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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CIL V. CCI : A MAJOR RULING FOR PSUs

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ABSTRACT

Recently on 15th June, 2023 a landmark judgement has been passed by Supreme Court in case Coal India Limited & ors. v. Competition commission of India¹ by a bench which consists of three judges headed by Justice KM Joseph it ruled that Coal India cannot take exemption under Competition Act just because it is a public sector undertaking under Coal mines (Nationalisation) Act, 1973, this legislation is an expropriatory legislation and does not relate to trade and commerce of coal, and thus does not protect coal India Ltd from competition laws. The judgment is of major importance for PSUs. In this paper the researcher will delve into the details of ruling and the reasoning given by the court by analyzing the arguments given by both parties and the researcher will also look into the relevant legislations which has been discussed in the case. The researcher has also cited the recent judgments related to market monopoly in India to describe the current stand by courts in other cases. The views of the researcher for the present case is that the court's decision is a positive development for Indian competition law regime because it promotes market competition, protects against anti- competitive practices, creates level playing field for both public and private sector enterprises and it sends a strong message that the CCI will not hesitate to investigate and penalize even PSUs for anti- competitive practices.

KEY WORDS

1. Competition Act, 2002
2. Arbitrary
3. Dominant
4. Public Sector undertaking
5. Coal
6. Fair Competition
7. Anti- competitive practices
8. Monopoly

¹ Coal India Limited and Ors. v. Competition Commission of India and Ors., MANU/SC/0670/2023.

BACKGROUND STORY OF THE CASE:

The series of occurrences began in 2013. In 2013, CCI claimed that CIL had misused its dominant position in the coal market. Further, CCI claimed that CIL, through its subsidiaries, engaged in separate business operations, possessed a dominant position in the market, and violated the terms of the competition act. The CCI instructed CIL to stop engaging in anti-competitive behavior and alter any relevant agreements with third parties.

Later, In March, 2017 competition commission of India imposed a penalty of Rs591.01 crore on CIL and its subsidiaries with directions for modifications as they were contravening the provisions of Section 4(2)(a)(i) of the Competition Act, 2002² for imposing unfair and discriminatory conditions in fuel supply agreements with the power products for the supply of non coking coal. It was discovered that the corporation was charging more for coal of inferior quality and adding ambiguous terms to the contract that covered supply specifications and quality.

COAL INDIA LTD STAND IN THE CASE:

- **Promoting the "Common Good":** and guaranteeing equitable distribution of coal, a crucial natural resource, are the guiding principles that guide CIL's operations.
- **Monopoly Status:** To support its claim of being a "monopoly" created for effective coal production and distribution, CIL cites the Nationalization Act of 1973. It was argued that because they are a part of this legally required monopoly, they should be excluded from the Competition Act because they represent a special type of monopoly known as a "Article 39(b) monopoly." An Article 39(b) monopoly, as opposed to a typical monopoly, is consistent with the State's obligation to take into account the allocation of scarce resources and the principles of the common good.
- **Differential Pricing:** CIL uses differential pricing to encourage the production of captive coal with the aim of preserving the larger operating ecosystem and pursuing welfare goals.
- **Implications for National objectives:** The availability of coal from CIL helps national objectives including increasing allocation to promote growth in economically underdeveloped areas.

² The competition act, 2002, § 4(2)(a)(i), No.12, Acts of Parliament, 2003(India).

CCI'S STAND IN THE CASE:

- **Raghavan Committee Report (2020):** The Raghavan Committee report (2020), which came to the conclusion that state monopolies like CIL are not in the best interests of the country and shouldn't run without competition, was cited by the CCI. This demonstrates the necessity of fostering market competition and responsibility.
- **Classification as a "Non-Essential Commodity":** The CCI noted that since 2007, coal is no longer considered to be a "essential commodity." In 2017, the Nationalization Act was also taken out of the Ninth Schedule, which lists legislation that cannot be challenged in court. This suggests that coal should not be protected from the Competition Act of 2002 because it is subject to market dynamics.
- **Impact on Consumers:** The CCI emphasized the major effects that fluctuating coal prices and supplies have on electricity producing firms, which in turn have an indirect influence on consumers. The interests of consumers would be directly impacted by CIL's unfair pricing or supply practices.
- **Government ownership and allocation of supply:** CIL's considerable coal shipments to power firms establish a link between the nation's well-being and the availability of coal. According to the CCI, maintaining a steady supply of coal, adhering to agreements, charging fairly, and maintaining high standards are all beneficial to society.

JUDGEMENT REINFORCED PRINCIPLE OF “COMPETITIVE NEUTRALITY”

“Competitive neutrality” meaning creating a level playing field between public and private sector is a bedrock of modern competition laws across the Globe. It occurs where there is no advantage or disadvantage to any entity working in the market.³

The jurisprudence on the interpretation of section 2(h) of the Act⁴ i.e., the definition of the term “enterprise” (which encompasses the concept of competitive neutrality as aforesaid in India) has

³ Organisation for Economic Co-operation and Development, Competitive Neutrality: Maintaining a level playing field between public and private business, (OECD Publishing 2012)

⁴ The competition act, 2002, § 2(h), No.12, Acts of Parliament, 2003 (India).

matured over the years through the orders of the erstwhile Competition Appellate Tribunal (COMPAT) and the High Courts and the Supreme Court.

The phrase "enterprise" has a broad definition that includes even government departments that may be involved in any activity related to the production, storage, distribution, supply, acquisition or control of articles or goods or the provision of services, of any kind, or in investment or in business of buying, holding, underwriting shares, debentures, etc. The phrase lacks a specific provision in the Competition Act but has been subtly introduced in the Act.

BRIEF DESCRIPTION OF COAL MINES (NATIONALISATION) ACT, OF 1973?

The Coal Mines (Nationalisation) Act, of 1973, was enacted by the Indian Parliament to ensure rational, coordinated, and scientific development of coal resources.

Under this act, coal mining was exclusively reserved for the public sector. Exceptions were introduced in 1976 for captive mining by private companies in iron and steel production and sub-leasing in isolated small pockets.

The objective of the Act is to bring about a paradigm shift in the nation's economic policy, ensuring the best economic interest of the country.

In 1993, amendments allowed private sector participation in captive coal mining for power generation, coal washing, and other notified end uses. Allotment of coal mines for captive use was based on recommendations from a high powered committee. Mining of coal for captive use in cement production was permitted by government notification.

The Act established government control over coal mining in India, with limited provisions for private sector involvement in specific sectors and purposes

WHAT ARE THE OTHER JUDGEMENTS RELATED TO MARKET MONOPOLY IN INDIA?

- **Competition Commission of India v. Steel Authority of India Ltd (SAIL)⁵ (2010)**: The SC upheld the CCI's order to investigate SAIL for anti-competitive practices in supplying rails to Indian Railways. SC ruled that SAIL was not exempt from the Competition Act and that its order was not appealable at the initial stage. The Court also said that the CCI was a necessary or proper party in any appeal before the COMPAT.
- **Competition Commission of India v. Google LLC & Ors, (2021)⁶**: CCI appealed against Karnataka HC's order, investigating alleged anti-competitive practices by Google in India's smart TV and Android app store markets. The HC quashed CCI's order due to lack of jurisdiction and the absence of Google's opportunity to present its case. The SC stayed CCI's investigation and issued notices to all parties involved.

IMPACT OF JUDGEMENT

The competition act, 2002 now after passing of the judgement applies to public sector undertakings with private sector enterprises without any discrimination. It will protect market from anti-competitive practices.

ANALYSIS OF THE JUDGEMENT

The Supreme Court began its analysis of the question of whether Coal India Limited (CIL) is subject to the Competition Act, 2002 by observing various provisions of the former Monopolies and Restrictive Trade Practices Act, 1969 ("MRTP Act"), the Coal Mines Nationalization Act, 1973 ("Nationalization Act"), observations and recommendations of the Raghavan Committee, and the Competition Act, 2002's scheme. It then noted that CIL cannot seek immunity from the application of law, which it noted that it could do.

The Supreme Court's reasoning began with the query of whether CIL falls under the Act's Section 2(h) description of a "enterprise." The appellant is a person who is engaged in activity related to production, storage, supply, distribution, and control of goods, as defined in the Act, the Supreme

⁵Competition Commission of India v. Steel Authority of India Ltd (SAIL), MANU/SC/0690/2010.

⁶ Competition Commission of India v. Google LLC & Ors, MANU/SCOR/08529/2023.

Court held after analysing the definitions of enterprise and person under the Act. Given the broad language used in Section 2(h), it might also fall under the purview of that section with respect to any services it offers. This is because CIL, a government company as defined by Section 617 of the Companies Act of 1956, is a "person" as defined in Section 2(l) of the Act and engages in economic activity related to the production, storage, distribution, and control of goods or services. The Apex Court also described the Competition Act's structure and its guiding principles, noting that the law's author had taken care to explicitly include individual government departments under the definition of "enterprise." The situation is crystal plain.

Any action which relates to the sovereign functions are the only acts which is exempted from section 2 (h) of the competition act, 2002, as a result, the meaning of the word "enterprise". Unquestionably, all operations carried out by the Central Government Departments which relates to atomic energy, money, defense, and space would be considered sovereign functions.

The Court in its ruling observed that the Act's Section 19(4)(g)⁷ expressly covers monopolies or dominating positions obtained through legislation, government-owned businesses, public sector organizations, or by any other methods. Thus, the Court came to the conclusion that the State Monopolies, Government Companies, Public Sector Units, and entities subject to statutes were all meant to be included by the Act. As a result, CIL would qualify as having a dominating position under Section 19(4)(g) of the Act due to its status as a monopoly under the Nationalization Act.

The Supreme Court held that the definition of "common good" is not a static concept & changes with the times and may depend upon the times, the felt necessities, the direction that the Nation wishes to take in the future, the socio-economic condition of the different classes, the legal system, and other factors. This was done while considering the argument of "common good" in Article 39(b)⁸ of the Indian Constitution and acknowledging the aim of the Nationalization Act to achieve the goals which are outlined in Article 39(b). Finally, the Supreme Court noted the wide power possessed by the CCI under the Act and held that though the action of the CIL can be challenged in judicial review and in other forums like Controller of Coal, however, this does not exempt it from the preview of the Competition Act, 2002.

Finally, the Supreme Court ruled that a notification made pursuant to Section 54 of the Act⁹ may

⁷ The competition act, 2002, § 19(4)(g), No.12, Acts of Parliament, 2003 (India).

⁸ INDIA CONST. art 39 (b).

⁹ The competition act, 2002, § 54, No.12, Acts of Parliament, 2003 (India).

exempt any provision or the application of the Act from application for any period of time on the grounds of state security and public interest. Therefore if CIL arguments in favour of public good then Government will be helpless in that situation.

CONCLUSION

The researcher feels that the ruling by Supreme Court has far reaching implications on economy that now Coal India Ltd falls under preview of Competition commission of India like other private sector enterprises. It has made a great impact on the PSUs, they no more can use their dominant position using nationalisation act and act arbitrarily or in disruptive manner against their similar entities.

Further, the judgement will promote the competition in the market and bring more benefits to the consumers. The judgement will create level playing field for small businesses as PSUs do not engage in anti-competitive practices and it will attract foreign investments by showing that India has fair and competitive market thereby it will boost economic growth of the country.