

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPETITION APPEAL (AT) No.05/2018**

(Arising out of order dated 12.06.2017 in Competition Case No.10/2017 passed by the Competition Commission of India)

In the matter of:

Karnataka Power Corporation Ltd,
Shakthi Bhavan, 82, Race Course Road,
Bangalore, Karnataka 560001

Appellant

Vs

1. Competition Commission of India,
The Hindustan Times House
18-20, Kasturba Gandhi Marg,
New Delhi 110001
2. The Singareni Collieries Company Ltd,
Kothagudem Collieries,
Bhadradri
Kothagudem Distt,
Telangana State 507101

Respondents

For Appellant: Mr. Ajay Nandalike, Mr. Achyuth Ajith Kumar, Advocates.

For Respondents: Ms. Sonali Malhotra, Ms. Prachi Dutta, Advocates for R-1. Mr. A. Mariarputhum, Sr. Advocate with Mr. Anurag Dayal Mathur, Advocate for R-2.

JUDGEMENT**JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

This appeal is against the impugned order dated 12.06.2017 passed under Section 26(2) of the Competition Act, 2002.

2. An information was filed by the appellant before the Respondent No.1/CCI seeking an investigation into the abuse of dominance by Respondent No.2, in terms of Section 19 of the Competition Act. However, without issuing any notice

or conducting the hearing, the Respondent No.1 passed the impugned order dated 12.06.2017 under Section 26(2) of the Act, thereby closing the information and holding that Respondent No.2 was not in contravention of Section 4 of the Act and it is in fact a competitor to Coal India Ltd and it further held the dispute is in the nature of a commercial dispute and the remedy would be elsewhere and the ruling of Respondent No.1 will not be prejudicial to the claim of the Appellant.

3. It is the grievance of the appellant that Respondent No.1 has not provided an opportunity to the informant to bring forth the relevant facts, which would have conclusively established that Respondent No.2 and Coal India Ltd act in close concert with each other and are in fact operating in the nature of a cartel and thus the order is passed in violation of principles of natural justice and ignores material information, thus this appeal.

4. The learned counsel for the appellant argued under Section 36(1) of the Act, in discharge of its function, the Commission shall be guided by the *principles of natural justice* and subject to the other provisions of this Act and of any rule made by the Central Government, the Commission shall have the *powers to regulate its own procedure*.

5. Thus it was argued while closing the information, per Section 36(1) of the Act, the Commission ought to have observed principles of natural justice and should have given a notice to the informant and he could have disclosed other material facts relating to his information.

6. We have heard the arguments. A bare perusal of Section 36(1) of the Act itself says the Commission shall be guided by the principles of natural justice

and subject to the other provisions of this Act and of any rule made by the Central Government, the Commission shall have the powers to regulate its own procedure. Admitted the Commission has its own regulations known as The Competition Commission of India (General) Regulations, 2009.

7. Now let us first examine Section 26(2) of the Act. It reads as under:-

26. Procedure for inquiry under section 19.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

8. A bare perusal of Section 26(2) of the Act, shows if the Commission finds no prima facie case, it **shall** close the matter **forthwith**. No notice, at this stage, is envisaged under sub-section (2) of Section 26 of the Act. Admittedly, *per* Section 36(1) of the Act, we now look into the regulations of 2009 of the Commission. Regulations 19 read as under: -

19. Communication of order when no prima facie case found:

The Commission is of the opinion that there exists no prima facie case, the Secretary shall send a copy of the order of the Commission regarding closure of the matter forthwith to the Central Government or the State Government or the Statutory Authority or the parties concerned, as the case may be, as provided in sub-section (2) of Section 26 of the Act.

9. Thus *per* Section 26(2) of the Competition Act, 2002 as also Regulation 19 of the Competition Commission of India (General) Regulations, 2009, no notice is required to be given if the Commission is of the opinion there *exists no prima*

facie case and the Regulation in such circumstance, requires the Secretary to send a copy of the order of the Commission regarding closure of the matter to the Central Government or the parties concerned as provided under sub-section (2) of Section 26 of the Act. Thus neither the Substantive Act nor its Regulations made thereunder, envisage any notice to informant at *initial* stage and thus we find no fault in the impugned order. A bare reading of the impugned order would reveal the commission has rather gone beyond to discuss the merit of the information as is noted in following paras of the impugned order as under:-

8. *The Commission notes that the Informant, a State power generating company, requires non-coking coal for its thermal power plants to generate electricity. In the similar setting of factual matrix, the Commission, in previous coal cases (i.e. Case Nos.03, 11 & 59 of 2012) decided on 24.03.2017, after noting the physical characteristics of non-coking coal and its use in power plants, opined that there is no substitute available for non-coking coal used by the thermal power plants in India. Thus, the relevant product market was delineated as non-coking coal, which is used primarily as a raw material for generation of electricity by the thermal power plants. Further, while delineating the relevant geographic market, the Commission observed in the previous coal cases (supra) that as the condition for supply of coal in the entire country is uniform and homogenous, hence the relevant geographic market is entire India and imported coal cannot be considered a substitute for domestic coal on account of several factors including the peculiar design and specifications of the boilers used in majority of Indian thermal power plants and further considering that imported coal is subject to customs duty and other levies, rendering it more expensive than domestic coal supplied by the Opposite Parties.*

9. *Thus, the relevant market in the present case may also be taken as “production and sale of non-coking coal to thermal power generators in India”.*

10. *In the aforesaid relevant market, the Commission in previous coal cases (supra) opined that Coal India Limited (CIL) through its subsidiaries operates independently of market forces and enjoys dominance. While holding CIL and its*

subsidiaries to be in a dominant position, the Commission *inter alia* noted as follows:

...The mere fact that SCCL - a joint venture between the Government of Andhra Pradesh and the Government of India - also produces coal for commercial sale in itself does not detract the fact that CIL and its subsidiaries enjoy dominant position in the relevant market in as much as SCCL has a negligible presence in the relevant market...

11. In this regard, it would also be apposite to note the following figures from Provisional Coal Statistics 2015-16:

Non-coking coal production, Import and Availability

(in MT)			
Year	CIL's production of non-coking coal (in MT)	SCCL's production of non-coking coal (in MT)	India's total production of non-coking coal
2014-15	443.668	52.536	551.733
2015-16	482.774	60.38	578.347

Source: Provisional Coal Statistics 2015-16, Coal Controller, Ministry of Coal, Government of India (<http://www.coalcontroller.gov.in/writereaddata/files/Provisional%20Coal%20Statistics%202015-16.pdf>)

12. From the aforesaid, it is seen that SCCL produces a meagre amount of non-coking coal in the relevant market defined supra. For instance, in the year 2014-15 its share of non-coking coal production was an insignificant amount i.e. 9.52% and again its share of non-coking coal production also was insignificant in the next year 2015-16 at 10.44%. Further, from the ownership structure of SCCL, it is observed that it is a government coal mining company jointly owned by the Government of Telangana and the Government of India on a 51:49 equity basis indicating that it has no relationship with CIL. Also, it is observed that SCCL is not related to CIL or its subsidiaries. As such, it is seen that SCCL is engaged only in the business of mining and extraction of non-coking coal and therefore it is a competitor to CIL and its subsidiaries in the aforementioned relevant market.

13. In view of the above, the Commission is of the opinion that SCCL is not dominant in the relevant market. Hence, no case of contravention of the provisions of Section 4 of the Act is made out against SCCL and the information is ordered to be closed

forthwith in terms of the provisions contained in Section 26(2) of the Act.

14. As the alleged dispute between the parties appears to be a commercial dispute involving no competition concern, the remedies of the Informant would lie elsewhere. The Informant is at liberty to pursue its remedies before the appropriate forum, if so advised. It is made clear that nothing stated herein shall prejudice the claim of the Informant filed before such other forum, if the Informant chooses to exercise such option.

10. Thus we find the principles have been balanced well with the statute wherein the information filed by the appellant herein (informant before Respondent No. 1) has been considered and gone into in detail and further, a speaking order had been passed under Section 26(2) of the Act in complete adherence to the provisions as provided under the present section as well as the said Act. Hence, the allegation that principles of natural justice haven't been adhered to is completely untenable.

11. There is no merit in the appeal and accordingly it is dismissed. Pending applications *viz* I.A. No. 05/2018 and 06/2018 are also disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 13-01-2026
Bm