CASE NO.:
Appeal (civil) 109\026125 of 1999

PETITIONER:
Pallavi Refractories & Ors. Etc.

RESPONDENT:
M/s. Singareni Collieries Co. Ltd. Etc.

DATE OF JUDGMENT: 04/01/2005

BENCH:
ASHOK BHAN & A.K. MATHUR

JUDGMENT:
J U D G M E N T
With
Civil Appeal No.15 of 2005
(arising out of SLP(C) N. 2783 of 1999)

BHAN, J.

Leave granted in SLP (C) No. 2783 of 1999.

These appeals by grant of special leave have been filed by the writ petitioners \026 the appellants herein, against the common order passed by the High Court of Andhra Pradesh in a group of writ petitions. The High Court in the impugned judgment has upheld Clause 10 of the Price Notification No. 3/96-97 dated 14.3.1997 issued by M/s. Singareni Collieries Co. Ltd. (hereinafter, for short 'the respondent').

Appellants are proprietors of various coal based small-scale industries who draw 'C' and 'D' grade coal from the respondent. Respondent is a state owned company in which 51% shares are held by the State of Andhra Pradesh and 49% shares are held by the Government of India.

Government of India has identified 7 core/priority sector industries. They are: 1) Exports, 2) Power Utilities, 3) Defence, 4) Railways (Loco), 5) Fertilizers, 6) Steel including Sponge Iron and Pig Iron and 7) other metallurgical industries who use coal/coke for their own use. Core/priority sector industries alone consume about 90-95% of the coal produced and left over 5% plus are supplied to the non-core/unlinked sector industries to which the appellants belong.

The Government of India has been fixing the grades and prices of the coal produced in India in pursuance of clauses 3 and 4 of the Colliery Control Order, 1945 as continued in force by Section 16 of the Essential Commodities Act, 1955. It appears that the company had accumulated heavy losses and was reeling under financial problems. The

Government of India by its notification dated 22.3.1996 issued under clause 3(2) of the Colliery Control Order, 1945 deregulated the price and distribution of non-coking coal of grades 'A', 'B' & 'C'. By a further notification dated 12.3.1997, decontrol was extended to some other grades of coal as well. By a communication dated 13.3.1997 addressed by the Government of India (Ministry of Coal), it was clarified that the Board of the respondent company "will henceforth determine the economic price to be charged for the coal produced from time to time." Soon thereafter, the respondent issued the Price Notification No. 3/96-97 dated 14.3.1997. Clause 10 of the Price Notification provided that non-core/unlinked sector industries are required to pay 20% additional price over and above the notified prices. Clause 10 reads as follows : "Any linked customers who are drawing B, C and D grades of coal are required to pay 20% additional price over and above the notified prices."

Being aggrieved with the above stated clause in the price notification issued by the respondent, the appellants filed various writ petitions in the High Court of Andhra Pradesh challenging the levy of additional price by the respondent being discriminatory and violative of Article 14 of the Constitution of India. According to them, the classification of linked and unlinked industries for the purpose of pricing was irrational and gave rise to hostile discrimination. It was averred that the respondent has effected a substantial price variation under the guise of additional levy and the same amounts to dual pricing. It was also averred that the price fixed was arbitrary and excessive.

The respondent in its reply contended that fixation of price is within its discretion and coal being not a controlled commodity now, the respondent could not be precluded from fixing appropriate prices for its produce including dual price. It was averred that the limited grievance of the appellants was against the alleged discriminatory treatment between core sector/linked sector industries and other industries. Having regard to the financial position of the respondent, having accumulated loss of more than Rs. 1000 crores and additional cost of production, there was nothing wrong in charging higher price from the non-core/unlinked sector customers leaving a comfortable profit margin to the respondent. Dual price has been resorted to by the respondent after taking into consideration the policy of the Government of India as well as the cost of production of the coal of respective grades. The price was fixed looking into the various economics of the cost structure of the production of coal. It was

averred that sale price was fixed keeping in view the respondent's financial capacity, operational costs and importance of certain category of industries in larger national interest. It was denied that there was any arbitrariness or unreasonableness in the price structure.

In the High Court the appellants gave up their challenge to the fixation of the price being arbitrary or unconscionably high or that the respondent has fixed the price of 20% extra according to its whims and fancies without appraisal of relevant factors. The only point argued before the High Court was with regard to dual pricing. According to the appellants, the non-core/unlinked sector customers could not be charged more than what the respondent was charging from the core sector/linked sector customers.

The High Court dismissed the writ petitions with costs finding no infirmity in Clause 10 of the Price Notification. It was held that Clause 10 of the Price Notification did not violate Article 14 of the Constitution of India. It was observed that core sector/linked sector industries had been given priority from the beginning so as to ensure regular supplies of coal to them. This benefit has been extended to them due to their intrinsic importance and the role played by such industries in nation building activities and the propensities of public utility possessed by them. Lesser price was charged from them because of the same considerations. Core sector industries, besides playing a vital role in the economy of the country, were bulk consumers and coal formed a major input and hence they cannot be compared with the non-core sector. Any substantial increase in the price of the coal from them would have a substantial effect on the cost of finished products and the cost of services to public in general. It was observed that any increase in the price of coal from them shall have a chain reaction on the budgetary allotments and will require additional funds. In the case of non-core sector/unlinked sector industries, consumption of coal is minimal and the increase of price of coal from them will not result in any appreciable increase in the cost of products manufactured by such industries. The extent of bulk consumption of coal by core sector/linked sector industries call for a special treatment. It cannot be said that by evolving dual price policy and charging lesser price from the core/linked sector industries, the respondent has treated equals as unequals or that the classification made was not rational.

Being aggrieved by the dismissal of the writ petitions by the High Court, the present appeals have been filed.

The only point argued before us in these appeals is whether resort to dual price fixation classifying its customers into core sector/linked sector and non-core sector/unlinked sector by the respondent and charging different prices for coal from such customers is discriminatory treating the equals as unequals and, therefore, violative of Article 14 of the Constitution of India.

Essence of the submissions advanced by Shri T.N. Rao, learned counsel appearing for the appellants, is that classification of core/linked sector industries and non-core/unlinked sector industries by the respondent for the purpose of pricing is irrational and gives rise to hostile discrimination. The respondent being the State-controlled company having monopoly business cannot discriminate between customers at its whims and apply double standards in charging the price for coal. The classification carved out between core and non-core industries for the purpose of price fixation is arbitrary and unreasonable and an instrumentality of State, even though running a business activity cannot take the stand that it has unfettered freedom in charging any prices it deems fit from any customer. That there is no reasonable basis for the classification introduced for the first time and the appellants cannot be subjected to bear the brunt of much higher prices. As against this, Shri Altaf Ahmed, learned senior counsel appearing for the respondents submitted that fixation of price is within the discretion of the company and coal being not a controlled commodity now, the company cannot be precluded from fixing appropriate price for the produce including dual price and no customer has any say in the matter. It was submitted that a mandamus could not be issued to the respondent to charge lesser price from the appellants or to charge uniform price from all the customers. That number of factors such as financial problems of the company, operational cost and importance of certain categories of industries in the larger national interest can be legitimately taken into account while fixing the price. That there was enough justification for adopting dual pricing having regard to the financial position of the company and the additional cost of production peculiar to the respondent, there was nothing wrong in charging a higher price from non-core/unlinked sector consumers which would leave a comfortable margin of profit to the company.

This Court in Union of India v. Cynamide India Ltd. [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:-

"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 revaluate 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]

A Constitution Bench of this Court in M/s. Shri SitaRam Sugar Co. Ltd. v. Union of India [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 was 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 rational basis.

Seven industries, reference to which has already been made, have been identified as core sector consumers. These consumers are extended inter se priorities in the supply of coal by granting appropriate linkages. No linkage is required for Defence, Railways and for Exports. The coal linkages, as far as these industries are concerned, are monitored periodically by the Standing Linkage Committee. Guidelines for giving linkages are issued under the provisions of clause 8 of the Colliery Control Order, 1945 by the Central Government. The priority given to the linked customers in the matter of supply of coal are not under challenge before us. The industries which do not fall in the core sector are classified as non-core/unlinked sector industries.

In the present case admittedly the respondent is facing heavy financial deficit having accumulated loss of more than Rs. 1,000 crores. The decontrol of prices was done with the predominant object to enable the respondent and other coal companies which were in red to wriggle out of the financial predicament to some extent and to derive returns so as to prevent or minimise further losses. An industrial company completely held by the Government cannot be denied the right to keep in view the consideration of commercial expediency while formulating its policies in the discharge of its functions. Though absolute and unfettered freedom cannot be granted to the State-owned company but a wide latitude and flexible approach should be conceded to it especially when the price fixation is outside the realm of statutory control.

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, the 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 fertilizers, 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 the 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 an everyday concern for a common man.

The primary consideration for placing the seven industries in the core-sector is of 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 service to the public. Counsel for the respondent has submitted before us that 70% of the cement manufactured by the country is utilized 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 any appreciable increase in the cost of products manufactured by non-linked sector industries.

Keeping in view the intrinsic importance of the core-sector consumers and their importance in the national building activities and the extent of consumption of coal either for captive power generation of 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 organizations like Electricity Boards, 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.

Keeping in view the law laid down by this Court in Union of India v. Cynamide India Ltd.(supra) and M/s. Shri SitaRam Sugar Co. Ltd. v. Union of India (supra), 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 of India. By evolving the dual price policy and charging lesser price from the core-sector industries the respondent has not treated equals as unequals or that the classification made was not rational.

For the reasons stated above, we do not find any merit in these appeals and dismiss the same. The parties shall bear their own costs in this Court.