

PETITIONER:
COAL INDIA LTD. & ANR.

Vs.

RESPONDENT:
M/S CONTINENTAL TRANSPORT AND CONSTRUCTION CORPORATION & ORS.

DATE OF JUDGMENT: 18/03/1997

BENCH:
S.C. AGRAWAL, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:
[WITH CIVIL APPEAL NO. 2005 OF 1997
@ S.L.P. (Civil) No. 26366 of 1995]
J U D G M E N T

S.C. AGRAWAL, J. :-
Special leave granted.

These appeals are directed against the judgment of the Calcutta High Court dated October 31, 1995 in appeals arising out matters Nos. 940 and 941 of 1994 decided by the learned single Judge of the High Court by order dated April 6, 1995. Since they raise common questions, they are being disposed of together.

In exercise of the power conferred on it by sub-rule (2) of Rule 81 of the Defence of India Rules, 1939 the Central Government has made the Colliery Control Order, 1945 (hereinafter referred to as 'the Colliery Control Order') which has been continued in force and is now in operation by virtue of Section 16 of the Essential Commodities Act, 1955, since coal is an essential commodity under Section 2(a)(ii) of the said Act. The Colliery Control Order makes provisions for regulating the production, supply and distribution of coal. The Colliery Control Order postulates that coal shall be supplied by the colliery owner to a person engaged in the business of production, supply and distribution of or trade or commerce in coal on the basis of an order of allotment issued by the Coal Controller. By Notification dated July 24, 1967, the Central Government authorised a person to acquire or purchase or to despatch or to divert or transfer, without any order of allotment or written authority, non-coking coal of all grades produced in all coal fields and coking coal not required for metallurgical consumers and coal produced in Assam subject to the condition that such coal shall be consumed within India. By Notification dated June 4, 1992 the earlier Notification dated July 24, 1967 was amended and the authorisation to acquire or purchase, or to despatch or to divert or transfer, without any order of allotment or written authority, was given in respect of (i) non-coking coal of all grades produced in the States of Assam and Meghalaya, (ii) coking coal produced in the States of Assam and Meghalaya which is not required for metallurgical consumers provided that such coking/non-coking

coal was not produced in the coal mines of the Coal India Limited or any of its subsidiaries, and (iii) the coal sold under any Liberalised Sales Scheme, framed by the Government of India in the Ministry of Coal, by the Coal India Limited or any of its subsidiaries, and the Singareni Collieries Company Limited, if such sale was not dependent on the condition that such coal would be used by the first purchaser only and was not meant for trading or sale. By Notification dated August 25, 1993 there was further amendment in the Notification dated July 24, 1967, as amended by Notification dated June 4, 1992, whereby in respect of coal sold by Coal India Limited (for short 'CIL') or any of its subsidiaries under any liberalised sale scheme framed by the Government of India it was prescribed that the collieries for which the coal is to be sold should be duly approved for the purpose by the Government of India and that the coal so sold would not, except in the case of actual user, be subject to the injunction against trading or resale. In accordance with said notification, Liberalised Sales Scheme has been framed from time to time.

These appeals relate to sale of coal by Central Coalfields Limited (for short 'CCL'), a subsidiary of CIL, the appellant in the appeals.

In Civil Appeal arising out of Special Leave Petition No. 25983 of 1995 we are concerned with the sale of coal under the Liberalised Sales Scheme-II (for short "LSS-II") framed by CIL in August 1992 in pursuance of Notifications dated July 24, 1967 and June 4, 1992. In September 1992 CIL published an advertisement in the 'Statement' inviting offers for purchase in respect of coal offered for sale under LSS-II. In the said advertisement the quantity and quality of coal that was being offered in the various collieries belonging to the subsidiaries of CIL were specified. Among the collieries mentioned in the advertisement were Urimari and Jarangdih collieries of CCL. In respect of Urimari Colliery 1.35 lac tonnes of Grade-6 Steam Coal was offered and in respect of Jarangdih Colliery 1.75 lac tonnes of Grade W-III Steam Coal was offered. In response to the said advertisement m/s Continental Transport and Construction Corporation, respondent No. 1 In both the appeals (hereinafter referred to as 'the petitioners'). Sent a letter dated September 16, 1992 to the General Manager (Sales), CCL, offering to purchase 1.35 lac tonnes of Grade-B Steam Coal from Urimari Colliery and 1.75 lac tonnes of Grade W-III Steam Coal from Jarangdih Colliery. By allotment letter dated April 7, 1993, CCL allotted to the petitioners 32,400 MT Grade-B Steam Coal from Urimari Colliery in Sayal area in response to the offer made by the petitioners on September 16, 1992. By another allotment letter dated April 20/21, 1993 CCL allotted to the petitioners 50,750 MT Grade W-III Steam Coal from Jarangdih Colliery. The validity of the said allotments was up to March 31, 1994, but the period of the said allotments was extended. The case of the petitioners is that Steam Coal at Urimari and Jarangdih Collieries was not matching to the declared Grades-B and W-III respectively and was of lower grades. Sirka Colliery falling in Argada area also belongs to CCL. The petitioners, having come to know that sufficient stocks of Grade-B Steam Coal was available for disposal at Sirka Colliery, wrote a letter dated April 7, 1994 to the General Manager (Argada area) of CCL, wherein it was mentioned that 32,400 MT of Grade-B Steam Coal from Urimari Colliery and 50,750 MT of Grade W-III Steam Coal from Jarangdih Colliery was allotted to them vide allotment letters dated April 7, 1993 and April 20/21, 1993 respectively and that on account of non-

availability of Grade-B Steam Coal at Urimari Colliery and Grade W-III grade steam coal at Jarangdih Colliery it would not be possible for them to lift the required quantity of coal. In the said letter it was also stated that the petitioners had learnt that Sirka Colliery had huge stocks of Grade-B Steam Coal to the tune of 4.16 lakh MT and that he (General Manager) was willing to accept the diversion of orders of other areas booked under LSS-II to the tune of 2.00 lakhs MT in addition to other pending commitments and orders/proposed deliveries to others including the petitioners. By the said letter the petitioners expressed their willingness to accept the transfer of allotment for Steam Coal of Urimari and Jarangdih Collieries. The General Manager was requested to accept the proposal of the petitioners at his level and intimate to the General Manager (Sales)/CCL Headquarters for obtaining the formal approval in this regard. After receiving the said letter the General Manager (A), Sirka, sent a communication dated April 8, 1994 to the General Manager (S&M), CCL wherein he enclosed a copy of the aforementioned letter of the petitioners dated April 7, 1994, he stated that in view of the stock position of 4.16 lakhs MT of coal at Sirka Colliery it has been confirmed that in order to liquidate stocks such orders of steam coal, if diverted from other areas, could be accepted. On April 9, 1994 the petitioners submitted a representation to the Coal Controller for transfer of allotments of steam coal from Urimari and Jarangdih Collieries allotted by CCL/Headquarters under LSS-II from these collieries to Sirka Colliery of Argada area. In the said representation the petitioners mentioned that quality of coal being produced at Urimari Colliery was equivalent to Grade-D coal and at Jarangdih Colliery also the quality of coal being produced was equivalent to Grade W-IV. It was stated that at Sirka Colliery of Argada area there huge stocks of Grade-B Steam Coal to the tune of 4.10 lakhs MT and it was pointed out that the General Manager (Argada area) of CCL, in his letter dated April 8, 1994, had recommended the request of the petitioners for diversion of allotments to Sirka Colliery for favourable consideration and approval of the General Manager (Sales)/CCL. A copy of the said letter of the General Manager, Argada Area, Sirka dated April 8, 1994 was also submitted along with the representation. By the said representation the petitioners requested the Coal Controller to issue a direction to the coal company for transfer of allotments of Steam Coal from Urimari and Jarangdih Collieries to Sirka Colliery for release of equivalent quantity of Steam Coal from Sirka Colliery. On the said representation the Coal Controller, on April 12, 1994, sent a communication to the Chairman-cum-managing Director, CCL, Ranchi referring to the letter dated April 7, 1994 submitted by the petitioners to the General Manager, Argada area well as letter dated April 8, 1994 from the General Manager, Argada addressed to the General manager (Sales)/CCL wherein he had recommended for acceptance of the transfer in order to liquidate huge stocks of coal at Sirka Colliery. In the said letter the Coal Controller has stated:-

"Having noted the entire circumstances and facts of the case and the availability of steam coal at Sirka you are advised to forthwith give effect to the transfer of these allotments of steam coal from Urimari/Jarangdih collieries of steam coal Grade B to the party as requested area, at the

earliest."

Civil Appeal arising out of S.L.P. (Civil) No. 26366 of 1995 relates to sale of washery products on the basis of the Notification dated July 245, 1967, before amendment introduced therein by Notification dated June 4, 1992. On January 17, 1991 an advertisement was published in the 'Statesman' inviting offers for bulk purchase of rejects, Middlings, Slurry and Dirty Slurry in various washeries of CCL including the Gidi washery. In response to the said advertisement, the petitioners, on March 2, 1991, submitted offers for purchase of 1,79,000 MT Slurry, 90,000 MT Middlings and 90,000 MT Dirty Slurry. By letters dated May 11/14, 1991 CIL accepted the offer of the petitioners and agreed to supply to the petitioners 1,79,000 MT Slurry Grade-D, 90,000 MT Middlings Grade-F and 45,000 MT Dirty Slurry Grade-F from Gidi washery. Subsequently by letter dated May 28, 1992 CCL approved the transfer of 88,500 MT of Grade-F Middlings allotted to the petitioners to equivalent quantity of Grade-F Dirty Slurry to be delivered from Gidi washery. By letter dated September 18, 1993, the General Manager (Argada area) of CCL refused to accede to the request of the petitioners to allow delivery of Grade-D Slurry also with Grade-F Dirty Slurry and reiterated that in order to avoid possible malpractices of lifting of Slurry against orders of Dirty Slurry, lifting both the products concurrently was not possible. On September 20, 1993, the petitioners submitted a representation to the Coal Controller requesting him to direct CCL to transfer their allotment of 1,65,724 MT of Slurry Grade-D to equivalent quantity of Dirty Slurry Grade-F which was abundantly available at the Gidi washery. On January 31, 1994 the Coal Controller gave a direction to the Chairman-cum-managing Director, CCL Ranchi, to transfer 1,65,724 MT of Grade-D Slurry to equivalent quantity of Grade-F Slurry in Gidi washery. Since the direction of the Coal Controller was not implemented by CCL, the petitioners moved the Calcutta High Court by filing a writ Petition and the High Court, by order dated February 10, 1994, directed the appellants to act in terms of Coal Controller's letter dated January 31, 1994. Thereupon by letter dated February 28, 1994, CCL confirmed the transfer of 1,65,724 MT of Grade-D Slurry to Grade-F Slurry of Gidi washery. The case of the petitioners is that with effect from April 1, 1994, CCL changed the grade of Dirty Slurry of Gidi washery from Grade-F to Grade-E for the year 1994-95 and increased its price by about Rs. 85/- per MT. The petitioners submitted a representation to the Coal Controller on April 2, 1994 in that regard. On April 7, 1994, the petitioners wrote a letter to the General Manager (Argada area) of CCL, wherein they stated that in view of the difficulties mentioned in the said letter, it would not be possible for them to lift the Dirty Slurry allotted to them from Gidi washery and they sought transfer of their allotments of Dirty Slurry to Steam Coal from Sirka/Gidi-C/Religara collieries. By his letter dated April 8, 1994 addressed to the General Manager (S&M), CCL, the General Manager (Argada area), forwarded the said letter of the petitioners for favourable consideration. On April 9, 1994 the petitioners submitted a representation to the Coal Controller requesting him to transfer of their allotted quantity of Dirty Slurry remaining to be booked and lifted against of Steam Coal by road from Sirka/Gidi-C/Religara collieries. The Coal Controller, sent a communication dated April 12, 1994 to the Chairman-cum-Managing Director, CCL, wherein, after taking note of the representation dated April 7, 1994 submitted by the petitioners to the General Manager

(Argada area) and the letter from the General Manager, Argada area to the General Manager (Sales)/CCL dated April 8, 1994, he stated:-

"Having noted the entire circumstances and facts and the availability of the coal at Sirka/Religara/Gidi-C desired to be lifted by the party, you are advised to forthwith effect to the transfer of allotments of Dirty Slurry and in the party letter dated 2.4.94 and 9.4.94 for release of equivalent quantity of steam coal from Sirka/Religara/Gidi-C collieries as requested for by them and recommended by the concerned area, at the earliest,"

Since the directions contained in both the communications of the Coal Controller dated April 12, 1994 addressed to the Chairman-cum-Managing Director of CCL were not being implemented by CCL, the petitioners on April 18, 1994, filed two writ petitions (Matters Nos 940-941 of 1994) in the Calcutta High Court. Both the writ Petitions were disposed of by a learned single Judge (Mittra J) by order dated April 18, 1994 whereby the Chairman-cum-Managing Director of CCL was directed to act in terms of the communications dated April 12, 1994 sent by the Coal Controller within a fortnight from the date. This order was passed by the learned single Judge without issuing notice to the appellants and by directing that a copy of the Writ Petition be served upon Mrs. A. Quraishi, Advocate as she generally appears on behalf of the Chairman-Cum-Managing Director of CCL and the Chairman-cum-Managing Director of CCL was directed to regularise her appointment in the matter. The said order of the learned single Judge was, however, set aside in appeal by the Division Bench of the High Court by order June 6, 1994 and the matter was remitted for reconsideration on merits. Thereafter, the matter was considered by Samresh Banerjee J. who, after issuing notice to the parties, by his judgment dated April 6, 1995, allowed both the writ petitions filed by the petitioners and directed the appellants herein, who were respondents in the Writ Petitions, to implement the orders of the Coal Controller dated April 12, 1994 forthwith. Letters Patent Appeals filed by the appellants against the said judgment of the learned single Judge have been dismissed by the Division Bench of the High Court (K.C. Agarwal CJ. and Tarun Chatterjee J.) by the impugned judgment dated October 31, 1995. Hence these appeals.

We have heard Shri Dushyant A. Dave and Shri Harish Salve, the learned senior counsel for the appellants in these appeals, and Shri Shanti Bhushan, the learned senior counsel appearing for the petitioners in both the matters. During the pendency of these matters in this Court, the Union of India was impleaded as a party. We have heard Shri P.P. Malhotra, the learned senior counsel appearing for the Union of India.

We will first take up the submissions urged by Shri Dave in Civil Appeal arising out of S.L.P. (Civil) No. 25983 of 1995 which relates to the contract for supply of Steam Coal from Urimari and Jarangdih Collieries. The submission of Shri Dave is that under the said contract CCL had undertaken to supply Grade-B Steam Coal from Urimari Colliery and Grade W-III Steam Coal from Jarangdih Colliery under LSS-II and that under the provisions of the Colliery

Control Order the Coal Controller was not competent to give a direction so as to modify the terms of the contract and to direct CCL to supply the said quantity and quality of Steam Coal from another colliery, namely, Sirka Colliery, which had not been offered for sale under LSS-II. In order to appreciate the aforesaid submission of Shri Dave it is necessary to briefly refer to various provisions of the Colliery Control Order and the Notification dated July 24, 1967, as amended by Notification dated June 4, 1992 and August 25, 1993.

As indicated earlier, the Colliery Control Order has been made with a view to regulate the production, supply and distribution of coal which is an essential commodity under the Essential Commodities Act, 1955. The expression "Coal Controller" is defined in clause 2(1)(a) to mean the person appointed by the Central Government to hold the post of Coal Controller and includes the Joint Coal Controller and Deputy Coal Controller. Clause 3 empowers the Central Government to prescribe the classes, grades, process into which coal may be categorised and the specifications for each such class, grade or size of coal. The sale price at which or the maximum or the minimum sale price or both, subject to which coal may be sold by colliery owners is to be fixed by the Central Government by notification in the official Gazette and such notification may fix different prices for different grades and sizes of coal and for different collieries (clause 4). A colliery owner or his agent cannot sell, agree to sell or offer to sell and no person can purchase, agree to purchase, or offer to purchase, directly or through a broker or a del-credere/agent coal from a colliery owner at a price which is in excess of the price of the maximum price fixed under sub-clause (1) of clause 4 or below the price or the minimum price fixed under clause 4 (clause 5). In clause 6 provision has been made for fixation of commission to be paid by a colliery owner to a middle man employed by him as a broker and by the consumer to the middle man who acts as del-credere agent for him. Every colliery owner, every person to whom coal is allotted under the Colliery Control Order and every other person engaged in the business of production, supply and distribution of, or trade and commerce in coal, on being requested to do so, either by notice served on him or by special or general direction issued by the Coal Controller has to submit to that officer such returns and other information, in such format within such time, as may be specified in the notice of direction (clause 7). The Central Government is empowered to issue, from time to time, 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 of coal or of the expected output of coal in the colliery during any period. Such direction can be as to 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 (clause 8). Clause 9 gives overriding effect to the direction given under clause 8. A person to whom such a direction is required to dispose of coal in accordance therewith and not to dispose of coal in contravention thereof. Power has been conferred under Clause 10A on the Coal Controller to direct by order in writing that any coal despatched by any colliery owner, or a person acting on behalf of a colliery owner, to any person, which is in transit, shall subject to such terms and conditions, if any, as the said Coal Controller deems fit, be diverted and

delivered to another person specified in the order, The said direction can be modified or cancelled by the Coal Controller who may direct the coal to be diverted or delivered to a person other than the person originally named therein. The said clause also makes provision for payment of compensation to the person affected by such direction. Clause 11 empowers the Central Government to issue such directions as it thinks fit to any colliery owner prohibiting or limiting the mining or production of any grade of coal and the colliery is required to comply with the said directions. The authorities competent to allot quota of coal to any or class of persons are required to be specified by the Central Government by a notification in the official Gazette and such allotment of quota has to be made by the authority subject to such instructions as the Central Government may issue from time to time (clause 12A). Clause 12B requires that a person who has been allotted coal under the Colliery Control Order cannot use it otherwise than in accordance with the conditions contained or incorporated in the document containing the order of allotment and he cannot divert or transfer any such coal to any other person except under the written authority from the Central Government. If a person who has been allotted coal does not require the whole quantity of the coal so allotted or any part thereof for the purpose for which it was allotted, the Central Government can direct such person to deliver the whole quantity of such coal or any part thereof to such person and at such price as may be specified in the order (clause 12C). Clause 12E contains a prohibition and lays down that no person shall acquire or purchase or agree to acquire or purchase any coal from a colliery and no colliery owner or his agent shall despatch or agree to despatch or transport any coal from the colliery except under the authority and in accordance with the conditions contained in general or special authority of the Central Government. By clause 12G the applicability of clauses 12A, 12B and 12E has been excluded from September 15, 1975 so as to permit a person, without any order of allotment or authority, to acquire or purchase or agree to acquire or purchase or despatch or agree to despatch or transport or divert or transfer, Hard coke produced from Bee-hive Ovens, Country Ovens and By-product Ovens. The functions of the Central Government under clauses 8, 10, 11, 12, 12A, 12B, 12C, 12D, 12E, 12F, 13 and 14 are also exercisable by the Coal Controller with the Government of India, Deputy Coal Controller (Distribution), the Deputy Coal Controller (Distribution) [clause 15]. Clause 17 requires that every colliery owner, every person to whom coal is allotted under the Colliery Control Order and every other person engaged in the business of production, supply and distribution or, or trade and commerce in coal, to whom any order or direction is issued under any powers conferred by or under the Colliery Control Order shall comply with such order or direction.

A perusal of the provisions of the Colliery Control Order shows that the control of the Central Government over the various activities involving production, supply and distribution of coal at various levels is all persuasive and certain powers that are conferred on the Central Government can also be exercised by the Coal Controller.

In pursuance of clauses 12B and 12E of the Colliery Control Order, the Central Government has issued the following Notification on July 24, 1967:-

"In pursuance of Clauses 12B and 12E of the Colliery Control Order, 1945, as continued in force by

Section 16 of the Essential Commodities Act, 1955 (10 of 1955) the Central Government hereby authorises a person -

(a) to acquire or purchase or agree to acquire or purchase, or

(b) to despatch or agree to despatch or transport, or

(c) to divert or transfer,

without any order of allotment or written authority, non-coking coal of all grades produced in all coal fields, coking coals not required for metallurgical consumers and coal produced in Assam.

Provided that such coal shall be consumed within India."

The said Notification was amended by Notification dated July 24, 1967 and for the words beginning with "without any order of allotment", the following words were substituted :-

"without any order of allotment or written authority---"

(A) (i) non-coking coal of all grades produced in the States

or Assam and Meghalaya.

(ii) coking coal produced in the States of Assam and Meghalaya, which is not required for metallurgical consumers.

Provided that such coking/non-coking coal is not produced in the coal mines of the Coal India Limited or any of its subsidiaries; and

(B) the coal sold under any Liberalised Sales Scheme, framed by the Government of India in the Ministry of Coal, by the Coal India Limited or any of its subsidiaries, and the Singareni Collieries Company Ltd., if such sale is not dependent on the condition that such coal would be used by the first purchaser only and is not meant for trading or sale."

By Notification dated August 25, 1992 there was a further amendment in the said notifications and for the portion beginning with "the coal sold under any Liberalised Sales Scheme" and ending with "for trading or sale", the following were substituted:-

"coal sold by the Coal India Limited or any of its subsidiaries or the Singareni Collieries Company Limited under any Liberalised Sales Scheme framed by the Government of India.

Provided that the collieries from which coal is to be sold under the said Scheme are duly approved for the purpose by the Government of India:

Provided further than the coal so sold under Liberalised Sale Scheme would not, except in the case of actual users, be subject to the

injunction against trading or resale."

As noticed earlier, clause 12E contains a prohibition to the effect that no person can acquire or purchase or agree to acquire or purchase any coal from a colliery and no colliery owner or his agent can despatch or agree to despatch or transport any coal from the colliery except under the authority and in accordance with the conditions contained in general or special authority or the Central Government. This means that except in respect of coal specified in clause 12G, to which the prohibition contained in clause 12E is not applicable, no transaction relating to sale of coal can take place without the general or special authority of the Central Government. The special authority referred to clause 12E is the direction that can be issued under clauses 8 and 12A of the Colliery Control Order. The general authority of the Central Government envisaged in clause 12E is contained in Notification dated July 24, 1967, as amended by notifications dated June 4, 1992 and August 25, 1993, issued under clauses 12B and 12E of the Colliery Control Order whereby the Central Government has authorised that a person can acquire or purchase or agree to acquire or purchase or to despatch or agree to despatch or transport or to divert or transfer without any order of allotment or written authority certain specified categories of coal. Initially, as per the Notification dated July 24, 1967, such general authority covered Non-Coking Coal of all grades produced in all coal fields, Coking Coals not required for metallurgical consumers and Coal produced in Assam provided that such coal had to be consumed within India. The said general authority was modified by Notification dated June 4, 1992 and it was applicable to (i) non-coking coal of all coking coal produced in the State of Assam and Meghalaya, (ii) coking coal produced in the State of Assam and Meghalaya, which is not required for metallurgical consumers provided that such coking/non-coking coal was not produced in the coal mines of CIL or any of its subsidiaries, and (iii) the coal sold under any Liberalised Sales Scheme framed by the Government of India in the Ministry of Coal, by CIL or any of its subsidiaries, and the Singareni Collieries that such coal would be used by the first purchaser only and was not meant for trading or sale. The said general authority was further modified by Notification dated August 25, 1993 and in the place of category (iii) in the Notification dated June 4, 1992 it was provided that the general authority will be available for coal sold by CIL or any of its subsidiaries or the Singareni Collieries Company Limited under any Liberalised Sales Scheme framed by the Government of India. This was subject to the condition that the collieries from which the coal is to be sold under the said Scheme are duly approved for the purpose by Government of India and coal so sold under Liberalised Sales Scheme would not, except in the case of actual users, be subject to the injunction against trade or resale. The effect of these notifications was that in respect of coal falling within the ambit of these notifications, the colliery owners were free to enter into transactions for sale of coal without obtaining prior approval of the Central Government or the Coal Controller. This general authority referred to above that is contained in the Notification dated July 24, 1967, as modified by Notifications dated June 4, 1992 and August 25, 1993, does not affect the power conferred on the Central Government to give special authority regarding disposal of coal to a particular colliery owner in respect of a specified quantity or quality of coal. Clause 8 of the

Colliery Control Order empowers the Central Government to issue, from time to time, such direction as it thinks fit to any colliery owner regulating the disposal of his stocks of coal and such direction can be as to the class, grade, size and quantity of which may be disposed of and person or class of description of persons to whom coal shall or shall not be disposed of, the order of priority to be observed in such disposal. In view of clause 9 the direction given under clause 8 would prevail over contract to the contrary and the colliery owner would be required to dispose of coal in accordance with such direction and would be precluded from disposing of coal in contravention with such direction.

Having regard to the object underlying the making of the Colliery Control Order, i.e., controlling the production, supply and distribution of coal and clauses 7 and 17 which expressly refer to persons engaged in trade or commerce in coal, it must be held that the directions under clause 8 of the Colliery Control Order can be given in the matter of supply of coal to traders engaged in purchase of coal for the purpose of sale to the small consumers who cannot obtain direct of coal from collieries.

The Colliery Control Order assigns an important role to the Coal Controller, as defined in clause 2(1)(a), in the matter of enforcement of its various provisions. In certain clauses (clauses 3A, 7 and 10A) powers have been expressly conferred on the Coal Controller and, in addition, there is clause 15 whereby the functions of the Central Government under clauses 8, 10, 11, 12, 12A, 12B, 12C, 12D, 12E, 12F, 13 and 14 can also be exercised by the Coal Controller. It is, therefore, open to the Coal Controller in exercise of the power under clause 8 to give directions regulating the disposal of stocks of coal by any colliery owner and such directions may be as to 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. The impugned directions dated April 12, 1994 that were given by the Coal Controller were in the nature of a special direction given by the Coal Controller in exercise of power under clause 8. In view of clause 9 the said directions could override the contract entered into by CCL with the petitioners regarding supply of coal from a particular colliery or washery.

Shri Dave has, however, submitted that the Coal Controller could not give a direction to supply Steam Coal from Sirka Colliery in the place of Steam Coal which was agreed to be supplied from Urimari and Jarangdih Collieries especially when the Steam Coal of Sirka Colliery was not covered by LSS-II and had not been offered for sale in the advertisement published in September 1992. There is no force in this contention. LSS-II was framed in pursuance of the Notification dated July 24, 1967, as modified by notification dated June 4, 1992. As indicated earlier, the said notifications were in the nature of a general authority given to the Central Government under clause 12E of the Colliery Control Order. This only means that in respect of coal covered by LSS-II it was permissible for the colliery owners to dispose of the coal covered by the said Scheme without obtaining prior authority from the Central Government. But this does not mean that the Coal Controller is deprived of his powers under the Colliery Control Order to give directions regarding the disposal of the coal which is dealt with under LSS-II. The said coal also falls within the ambit of the Colliery Control Order and, therefore, there was nothing to preclude the Coal Controller from giving directions under clause 8 in relation to coal dealt

with under the said Scheme and such directions when given would take effect notwithstanding any contract to the contrary entered by the colliery owners. The fact that Steam Coal of Sirka Colliery was not offered for sale by CCL in the advertisement published in September 1992 is of no consequence in so far as the competence of the Coal Controller to give directions regarding supply of that coal instead of Steam Coal from Urimari and Jarangdih Collieries is concerned. Steam Coal at Sirka Colliery was not outside the ambit of the Colliery Control Order and the Coal Controller, in exercise of his powers under clause 8, could give directions in respect of that coal. The power to give such directions is not fettered by the contract between CCL and the petitioners providing for supply of Steam Coal from Urimari and Jarangdih Collieries, we are, therefore, unable to uphold the contention urged by Shri Dave that in view of the contract between the petitioners and CCL for supply of coal in accordance with LSS-II from Urimari and Jarangdih Collieries it was not open to the Coal Controller to give direction to CCL for supply of Coal from Sirka Colliery which coal was not covered under LSS-II.

Shri Dave has next contended that the impugned direction dated April 12, 1994 was given by the Coal Controller without affording an opportunity to the appellants to make their submissions in that regard. In other words, Shri Dave has invoked the principle of audi alteram partem. We do not find any merit in this contention. We are unable to hold that it was incumbent upon the Coal Controller to have afforded an opportunity to the appellants before giving the impugned direction in exercise of his powers under clause 8 of the Colliery Control Order. The power to issue directions under clause 8 has been conferred with a view to enable the Central Government/Coal Controller to effectively regulate the production, supply and distribution of and trade and commerce in coal. There may arise situations where immediate action may be called for. It cannot, therefore, be held that the said power can only be exercised after giving prior notice to the colliery owner or other persons affected by such directions. In case the colliery owner or any person feels that his interests are adversely affected by such a direction, he may place his case before the Central Government/Coal Controller who has given the direction and seek reversal of the same and, in that event, the concerned authority shall give due consideration to such submissions. In the present case the Coal Controller had before him the representation dated April 7, 1994 submitted by the petitioners to the General Manager (Argada area) Sirka of CCL and the letter dated April 8, 1994 sent by the General Manager (Argada area) to the General Manager (S&M), CCL, Ranch which indicated that sufficient stocks of Steam Coal were available at Sirka Colliery which was required to be disposed of. In case the appellants felt aggrieved by the impugned directions given by the Coal Controller on April 12, 1994, they should have moved the Coal Controller forwarding the representation dated April 2, 1994 submitted by the petitioners. We have gone through the said letter. We are unable to hold that in the facts of this case it can be said that the impugned direction dated April 12, 1994 given by the Coal Controller was vitiated by any extraneous considerations.

Shri Harish Salve has urged an additional point that the letter from the Coal Controller to the Chairman-cum-managing Director of CCL dated April 12, 1994 cannot be treated as a statutory direction for enforcement of which writ of mandamus can be issued. The submissions is that in

the said letter the Coal Controller has advised the Chairman-cum-Managing Director to give forthwith effect to the transfer of allotments. There is no force in this contention. Although the language used in the said letter is in the nature of an advice, but in substance it is a direction for giving effect to transfer of allotments. In view of clause 17 of the Colliery Control Order such a direction was binding on CCL. A writ of mandamus could, therefore, be issued to implement the said direction.

Since none of the contentions urged by the learned counsel for the appellants merit acceptance, the appeals fail and are, therefore, dismissed. But in the circumstances, there will be no order as to costs.

JUDIS