said one case was explained to be that of the petitioner herein. In other words, the respondent No. 2 – State Government has affirmed the stand taken by the petitioner that the procedure of allocation of the coal block through the Screening Committee Route/Government Dispensation Route had not been followed in the case of the petitioner and therefore there was no illegality in allocation of the specified coal mines in its favour, unlike the other cases. In the light of the aforesaid stand taken by the respondent No. 2 – State Government which can be co-

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- A related with the correspondence placed on record, the plea of the respondent No. 1 – UOI that the case of the petitioner was considered by the Screening Committee in its 9th, 10th, 14th, 15th, 16th and 20th meetings, would not make the allocation illegal. No parity can be drawn between the petitioner and the other allottees of the coal blocks when the petitioner followed the correct procedure of applying through proper channel for grant of a mining lease which application on being received, was routed by the Office of the Collector (Mines), Narsingpur to the Mineral Resource Department, Government of Madhya Pradesh and onwards to the respondent No. 1 – UOI, for prior approval. [Paras 18, 19][200-A-G]

- 1.4 The mining lease granted in favour of the petitioner was not tainted by mala fides, as was the case of the other allottees. It was the respondent No. 2 – State Government that had undertaken a diligent exercise to examine the petitioner's application before recommending its case to the respondent No. 1 – UOI for grant of the mining lease. Founded on the said recommendations, the respondent No. 1 – UOI had issued the letter allocating the coal block to the petitioner and not the other way round. The respondent No.1 - UOI ought not to have included the name of the petitioner and the coal blocks allotted to it in Annexure – 1 filed before this Court that forms a part of the Second Judgment. Taking the contents of the said Annexures – 1 and 2 filed by the respondent No. 1 – UOI as true and correct, this Court passed the consequential order directing payment of compensation as an additional levy. The fact that the petitioner did not get an opportunity to inform the Court about the error on the part of the respondent No. 1 – UOI of including its name in Annexure – 1 can be discerned from the observations made in para 24 of the Second Judgment to the effect that the Court had not dealt with any individual case but only with the process of allotment of coal blocks which was found to be fatally flawed. Allocation of the coal block made in form of the petitioner did not run foul of the procedure prescribed in the MMDR Act and the MC Rules. The petitioner was not allocated the coal block either through the Screening Committee Route or the Central

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Government Dispensation Route, which fact was not pointed out by the respondent No. 1 – UOI at the appropriate stage, that led to painting the petitioner with the same brush as the other allottee listed in Annexures – 1 and 2. The petitioner was not a beneficiary of the flawed process thus, the consequences spelt out in the Second Judgment would not apply to it and therefore, it cannot be called upon to pay penalty as compensatory payment, as demanded by the respondent No. 1 – UOI. The respondent No. 1 – UOI is not entitled to claim payment of an additional levy for the coal extracted by the petitioner from the subject mine. Any such demand raised by the respondent No. 1 – UOI is hereby quashed and set aside. Contempt Petition (Crl.) No.7 of 2016 is dismissed as meritless. Litigation costs of ₹ 1,00,000/- (Rupees one lakh) shall be paid by the respondent No.1–UOI to the petitioner within four weeks. [Paras 20-24][200-H; 201-A-H; 202-A-C]

*Manohar Lal Sharma v. Principal Secretary and Others* (2014) 9 SCC 516 : [2014] 8 SCR 446; *Manohar Lal Sharma v. Principal Secretary and Others* (2014) 9 SCC 614 : [2014] 12 SCR 110 – referred to.

**Case Law Reference**

[2014] 8 SCR 446	referred to	Para 7	E
[2014] 12 SCR 110	referred to	Para 8	

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 63 of 2015.

Under Article 32 of The Constitution of India

Abhimanyu Bhandari, Mahesh Agarwal, Ayush Agarwal, Ms. Madhavi Agarwal, Victor Dass, Ms. Rubina, E. C. Agrawala, Advs. for the Petitioner.

Balbir Singh, ASG, Saurabh Mishra, AAG, Rajat Nair, Naman Tandon, Shyam Gopal, Samarvir Singh, Chinmayee Chandra, Gurmeet Singh Makker, Manoj Kumar, Sunny Choudhary, Mrs. Shally Bhasin, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

**HIMA KOHLI, J.**

B 1. The petitioner has approached this Court under Article 32 of the Constitution of India raising a grievance against the respondent No.1 – Ministry of Coal, Union of India<sup>1</sup> for having included its name and mining lease area in the Schedules appended to the Coal Mines (Special Provisions) Ordinance, 2014<sup>2</sup>, even though, the Screening Committee constituted by the Ministry of Coal, Union of India had not allocated any coal block to it.

C 2. A quick glance at the relevant chronology of events, as narrated in the petition, are considered necessary. The petitioner had submitted an application dated 8<sup>th</sup> November, 1994 under Section 2 of the Forest (Conservation) Act, 1980<sup>3</sup> to the District Collector, Narsinghpur District, Narsinghpur, Madhya Pradesh for permission to undertake coal mining on forest land. On 21<sup>st</sup> November, 1994, the petitioner applied to the respondent No.2 – State of Madhya Pradesh<sup>4</sup> in Form-I under the Mineral Concession Rules, 1960<sup>5</sup> for grant of a mining lease. On 7<sup>th</sup> April, 1995, the petitioner submitted an application to the respondent No.1 – UOI under Section 5(2) of the Mines and Minerals (Development & Regulation) Act, 1957<sup>6</sup> for approval of the mining plan.

E 3. On 15<sup>th</sup> May, 1995, the District Collector, Narsinghpur forwarded the petitioner's application to the Principal Secretary of the respondent No.2 – State Government with a recommendation for grant of a mining lease in its favour. In the very same month, in reply to a letter dated 5<sup>th</sup> May, 1995 received from the respondent No. 1 – UOI seeking essential details regarding the approval of the mining plan, the petitioner F furnished the necessary information under cover of letter dated 19<sup>th</sup> May, 1995. On 15<sup>th</sup> December, 1995, the respondent No. 1- UOI issued a letter to the petitioner calling upon it to appear before the Screening Committee in a meeting scheduled on 20<sup>th</sup> December, 1995 for screening the proposals relating to captive mining by power generation companies and companies engaged in the manufacture of iron and steel. Accordingly, G

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<sup>1</sup> For short 'UOI'

<sup>2</sup> For short 'Ordinance'

<sup>3</sup> For short 'FC Act'

<sup>4</sup> For short 'State Government'

<sup>5</sup> For short 'MC Rules'

H <sup>6</sup> For short 'MMDR Act'

the petitioner participated in the 9<sup>th</sup> Meeting held by the Screening Committee on 20<sup>th</sup> December, 1995. A

4. On 23<sup>rd</sup> December, 1995, the Department of Mineral Resources of the respondent No.2 – State Government addressed a letter to the respondent No.1 – UOI for seeking prior approval under Section 5(1) of MMDR Act for grant of mining lease for coal in favour of the petitioner for a period of 30 years over an area measuring 249.243 hectares situated in Villages Mohapani, Richhai and Chargaonkhurd. On 21<sup>st</sup> June, 1996, the respondent No.1 – UOI wrote a letter to the petitioner informing it that the Screening Committee had identified “Gotitoria (East & West) Coal Blocks” in Mohapani Coalfield, Madhya Pradesh to meet the coal requirements of the captive power plant and that the petitioner should approach the authorities for obtaining a mining lease of the specified blocks. Pertinently, a copy of the aforesaid letter was not marked by the respondent No.1 – UOI to the respondent No.2 – State Government. Instead, the same was marked to the Chief Secretary, Government of Maharashtra, Mumbai. The fact that the said letter was not endorsed to the respondent No.2 – State Government was also confirmed by the respondent No.1 – UOI in its reply dated 10<sup>th</sup> April, 2015 to a query raised in an application under the Right to Information Act, 2005<sup>7</sup>. B  
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5. On its part, the petitioner responded to the letter dated 21<sup>st</sup> June, 1996 sent by the respondent No.1 – Union of India by writing back on 3<sup>rd</sup> July, 1996, stating *inter alia* that it had already applied to the State Government in the prescribed form for grant of a mining lease through the District Collector, Narsinghpur, Madhya Pradesh and the said proposal had been recommended by the respondent No. 2 – State Government to the Ministry of Coal for grant of approval. The petitioner requested that the approval to the proposal forwarded by the respondent No.2 – State Government for grant of a mining lease be accorded by the respondent No.1 – UOI at the earliest. E  
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6. Finally, vide letter dated 27<sup>th</sup> August, 1997, addressed by the respondent No.1 – UOI to the respondent No.2 – State Government, approval was accorded by the Central Government for grant of a mining lease in favour of the petitioner under Section 5(1) of the MMDR Act. Pursuant to the aforesaid letter, the mining lease for the area in question was executed by the respondent No.2 – State Government in favour of the petitioner on 21<sup>st</sup> May, 1998. On the petitioner setting up a coal G

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<sup>7</sup> For short ‘RTI’



- A washery operation in September, 2001, coal mining operations were finally commenced in October, 2004.

7. After passage of almost a decade, a group of petitions in the nature of Public Interest Litigations were filed before this Court with the grievance that coal blocks had been arbitrarily allocated between the years 1993 to 2011 without adhering to the mandatory legal procedure prescribed under the MMDR Act and in breach of the relevant provisions of the Coal Mines (Nationalization) Act, 1973<sup>8</sup>, to favour ineligible companies tainted with *mala fides* and corruption. The said group of petitions were decided by a three Judges Bench of this Court, by a detailed judgment dated 25<sup>th</sup> August, 2014<sup>9</sup> in **Manohar Lal Sharma v. Principal Secretary and Others**<sup>10</sup> wherein, the prayer regarding quashing of the allocation of coal blocks to private companies made by the Central Government between 1993 to 2011, was considered extensively and it was held that the exercise undertaken by the Central Government of allocation of coal blocks, was neither traceable to the MMDR Act or the CMN Act and the practice and procedure adopted by the Central Government for allocation of coal blocks to the beneficiaries through the Screening Committee Route, was inconsistent with the extant law already enacted and the Rules framed. Consequently, this Court declared that the entire allocation of coal blocks, as per the recommendations made by the Screening Committee constituted by the respondent No.1 – Union of India from 14<sup>th</sup> July, 1993 onwards and the allocations made through the Government Dispensation Route after 1993 suffered from the vice of arbitrariness and were illegal.

8. The outcome of the illegal allocations were the subject matter of the subsequent judgment dated 24<sup>th</sup> September, 2014<sup>11</sup> delivered in the same case<sup>12</sup>. After carefully examining all the consequences of cancellation of the coal blocks, as put forth by the respondent No.1 – UOI and the learned counsel appearing for the allottees, this Court divided the coal block allotments in two categories on the basis of the documents that were furnished by the respondent No.1 – UOI. The first category was of allotments other than those that were mentioned by the respondent No.1 – UOI in Annexure-1 and Annexure-2, filed by it. The second

<sup>8</sup> For short 'CMN Act'

<sup>9</sup> For short 'First Judgment'

<sup>10</sup> (2014) 9 SCC 516

<sup>11</sup> For short 'Second Judgment'

<sup>12</sup> (2014) 9 SCC 614

category comprised of 46 coal blocks mentioned in Annexure-1 and Annexure-2 that could possibly be “saved” from cancellation on imposition of certain terms and conditions. The first category of the allotments was quashed outright by the Court as patently illegal and arbitrary. This left the second category of coal block allotments that had come into production or were likely to come into production.

9. Out of 46 coal blocks, mentioned in Annexure-1 and Annexure-2, 42 coal blocks were cancelled with a grace period of six months granted for the said cancellation to take effect. Pertinently, the coal blocks allocated to the petitioner herein were mentioned at Sr. No.22 and 23 of Annexure-1 that was extracted at the end of the Second Judgment. Besides deferment of cancellation, this Court issued the following directions:

“38. In addition to the request for deferment of cancellation, we also accept the submission of the learned Attorney General that the allottees of the coal blocks other than those covered by the judgment and the four coal blocks covered by this order must pay an amount of Rs 295 per metric tonne of coal extracted as an additional levy. This compensatory amount is based on the assessment made by CAG. It may well be that the cost of extraction of coal from an underground mine has not been taken into consideration by CAG, but in matters of this nature it is difficult to arrive at any mathematically acceptable figure quantifying the loss sustained. The estimated loss of Rs 295 per metric tonne of coal is, therefore, accepted for the purposes of these cases. The compensatory payment on this basis should be made within a period of three months and in any case on or before 31-12-2014. The coal extracted hereafter till 31-3-2015 will also attract the additional levy of Rs 295 per metric tonne.”

10. We have been informed in the course of arguments that the coal blocks in question allocated to the petitioner have already been allocated to a third party. Learned counsel for the petitioner states that the only issue that survives for consideration in this petition relates to the liability of the petitioner to pay compensation towards the coal extracted as an additional levy demanded by the respondent No.1 – UOI, in terms of the directions issued in para 38 of the Second Judgment extracted above. Notably, respondent No.1 – UOI has filed a contempt petition registered as Contempt Petition (Criminal) No. 7/2016 alleging *inter*

A *alia* that the petitioner herein is in willful disobedience of the First and Second Judgments that had directed payment of additional levy compensatory amount @ Rs. 295 per MT on the allottees of the coal blocks which was to be paid latest by 31<sup>st</sup> December, 2014. Stating that  
B against prior allottees, the captioned contempt petition has been filed against the petitioner herein on account of its failure to pay the additional levy for the second phase, i.e., for coal produced from 25<sup>th</sup> September, 2014 till 31<sup>st</sup> March, 2015 that was directed to be paid by 30<sup>th</sup> June, 2015.

C 11. Mr. Abhimanyu Bhandari, learned counsel for the petitioner has argued that the erroneous inclusion of the name of the petitioner in the list of 46 allottees of coal blocks and its mining lease area in the Schedule appended to the Ordinance as also the erroneous inclusion of its name at serial No. 22 and 23 in Annexure-1 filed by the respondent  
D No. 1 – UOI before this Court, has resulted in cancellation /quashing of the lease that was validly granted in its favour. The petitioner was neither the beneficiary of the Screening Committee Route nor of the Government Dispensation Route. It had followed the correct procedure prescribed under the MMDR Act/MC Rules by submitting an application for grant of a lease directly to the respondent No. 2 - State Government and only  
E after the latter had processed the application and recommended the same for approval to the respondent No.1 – UOI, was the mining lease granted in favour of the petitioner. Therefore, the petitioner ought not to be saddled with any compensation/levy towards the coal extracted. Learned counsel submitted that had an opportunity of hearing being granted to the petitioner, the above position would have been clarified but no such opportunity  
F was given.

G 12. *Per Contra*, Mr. Balbir Singh, learned ASG appearing for the respondent No.1 – Union of India explained that the levy has been imposed in principle on the beneficiaries of illegal allocation just like the petitioner herein. The additional levy is in the nature of penalty as well as compensation for the loss caused to the public exchequer. He stated that the object and purpose of imposition of the additional levy was that since the process of allocation was found to be fundamentally flawed by this Court therefore, all the beneficiaries of the said flawed process including the petitioner herein ought to suffer the consequences and compensate the public exchequer for the loss caused. Stating that as it  
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was the Screening Committee constituted by the respondent No. 1 – A  
UOI that had identified Gotitoria (East and West Blocks) in Mohapani  
Coalfield in Madhya Pradesh for captive mining by the petitioner herein  
to meet the coal requirements of the captive power plant vide allocation  
letter dated 21<sup>st</sup> June, 1996, the petitioner was covered under both the  
judgments but it has failed to pay any amount towards additional levy in B  
the first phase that was to be paid on or before 31<sup>st</sup> December, 2014 and  
the second phase that was to be paid on or before 30<sup>th</sup> June, 2015. He  
specifically referred to the First Judgment in particular, para 125 thereof  
to urge that the petitioner’s name was mentioned along with some other  
allottees in the 11<sup>th</sup> Meeting of the Screening Committee held on 26<sup>th</sup>- C  
27<sup>th</sup> September, 1997 and once the allocations made by the Central  
Government on the recommendations of the Screening Committee have  
been held by this Court to be illegal, the petitioner cannot claim any  
different treatment from that extended to the other allottees. To rebut  
the contention of the learned counsel for the petitioner that principles of  
natural justice have been violated in the instant case, as the petitioner D  
was not afforded an opportunity of hearing, learned ASG had drawn the  
attention of this Court to the observations made in the Second Judgment  
to the effect that all parties who were adversely affected, were duly  
given a hearing before the First Judgment was pronounced. He submitted  
that the petitioner was afforded an opportunity of hearing along with  
several other allottees and only thereafter the First and Second Judgments E  
were passed.

13. In his rejoinder, learned counsel for the petitioner has  
vehemently opposed the submission made on behalf of the respondent  
No. 1 – UOI that the petitioner was afforded an opportunity of hearing  
by the Court which he submits is quite apparent from a perusal of para F  
24 of the Second Judgment, where this Court has itself observed that  
“*The judgment did not deal with any individual case. It dealt only  
with the process of allotment of coal blocks and found it to be illegal  
and arbitrary.*” He reiterated the fact that the mining lease was granted  
in favour of the petitioner in the same manner and sequence as was G  
approved by this Court in the First Judgment and therefore the petitioner’s  
case did not fall foul of the said judgment. To reinforce the aforesaid  
stand, learned counsel also alluded to the counter affidavit filed by the  
respondent No. 2 – State Government on 09<sup>th</sup> February, 2016 which  
supports the plea of the petitioner that the State Government’s decision  
to grant a mining lease in its favour was not the result of any allocation H

- A letter issued by the Central Government and/or the Screening Committee, but was based on its own independent consideration done strictly under the provision of MMDR Act read with the MC Rules.

14. We have heard the rival submissions advanced by learned counsel for the parties and perused the records in the backdrop of the First Judgment dated 25<sup>th</sup> August, 2014 and the Second Judgment dated 24<sup>th</sup> September, 2014 rendered in the case of ***Manohar Lal Sharma (supra)***. The issue that requires to be answered in the instant case is whether the petitioner was allocated coal mines through the Screening Committee Route and/or the Government Dispensation Route. Only if the answer to the said question is in the affirmative, would the respondent No. 1 – UOI be entitled to claim compensatory payment from the petitioner in terms of the Second Judgment and not otherwise.

15. A perusal of the First Judgment leaves no manner of doubt that this Court held that the practice and procedure adopted by the respondent No. 1 – UOI for allocation of coal blocks through the administrative route was not consistent with the statute and the Rules and that the legal regime under the MMDR Act imposes a statutory obligation upon the State Governments to recommend or not to recommend to the Central Government, grant of prospecting license or mining lease for coal. This Court also questioned the entire exercise of allocation of coal mines through the Screening Committee Route and observed that it suffered from the vice of arbitrariness; that there was no evaluation on merits and no *inter se* comparison of the applicants; that the determination of the Screening Committee was subjective and most of the companies which had been allocated coal blocks, were not engaged in the production of steel, power or cement at the time of allocation and nor did they disclose in their applications whether or not the power, steel or cement plants were operational. Noting the aforesaid legal flaws that went to the root of the matter, the entire allocation of the coal blocks in terms of the recommendations made by the Screening Committee in 36 meetings conducted by it from 14<sup>th</sup> July, 1993 onwards and the consequential allocation through the Central Government Dispensation Route were struck down as being unfair, ambiguous and in gross breach of the guidelines.

16. To test the veracity of the submission made by the petitioner that in its case, the procedure laid down was followed “to the T” for allocation of the coal blocks, it is imperative to examine the chronology

of the events and the documents placed on record. Admittedly, the petitioner had submitted a mining lease application to the Collector (Mining), Narsingpur, Madhya Pradesh on 8<sup>th</sup> November, 1994. The said application was forwarded to the Tehsildar, Gadawara and the Mining Inspector, Narsingpur for seeking an inspection report for the area applied for. Ground work was done by the Tehsildar and the Mining Inspector who submitted a report of the proposed area which in turn was confirmed by the Mine Surveyor. The map of the applied area submitted by the petitioner was also certified by the Divisional Forest Officer and a consent from Chief Conservator of Forest was obtained. Additionally, a mineral analysis report was sought from the petitioner and after all the aforementioned information was gathered and analyzed, the Collector, Narsingpur addressed a letter dated 15<sup>th</sup> May, 1995 to the Principal Secretary, Mineral Resource Department, Bhopal (Madhya Pradesh) stating *inter alia* that if no Government authorized unit was prepared to operate in the area and the petitioner is granted the lease, it would result in development of the area and generation of employment. Therefore, the Collector (Mining) recommended grant of a mining lease for a period of 30 years to the petitioner in accordance with the Rules and the policy of the Government. Based on the aforesaid input received from the Collector (Mining), Narsingpur, the respondent No. 2 – State Government wrote a letter dated 23<sup>rd</sup> December, 1995 to the respondent No. 1 – UOI specifically stating *inter alia* that the petitioner had furnished all the relevant information as required under Rule 22 (3) (d) (e) (f) and (g) of the MC Rules, 1960 along with the coal mining plan of the specified area and after examination, the petitioner was found to be eligible under the Rules for grant of a mining lease. Stating that prior approval of the Central Government was necessary under Section 5(1) of the MMDR Act, the respondent No. 2 – State Government requested the respondent No. 1 – UOI to grant requisite approval in favour of the petitioner. It was in the aforesaid background that the recommendation received from the respondent No. 2- State Government was acted on by the respondent No. 1 – UOI and the letter dated 27<sup>th</sup> August, 1997 was issued granting approval of the mining lease in favour of the petitioner.

17. The aforesaid sequence of events belies the plea taken by the respondent No. 1 – UOI that the mining lease was granted in favour of the petitioner solely on the basis of the recommendations made by the Screening Committee. Simply because the petitioner had participated in the meetings conducted by the Screening Committee cannot be held

A against it. Participation in the said meetings can also not be taken to mean that the petitioner had applied directly to the respondent No. 1 – UOI for grant of the mining lease. In fact, the records reveal that the letter dated 21<sup>st</sup> June, 1996 issued by the respondent No. 1 – UOI stating that the petitioner’s proposal for identification of the captive mining block for supply of coal to the 24 MW captive power plant in Madhya Pradesh

B was considered in the meeting of the Screening Committee and was approved, never found its way to the respondent No. 2 – State Government. This position is borne out on a perusal of the copies of the said letter endorsed by the respondent No. 1 – UOI to different authorities. At Serial No. (iv), the name of the “Chief Secretary, Government of

C Maharashtra, Mumbai” has been endorsed instead of the “Chief Secretary, Government of Madhya Pradesh” which fact stand confirmed from the reply dated 10<sup>th</sup> April, 2015 issued by the respondent No. 1 – UOI to an RTI query received by it. A similar stand has been taken by the respondent No. 2- State Government in its reply dated 6<sup>th</sup> April, 2015

D to an RTI query received by the concerned department. The petitioner had also clarified that it had applied to the State Government for grant of a mining lease through the District Collector, Narsingpur, Madhya Pradesh in the prescribed form and it was the said proposal that had been recommended by the State Government to the respondent No. 1 – UOI for necessary approval. The said position is apparent from the letter

E dated 3<sup>rd</sup> July, 1996 addressed by the petitioner to the respondent No. 1 – UOI. The letter dated 27<sup>th</sup> August, 1997 issued by the respondent No. 1 – UOI to the respondent No. 2 – State Government, contents whereof are extracted below for ready reference, is also on similar lines: -

“13011/1/96-CA

Dated : 27.08.1997

F

To,

Shri A.K. Trivedi,  
Under Secretary,  
Department of Mineral Resources,  
Government of Madhya Pradesh,  
G Ballav Bhawan,  
Bhopal

Subject: Grant of mining lease over 2.49 sq. kms. of Mohpani Block M/s BLA Industries-communication of Prior approval of the Central Government Regarding.

H

Sir,

A

I am directed to refer to the endorsement of this Ministry's letter of even number dated 08.07.1997, addressed to Shri Anup Kumar Agarwalla, President, BLA Industries, wherein it was stated that fresh recommendation of the State Government for grant of Mining lease over 2.49 Sq. kms will be required. However, this has been re-examined in this Ministry. It has been decided to consider the recommendations of the State Government dated 23.12.95 for grant of mining lease over 2.49 sq. kms. Particularly in view of the fact that the area over which the mining plan has been prepared and approved and the area which as been recommended by the State government for grant of mining lease, are same, though the date of recommendation precedes substantially the date of communication of the Central Government's approval on the mining plan.

B

C

2. In view of the above, the Central Government, on consideration of the recommendations of the State Government vide their letter No. 3-72/95/12/2/5 dated 23.12.95 for grant of mining lease over an area of 249 .243 hectares in Mohapani and two other villages in Narsinghpur District of Madhya Pradesh, the approval of the Central Government for grant of mining lease in favour of M/s BLA Industries over an area of 249.243 hectares as recommended is hereby accorded under section 5(1) of the Mines and Minerals (Regulation and Development) Act, 1957.

D

E

3. The area co-ordinates of the mining block of 2.49 Sq. Kms. Over which the approval of the Central Government has been communicated for grant of mining lease are detailed in the Annexure for accurate and correct physical identification of the Coal Mining block. These may appropriately be incorporated in the mining lease deed executed between the State Government and M/s BLA Industries Limited. A copy of the lease deed may also be furnished to the Ministry of Coal.

F

G

Yours faithfully,  
Sd/-  
(A. Banerjee)  
Director"

H



A 18. Another relevant aspect that tips the scale in favour of the  
petitioner is the counter affidavit filed by the respondent No. 2 – State  
Government which is in consonance with the plea taken by the petitioner  
that the decision to grant the mining lease in its favour was not based on  
any allocation letter issued directly by the Central Government and/or  
the Screening Committee, but was founded on an independent  
B consideration of the petitioner’s application made by the State Government  
and done in accordance with the provisions of the MMDR Act read  
with the MC Rules. Respondent No. 2 – State Government has also  
referred to its earlier affidavit dated 28<sup>th</sup> October, 2013 filed before this  
Court in the connected matters decided by the First Judgment, wherein  
C it had explained the procedure adopted for allocation of coal blocks by  
the Screening Committee constituted by the Central Government and  
had categorically averred that the said procedure was followed in all  
cases “*Other than one*”, where the application was made directly to  
the State Government and not to the Central Government. The said one  
D case was explained to be that of the petitioner herein.

19. In other words, the respondent No. 2 – State Government has  
affirmed the stand taken by the petitioner that the procedure of allocation  
of the coal block through the Screening Committee Route/Government  
Dispensation Route had not been followed in the case of the petitioner  
and therefore there was no illegality in allocation of the specified coal  
E mines in its favour, unlike the other cases. In the light of the aforesaid  
stand taken by the respondent No. 2 – State Government which can be  
co-related with the correspondence placed on record, the plea of the  
respondent No. 1 – UOI that the case of the petitioner was considered  
by the Screening Committee in its 9<sup>th</sup>, 10<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup> and 20<sup>th</sup>  
F meetings, would not make the allocation illegal. No parity can be drawn  
between the petitioner and the other allottees of the coal blocks when  
the petitioner followed the correct procedure of applying through proper  
channel for grant of a mining lease which application on being received,  
was routed by the Office of the Collector (Mines), Narsingpur to the  
Mineral Resource Department, Government of Madhya Pradesh and  
G onwards to the respondent No. 1 – UOI, for prior approval.

20. Given the aforesaid facts and circumstances of the instant  
case, we find force in the submission made by the learned counsel for  
the petitioner that the mining lease granted in favour of the petitioner  
was not tainted by *mala fides*, as was the case of the other allottees. It  
H

was the respondent No. 2 – State Government that had undertaken a diligent exercise to examine the petitioner’s application before recommending its case to the respondent No. 1 – UOI for grant of the mining lease. Founded on the said recommendations, the respondent No. 1 – UOI had issued the letter allocating the coal block to the petitioner and not the other way round. Given the aforesaid position, the respondent No. 1 - UOI ought not to have included the name of the petitioner and the coal blocks allotted to it in Annexure – 1 filed before this Court that forms a part of the Second Judgment. Taking the contents of the said Annexures – 1 and 2 filed by the respondent No. 1 – UOI as true and correct, this Court passed the consequential order directing payment of compensation as an additional levy. The fact that the petitioner did not get an opportunity to inform the Court about the error on the part of the respondent No. 1 – UOI of including its name in Annexure – 1 can be discerned from the observations made in para 24 of the Second Judgment to the effect that the Court had not dealt with any individual case but only with the process of allotment of coal blocks which was found to be fatally flawed.

21. It is therefore held that allocation of the coal block made in form of the petitioner did not run foul of the procedure prescribed in the MMDR Act and the MC Rules. The petitioner was not allocated the coal block either through the Screening Committee Route or the Central Government Dispensation Route, which fact was not pointed out by the respondent No. 1 – UOI at the appropriate stage, that led to painting the petitioner with the same brush as the other allottee listed in Annexures – 1 and 2. Having held that the petitioner was not a beneficiary of the flawed process, the consequences spelt out in the Second Judgment would not apply to it and therefore, it cannot be called upon to pay penalty as compensatory payment, as demanded by the respondent No. 1 – UOI.

22. The upshot of the aforesaid discussion is that the respondent No. 1 – UOI is not entitled to claim payment of an additional levy for the coal extracted by the petitioner from the subject mine. Any such demand raised by the respondent No. 1 – UOI is hereby quashed and set aside. The writ petition is allowed on the aforesaid terms. Contempt Petition (Crl.) No.7 of 2016 is dismissed as meritless.

23. Before parting with this matter, we are constrained to make certain observations regarding the conduct of the respondent no. 1 –

- A UOI. Here is a case where a private party followed all the rules and the law, as applicable, before investing large sums of money to undertake business. In fact, it appears from the facts of the case that it was the respondent no. 1 – UOI that did not follow the letter of the law. But ultimately, it was the private party that had to suffer the consequences of the careless and callous approach of the respondent no. 1 – UOI.
- B To compound the petitioner’s woes, the respondent no. 1 – UOI filed an affidavit before this Court including the petitioner in the list of errant mine owners, based on its own unlawful conduct. It did not undertake the necessary due diligence to determine as to whether the petitioner had been allotted the mine through the lawful procedure. As a result of
- C this callous, careless and casual approach of the respondent no. 1 – UOI, the present petitioner had to suffer loss and ignominy.

24. Therefore, litigation costs quantified at ₹ 1,00,000/- (Rupees one lakh) shall be paid by the respondent No.1 – UOI to the petitioner within four weeks.