PETITIONER:
GUJARAT AMBUJA CEMENT LTD. & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 21/08/1998

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

WITH

C.A. No. 3916/98 @SLP (C) No.13097/98), C.A.Nos.2246/96, 2247 TO 2262/96, 2264/96 to 2267/96, 2385/96, 2439/96 AND W.P. (C) No.557/97

J U D G M E N T

S.B. Majmudar, J:

Leave granted in S.L.P. (C) No.13097 of 1998.

In this group of matters, that common judgment rendered by the Division Bench of the High Court of Madhya Pradesh at Jabalpur, dismissing various writ petitions filed by the writ petitioners has been brought in challenge. In order to appreciate the grievance of the appellants viz. writ petitioner who have filed these appeals on grant of special leave under Article 136 of the Constitution of India, it is necessary to note a few background facts.

BACKGROUND FACTS:

The appellant-writ petitioners are manufacturers of cement. Their manufacturing plants are located in different parts of the country. For manufacturing cement, essential raw material is coal. During the relevant period with which this group of matters is concerned, namely, from 1.1.1989 to 31.3.1996, coal was controlled commodity being treated as an essential commodity' under the Essential Commodities Act, 1955 (hereinafter referred to as the Act'). Prior to the independence of the country, there was in force Colliery Control Orders, 1945, wherein as per clause 4 thereof, price for supply of coal to the consumers was controlled. The said scheme was continued in force by Section 16 of the Act. As during the relevant time, coal was a controlled commodity, its price was being monitored and fixed under the aforesaid Colliery Control Order by the appropriate authority functioning thereunder. Till December, 1988, the price of coal supplies from collieries to different consumers, like the appellants, concerning different grades of coal had not posed any difficulty to the consumers of coal. However, according to the appellants, the problem started after the letter dated 1st January, 1989 issued under the provisions of the Colliery Control Order as promulgated under Section 16 of the Act. By Item no.20 of the notification dated 1st January, 1989, the premium of 10%

of the price given in Table II of the notification was to be charged by the collieries supplying coal to the consumers in the country in connection with A,B,C & D grades of coal sold to them. The clauses 3 and 4 of the Colliery Control Order as operative during the relevant period read as under:

> "3. The Central Government may for the purposes of this order prescribe the classes, grades or sizes into which coal my be categorised and the specifications for each such class, grade or size of coal.
>
> 4. The central Government may, by notification in the official Gazette, fix (the sale price at which, or the maximum sale price, or both) subject to which coal may be sold by colliery owners and any such notification may fix different prices-
>
> (i) for different classes, grades and sizes of coal; and
>
> (ii) for different collieries."

Item No.20 of the notification dated 1.1.1989, which is impugned in the present proceedings, read as under:

> "A premium of 10% over and above. the prices given in Table II of this notification will be charged by coal companies on-coals of Grades A,B,C & D supplies from the collieries listed in the Annexure to this notification."

The grievance of the present appellant-writ petitioners before the High Court was that though same quality of coal as comprised in grades A,B,C & D was being supplied by different collieries, 10% premium over price was being charged only by some of the collieries as per Item No.20. According to the writ petitioners, there was no choice of colliery from which they had to purchase coal at the relevant time as their choice was fettered by the decision of the linkage committee compelling the writ petitioners to purchase coal from a particular colliery. Shri K.K.Venugopal, learned senior counsel appearing for the appellant in civil appeal No. 2245 of 1996, which is treated as the leading appeal, vehemently contended that the cement manufacturing plants in the western region of the country had not been given linkage by the linkage committee to lift coal from collieries situated nearby which were within reasonable distance, but they were forced to take coal from collieries situated in Madhya Pradesh wherein the respondent authorities were requiring the collieries, treating them as premium collieries, to charge 10% extra on the price of every grade of coal supplied to consumers like the writ petitioners. It was the contention of the writ petitioners before the High Court in these writ petitions that A,B,C and D grades of coal produced from any colliery were of similar quality and, therefore, their prices had to be similar. Charging of higher price in respect of coal purchased from certain collieries like the premium collieries was discriminatory and violative of the right guaranteed under Article 14 of the Constitution of India. It was also contended that premium was not a price and Union of India had no legal right to impose premium. It was submitted that in fact charging anything over and above the price fixed was an offence punishable under the Act. It was also contended

that while fixing the price and imposing 10% premium on all these grades of coal manufactured and supplied by the premium collieries, relevant material had not been taken into consideration and in an arbitrary manner and relying on an irrelevant consideration, 10% premium was fixed for being charged to the consumers of coal supplied by these premium collieries. It was, therefore, contended that Item No.20 of the impugned notification ultra vires the Constitution. It was also additionally contended that clause 4 of the Colliery Control Order did not provide for nor did it lay down any guidelines, more or less, for the fixation of coal price. It was, therefore, ultra vires.

All these writ petitions were heard in common by a Division Bench of the High Court at Jabalpur. The contesting parties produced material in support of their respective cases. We are told that the hearing of these writ petitions was spread over a week or so. However, at the final stage of arguments before the Division Bench of the High Court, a clear stand was taken by learned counsel for the respondents - namely, Union of India, Coal Indian Ltd. - a Govt. Company and South-Eastern Coal Fields Ltd. - a Govt. company, which were supplying the disputed quantity and quality of coal to the consumers like the writ petitioners and the coal controller who was functioning under the Colliery Control Order - that the grievance made by the petitioners was of academic nature as it was open to the consumers of coal concerned to lift coal from any colliery of their choice and it was not compulsory for such a consumer to indent coal for Their factory only from a premium colliery which was charging 10% extra price on the quality of the coal supplied to these consumers. Of course, the High Court noted in the impugned judgment that the main grievance of the writ petitioners was that they had no choice as far as the purchase of coal was concerned. It could not be disputed that coal was a controlled commodity and it was a monopolised trade in the hands of Government or governmental agencies during the relevant time. It was the linkage committee which allotted collieries to the bulk consumers. It was this linkage committee which allotted racks of railway wagons for supplying of coal from collieries to the bulk consumers. Because of the monitoring by the linkage committee, consumers of coal like the writ petitioners were compelled to purchase coal from collieries situated at long distances wherein unwillingly they had to pay 10% extra premium price for the same quality of coal which otherwise could have been supplied to them by non-premium collieries situated nearby. An attempt was also made on behalf of the respondents before the High Court to justify the charge of 10% more premium on A,B,C and D grades of coal supplied by these premium collieries. It was submitted that the coal being of proper quality as supplied by premium collieries, charging of 10% more by way of price of such coal was legally justified and was not arbitrary.

These rival contentions would have required the High Court to closely examine the challenge to this 10% extra charge on A,B,C and D grades of coal supplied by the premium collieries but according to the High Court it was not necessary to go into this wider question as it was told by learned senior counsel for the respondents that there was no compulsion for the writ petitioners to lift coal from these collieries which were premium collieries and they were free to purchase coal from any other colliery which was not charging 10% extra price by way of premium. Heavily relying upon the said submission of learned senior counsel for the respondents, which, we are told, was also the stand of the

respondents in their counter filed before the High Court, in the impugned common judgment at paragraph 13, the High Court observed as under:

> "....in view of the categorical statement made by the learned counsel for the respondents, it is no longer necessary for us to go into this question. It was contended by the petitioners that premium is not a price and Central Govt. has no power to impose premium. Various dictionaries were referred to us so as to bring home the meaning of the word 'premium'. And this Court's interim order dated 16.3.1992, was also brought to our notice. We would like to make it clear that since it is not necessary to dwell at length on this point, in view of the statement made at the Bar by the respondent's counsel, Sri Nair contention on this point as raised by the petitioners are virtually rendered pure academics."

Accordingly, the High Court without addressing itself to this moot question which went to the root of the matter, in the light of the aforesaid stand taken by the learned senior counsel for the respondents, disposed of the writ petitions, in terms of paragraphs 14 and 15, which read as under:

> "14. The statement made by the learned counsel Shri Abhay Supre, that Cl. IV of the notification provides unguided and arbitrary power in the matter of fixation of price need not to be discussed in detail as the real controversy involved in the case, a stand (sic) relied by the statement made by the respondents' counsel at the Bar. In view of the foregoing discussion, we are of the view that no interference is called for in the matter of charging of premium of 10% as part of price of coal produced from certain collieries.
>
> 15. The petitions are, therefore, dismissed with no order as to costs."

We may state that in these appeals, further documentary evidence has been adduced by both the sides for supporting their respective cases on merits.

Learned senior counsel, Shri Venugopal and other learned advocates who raised similar contentions in the companion appeals, submitted that even though, prima fair, price fixation may be taken as a legislative function, it is now well settled by a catena of decisions of this Court that when price fixation is challenged as arbitrary and unreasonable, the court has ample jurisdiction to go into this question and examine the impugned price policy on the touchstone of Article 14 of the Constitution of India. In this connection, Shri Venugopal, learned senior counsel invited our attention to the observations of the High Court in Paragraph 13 of the judgment, wherein it was held that

"price fixation is neither the function nor forte of the court. It is neither concerned with the policy nor with the rate, it si left to the discretion of the executive". He submitted that the aforesaid statement of law culled out from the decisions of this Court, is a partial enunciation of the legal principle. It was submitted that despite the fact that this pricing policy was in the realm of legislative exercise if the policy is shown to be violative of Article 14 of the Constitution of India as unreasonable, arbitrary or involving non-application of mind to relevant considerations or based on irrelevant considerations, it could be challenged in court. To that extent, learned senior counsel, Shri Venugopal is right. In fact, in fairness to learned senior counsel for the respondents, it must be stated that he did not challenge the locus standi of the writ petitioners to mount such a challenge under Article 226 of the Constitution of India. But his submission was that even during the relevant time it was open to the writ petitioners to purchase coal from any colliery of their choice which was a non-premium colliery. The said stand taken in the counter before the High Court and which was reiterated by the learned senior counsel for the respondents before the High Court and was also reiterated before us. It was also contended that there was nothing illegal or unreasonable in charging 10% more for A,B,C and D grades of coal by the premium collieries, as according to the learned senior counsel for the respondents, relevant considerations were kept in view by the pricing authorities in coming to the aforesaid conclusion about charging 10% more. Shri Venugopal challenged the said stand of learned counsel or the respondents by submitting that because of the linkage committee's restrictions, writ petitioners had no choice but to lift coal from respondent no.4 colliery located in Madhya Pradesh, otherwise their manufacturing activities would have come to a grinding halt and, therefore, it was a misnomer to say that it was open to the writ petitioners to purchase coal from non-premium collieries as they liked. He further contended that for the purpose of utilisation of coal as essential raw material in their plant, different grades of coal are required. Classification of coal by grade is made according to the standard specified by the Indian Standard Specification depending upon the inherent ingredient contents of coal. Before such gradation is determined in respect of any particular type of coal, there is always a testing process. Through such testing process, the gradation of coal is fixed and once such a gradation is fixed, there is no, nor can there be any, question of further testing or relaxing the classification already made. Learned senior counsel for the respondents on the other hand pointed out that even on merits it could not be said that the 10% hike in price for different grades of coal supplied by Respondent no.4 colliery viz. the premium colliery was in any way irrational as the coal supplied by the said colliery as compared to non-premium collieries had a better quality, as it had greater lasting, fuel heat value and consequently the said 10% premium charged by the premium colliery could not be said to be violative of guarantee of Article 14 of the Constitution of India. It was submitted that the writ petitioners themselves paid this 10% extra charge on the coal lifted by them during the period from 1.1.1989 till 1991 when they filed the writ petitions in the High Court. It is also submitted that from 1st April, 1996, coal has not remained a controlled commodity and it is easily available as raw material in the open market and consequently, the grievance made by the writ petitioners has become more or

less academic and is confined only to the aforesaid limited period from 1.1.1989 to 31.3.1996 or up to 31.8.1996 as submitted by the learned senior counsel Shri Venugopal for the appellant-writ petitioners.

In our view, the aforesaid rival contentions would squarely pose the main question whether the charging of 105 premium over the price given in Table II to the impugned notification can be treated to be so unreasonable and arbitrary as to fall foul on the touchstone of Article 14 of the Constitution of India. For deciding the aforesaid question, evidence was led by the contesting parties before the High Court and more voluminous evidence is led before us by the contesting parties in these appeals. However, unfortunately, the High Court in the impugned judgment has not thought it fit to address itself to this moot question presumably because of the stand as taken by learned senior counsel for the respondents on the basis of counter filed in the High Court on their behalf that the grievance of the writ petitioners was academic as it was free for them not to purchase coal from these premium collieries by paying 105 more and they could well purchase coal from other collieries which were supplying requisite coal to them at cheaper rates. It is this stand which, as we have noted earlier, appealed to the High Court for disposing of the writ petitions without going into the main question in controversy between the parties as aforesaid. it is true that the stand of the respondents before the High Court was that it was not compulsory for the writ petitioners to purchase coal from premium collieries. it is also true that the same stand is reiterated before us by learned senior counsel for the respondents. But the real grievance of the writ petitioners which unfortunately remained unnoticed by the High Court is that during the relevant period with which we are concerned in the present proceedings, from a practical point of view, it was almost impossible for the writ petitioners to lift the coal from any other colliery except from these premium collieries on account of various problems faced by the writ petitioner manufacturers of cement as tried to be high-lighted before us in the additional affidavit filed on behalf of the writ petitioners in Civil Appeal No.2245 of 1996 at pages 265 to 268. It was contended before us in the light of the aforesaid grievances categorised in the said additional affidavit that during the relevant time production, distribution and sale of coal was a monopoly of the Union of India and that this power was conferred under the Colliery Control Order of 1945. The quotas of coal were allotted by Central Government under the said Order to the consumers of coal. The bulk transportation of coal was also under the control of Union of India in as much as the same could only be done through railways as the railways are the monopoly of the Union of India. The price at which the coal had to be sold was fixed by the Central Government in the said Order of 1945. The quantity of coal allotted to bulk of consumers like the writ petitioners was admittedly being controlled by the linkage committee of the Central Government since the last number of years. Because of the direction of the linkage committee the coal allotted to the writ petitioners had to be lifted from the colliery assigned to it by the said committee. Therefore, there was no choice left to the writ petitioners in connection with lifting of coal from the colliery concerned. It was, therefore, submitted that it would not be correct to assume as done by the High Court that the grievance of the writ petitioners was imaginary or of academic nature.

Having given our anxious consideration to the rival

contentions, we have reached the conclusion that the High Court simply assumed that the main grievance of the writ petitioners against 105 hike in price by way of premium was only of academic nature. The High Court had also not gone into the question whether the said grievance was really academic in view of the difficulties tried to be projected by the writ petitioners in that connection and which were highlighted before us by the aforesaid additional affidavit of the appellants in the leading appeal. Similar grievances were voiced before us by learned counsel of the other appellants whose writ petitions were also disposed of by the common judgment. Therefore, it was for the High Court to consider whether the grievance of the writ petitioners had become really academic in nature and if it was not of academic nature, then the question regarding the merits of the pricing policy in the light of the limited inquiry which was required to be undertaken on the touchstone of Article 14 of the constitution of India had to be gone into by the High Court on a consideration of the voluminous evidence produced before it by the respective parties in support of their rival contentions.

Consequently, without expressing any opinion on the merits of the controversy between the parties, we deem it fit to set aside the impugned common judgment and restore all the writ petitions filed by the writ petitioners before the High Court in their original numbers for decision of the High Court on merits. The High Court is requested to consider the question whether the impugned premium of 10% as charged by the respondents from the writ petitioners is, in any way, violative of guarantee under Article 14 of the Constitution of India and also to go into the question whether the said grievance of the writ petitioners was really academic in nature or was a subsisting one requiring adjudication by the court. All these questions will have to be considered by the High Court in the remanded proceedings. We would also request the High Court to decide all these questions including the main controversy on merits, even if after hearing the parties concerned, the High Court is once again inclined to take the view that the grievance of the petitioners was of academic nature. In that case the High Court may examine the said main grievance in the alternative. This request is made to the High Court in the case its decision on the academic nature of writ petitioner’s grievance gets upset in the hierarchy of proceedings.

In the result, the appeals are allowed, the common judgment and orders of the High Court are set aside. All the writ petitions are restored to the files of the High Court with a request to proceed with the same in accordance with law and in the light of observations made herein. Whatever evidence was led by the respective parties in support of their cases in the High Court in these writ petitions and whatever further evidence and material may be led by the respective parties in the remanded proceedings will of course be examined by the High Court. It will also be open to contesting parties to produce the material adduced in these appeals for the consideration of the High Court in the remanded proceedings. We may also make it clear that all legally permissible contentions will be open for being canvassed by the respective contesting parties for consideration of the High Court. As the writ petitions of 1991 are being restored to the files of the High Court, we request the High Court to make it convenient to decide these writ petitions at the earliest, preferably within a period of six months from the receipt of the copy of this order.

The registry of this court is directed to communicate this order to the Registrar of the High Court for bringing it to the notice of the Hon'ble Chief Justice of the High Court for doing the needful.

Before parting with these appeals, we may mention that at the SLP stage in these group of matters, ad interim relief was given which was confirmed pending these appeals. Identical interim orders in these group of appeals read as under:

> "The respondents are injuncted from stopping the delivery of coal to the petitioners on the ground that the amount of premium claimed by the respondents for the period subsequent to 1st March, 1992, has not been paid. It is also made clear that in the event, under the terms of the statement, the petitioners choose any other colliery where premium is payable, such premium shall be paid."

while granting special leave to appeal on 18th January, 1996, a bench of the two learned Judges of this Court, passed further interim orders in connection with security deposits furnished by the writ petitioner-appellants to the following effect:

> "It is pointed out that although counsel on behalf of the respondents was present in Court on 31st May, 1993 when interim orders were passed, the respondents have contended that they received the interim orders only on 3rd June, 1993 and, in the meantime, have adjusted the deposits made by the appellants against demands for premium, which is the subject-matter of the appeals. Having regard to the fact that counsel on behalf of the respondents was present on 31st May, 1993 when the interim order was issued, this stand of the respondents does not appear to be justified and no supplies to the appellants can be held up upon that basis. Until further order, the deposits made by the appellants in their entirety shall continue to be treated as deposits."

The aforesaid interim orders have continued through out to operate in the present group of matters till date. We, therefore, deem it fit to direct that the said interim reliefs in the aforesaid terms will continue to operate till the final disposal of the remanded writ petitions by the High Court and will abide by the ultimate decisions rendered by the High Court in the said writ petitions. It is obvious that while disposing off the writ petitions finally, it will be open to the High Court to pass appropriate final directions as it may deem fit and proper in the light of its decisions in the writ petitions. The appeals are allowed accordingly. There is no order as to costs in the facts and circumstances of the case.

W.P. (C) No.557 of 1993:

The above writ petition has been moved directly before

us under Article 32 of the Constitution of India for declaring the impugned clause of the said notification dated 30th December, 1988 as ultra vires to the extent it imposed premium on coal of the collieries listed in the Annexure to the said notification. As we are remanding other writ petitions, as indicated earlier, to the High Court for disposal on merits, we reserve liberty to the petitioner of this writ petition to file a fresh writ petition under Article 226 of the Constitution of India before the High Court within six weeks from today. If such writ petition is filed within the aforesaid period, it will be clubbed with the remanded writ petitions and will be decided by the High Court along with them as the questions involved therein will be common to all of them including the writ petition to be filed by writ petitioner M/s H.M.P. Cements pursuant to this order. The interim reliefs, given in W.P.(C) No.557/93 will also continue to operate till the final disposal of the writ petitions if filed by the petitioner as per present order and will abide by the ultimate decision rendered therein by the High Court.

The writ petition is disposal of accordingly subject to the aforesaid liberty given to the petitioner and without going into the merits of the contentions raised in the writ petition and keeping them open for consideration of the High Court in the writ petition that may be filed by the petitioner.