

M/S MARUTI CLEAN COAL & POWERS LTD.

v.

ALOK NIGAM & ANR.

(Interlocutory Application No. 3 of 2009

(In SLP(C) No. 20238 of 2006)

MARCH 31, 2010

**[K.G. BALAKRISHNAN, CJI., J.M. PANCHAL AND DR.
B.S. CHAUHAN, JJ.]**

Interim Orders:

Interlocutory application – For issuance of interim directions to South Eastern Coal Field Ltd. (SECL) to start supply of coal and issue Transit Passes/Delivery Orders through washery of petitioner on behalf of linked and other customers based on instructions/requests from them – Allowed – It is clarified that grant of this interim relief will be subject of the result of the title suit pending in the High Court – It is also clarified that if the issue of title is decided in favour of SECL, it would be open to the said company to lease the land to the petitioner or to take other steps in accordance with law – Coal – Coal washery.

A lease deed dated 5.12.2002 for a period of 99 years was executed in favour of the petitioner-Company by the State Government through the State Industrial Development Corporation, with regard to certain lands to enable the petitioner to set up a coal washery thereon. Subsequently, M/s. South Eastern Coal Field Ltd. (SECL) claiming title to the said land, filed a suit. A writ petition was also filed before the High Court to prevent the petitioner from setting up the coal washery on the ground that the land allotted was the forest land. The High Court passed an interim order in the writ petition allowing the petitioner to continue the construction of the building but restraining it from installing the machineries. In the

- A petition for special leave to appeal filed by the petitioner before the Supreme Court, interim order staying the construction was vacated. Since the petitioner had installed the machineries and the coal washery was set up but as supply of coal was not started, the petitioner
 B filed the instant application seeking a direction to the SECL to start supply of coal and issue Transit Passes/Delivery Orders through the washery of the petitioner.

Partly allowing the application, the Court

- C HELD: 1. The building constructed and the machineries installed have remained unused since long causing great financial loss to the petitioner-company. It is relevant to notice that as on date, there is no order subsisting, which restrains the petitioner from operating
 D the washery in question. The assertion made by the petitioner that it has received all necessary approvals for running the washery including the approval from the Ministry of Environment, Electricity Department, Commercial Tax Department, licence under the Factories
 E Act etc. is not disputed by any of the respondents. [Para 8] [333-B-C]

2. M/s SECL is hereby directed to start supply of coal and issue Transit Passes/Delivery Orders through the washery of the petitioner on behalf of linked and other
 F customers based on instructions/requests from them. It is clarified that the grant of this interim relief will be subject to the result of Civil Suit No. 1-A of 2008 pending in the High Court. It is also clarified that if the issue of title is held in favour of M/s SECL, it would be open to the said
 G company to lease the land to the petitioner-company or to take other steps with reference to the said land in accordance with law. [Para 9] [333-E, F]

- H *T.N. Godavarman Thirumulpad vs. Union of India & Ors.* (2006) 5 SCC 28, cited.

MARUTI CLEAN COAL & POWERS LTD. v. ALOK 327
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Case Law Reference:

(2006) 5 SCC 28 cited **para 2**

CIVIL APPELLATE JURISDICTION : Interlocutory
Application No. 3 of 2009.

IN

SLP (Civil) No.20238 of 2006.

From the Judgment & Order dated 9.5.2003 of the High
Court of Chhattisgarh at Bilaspur in WP (C) No. 1264 of 2003.

Mukul Rohtagi, Ranjit Kumar, Vikas Singh, Ajit Kumar
Sinha, Saurav Kirpal, Ayush Agarwal, (for Suresh A. Shroff &
Co.), Anurag Sharma, Sanjeev K.Bhardwaj, (for R.C. Kaushik),
Ambhoj Kumar Sinha, Ashwarya Sinha, Swetabh Sinha for the
appearing parties.

The Judgment of the Court was delivered by

J.M. PANCHAL, J. 1. By filing this Interlocutory Application,
M/s. Maruti Clean Coal & Power Limited which has established
a coal washery of 10 M.T.Y. capacity on Khasra Nos.850/30,
850/24, 850/31, 850/28, 850/27 and 850/32 of Village Ratija,
District Korba leased by the State of Chhattisgarh through
Chhattisgarh State Industrial Development Corporation
(‘CSIDC’ for short), has prayed to direct M/s. South Eastern
Coal Field Limited (‘SECL’ for short) to start supply of coal
immediately and issue Transit Passes/Delivery Orders through
the washery of the petitioner on behalf of linked and other
customers on instructions/requests from all such customers/
purchasers of coal.

2. In order to understand the scope and ambit of the prayer
made by the petitioner, it would be relevant to notice certain
facts. M/s. Maruti Clean Coal & Power Limited is a company
registered under the provisions of the Companies Act. It applied
for the allotment of about 15 hectares (37.91 acres) of land of
village Nawagaon Khurd (now Ratija), District Korba, (‘the land’
for short) for setting up a Coal Beneficiation Plant with a

A capacity to wash 10 million tons of coal per annum. The land demanded was adjacent to already existing two coal washeries one of which was set up by ST-CLI in which one Aryan Coal Beneficiation Pvt. Ltd. has 26% holdings and another Coal Washery set up belongs to Aryan itself. The officials of the Revenue, Forest and Industry Departments of the State conducted a thorough inspection of the land demanded by the petitioner. After being satisfied that the land demanded was not forest land and requirements of environmental laws were complied with by the petitioner, the officials recommended to the State to allot the land to the petitioner. Pursuant to the said recommendation, a lease deed dated December 5, 2002 for a period of 99 years was executed in favour of the petitioner by the State of Chhattisgarh through CSIDC. The purpose for which the lease deed was executed was to enable the petitioner to set up a coal washery. Pursuant to the said lease deed, the petitioner was put in possession of the land. However, subsequently, SECL claimed title to the land and alleged that the land did not belong to the State Government and, therefore, could not have been leased by the State to the petitioner.

E In March/April 2003, one Mr. B.L. Wadhera, a public spirited citizen instituted WP (C) No.1264/2003 before the High Court of Chhattisgarh at Bilaspur to prevent the petitioner from setting up its coal washery on the land allotted to it by the State Government on the ground that the land allotted were forest land. The High Court, by an ex parte order dated April 24, 2003, directed the petitioner to maintain status quo regarding the land allotted to it and not to cut trees standing on the land till further orders. In view of the dispute pertaining to the title of the land between SECL and the State Government, the Union of India, vide letter dated May 7, 2003 sent through the Ministry of Coal, gave the petitioner two options (1) to wait until title issue is decided; or (2) to proceed on the assumption that the title vests in SECL and on that basis, to request the SECL to allot the land to the petitioner. It was also mentioned in the said letter

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that in the event the petitioner chose the second option, Coal India Limited and SECL would be requested by the Ministry to initiate action for leasing the land to the petitioner. The record shows that by letter dated May 9, 2003, the petitioner elected the second option. The petitioner filed an application for vacation of the stay order. The High Court, by order dated May 9, 2003, modified its earlier order and allowed the petitioner to continue with the construction of the main building but restrained it from installing the machineries. Meanwhile, the SECL wrote a letter dated June 27, 2003 to the Ministry of Coal stating that it had no objection in leasing the land to the petitioner subject to certain conditions including the condition that the fact that the land belonged and belongs to SECL is acceptable to the petitioner. Feeling aggrieved by order dated May 9, 2003, Mr. B.L. Wadhwa filed SLP (C) No.22531 of 2003. This Court, by order dated November 24, 2003 stayed further construction on the land. Subsequently, the said SLP was tagged with IA No.857-858 of 2003 filed by Mr. Wadhwa and one Mr. Deepak Aggarwal respectively. This Court, by judgment dated April 10, 2006 in case of *T.N. Godavarman Thirumulpad vs. Union of India & Ors.* (2006) 5 SCC 28, dismissed the application of Mr. Deepak Aggarwal observing that it was filed with mala fide intention. The interim order passed staying further construction was vacated. On the pronouncement of judgment by this Court, the petitioner filed an application in the writ petition pending before the High Court of Chhattisgarh with a prayer to dismiss the writ petition. The record shows that the said application was heard with two other connected petitions and judgment was reserved. However, the judgment could not be pronounced by the High Court. Therefore, the petitioner filed an application for vacating the interim orders dated April 23, 2003 and May 9, 2003. Listing of the said application was refused by the Registry on the ground that in the main matter, judgment was reserved. Meanwhile, the petitioner completed construction of the main building. The order for purchase of machineries to be installed was already placed.

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A 3. On December 9, 2004, SECL filed Civil Suit No.90-A
of 2004 against the State of Chhattisgarh and the petitioner
contending, inter alia, that the land allotted to the petitioner
company by the State of Chhattisgarh through CSIDC had
vested in SECL and that SECL is the owner and in possession
B of the land in question. Various other litigations and
proceedings were initiated by several parties pertaining to the
land allotted to the petitioner company. The Ministry of Coal,
by letter dated December 30, 2005 advised SECL to
implement the instructions dated May 7, 2003 mentioned in
C para (b). The petitioner thereupon addressed a letter dated
June 14, 2006 to SECL to inform the petitioner about the lease
premium/rent to be deposited. The record of the case further
shows that in spite of instructions issued by the Ministry of Coal
and request made by the petitioner, SECL did not initiate steps
D for leasing the land to the petitioner. Therefore, the petitioner
has filed Special Leave Petition No.20238 of 2006 challenging
validity of order dated April 24, 2003 as modified by order dated
May 9, 2003 in WP No.1264 of 2003 pending before the High
Court of Chhattisgarh. In the abovereferred special leave
E petition, the Court has issued notice and the said SLP is
pending for final disposal. Thereupon, the petitioner company
filed Transfer Petition No.53 of 2007 in this Court to direct that
all the connected matters including the suit, writ petitions and/
or appeals be heard together and transferred to the High Court
of Chhattisgarh at Bilaspur. The said Transfer Petition was
F allowed. Pursuant to the directions given by this Court, the
number of Civil Suit was changed from 90-A of 2004 to Civil
Suit No.1-A of 2008. The said suit and all other connected writ
petitions, appeals etc. are pending adjudication before the High
Court of Chhattisgarh at Bilaspur.

G 4. During the pendency of proceedings before the High
Court of Chhattisgarh, the Prime Minister's Office vide letter
dated June 26, 2007 to the Secretary, Ministry of Coal
approved and recommended SECL to move an appropriate
H application before the High Court of Chhattisgarh seeking

permission of the Court for leasing the land to the petitioner company for establishment of a coal washery. Having regard to these directions, the Ministry of Coal issued a letter dated July 4, 2007 to M/s. Coal India Ltd. which is parent company of SECL, stating that in view of the decision by the competent authority, SECL should take appropriate action to lease the land to the petitioner company. Therefore, M/s. Coal India Ltd. addressed a letter dated July 5, 2007 to SECL directing it to take all necessary actions for execution of lease deed in favour of the petitioner company. On July 9, 2007, SECL issued a letter to the Chairman-cum-Managing Director of CMPDI requesting to make assessment of the land required to be leased out. In view of the directions contained in letter dated July 5, 2007 of Coal India Limited, SECL filed an application on July 16, 2007 before the High Court of Chhattisgarh at Bilaspur in WP No.3094 of 2007 seeking permission to execute a lease deed in favour of petitioner's company. It was also mentioned in the said application that the petitioner company had agreed to take the land on lease for establishment of a coal washery and agreed to pay the lease money to SECL. Subsequently, on August 9, 2007, an additional affidavit was filed enumerating three conditions precedent to the execution of lease deed in favour of petitioner-company. The record shows that the petitioner-company showed willingness to abide by those conditions but no lease deed is executed between the petitioner-company and SECL. In the title suit filed by SECL, an order was passed by the High Court directing the parties to appear before Mr. Gopal Subramaniam, the then learned Additional Solicitor General of India, to explore the possibilities of a settlement. The record does not indicate that any settlement had taken place between the parties.

5. The grievance made by the petitioner in the instant application is that it has expended almost Rs.100 crores to set up a 10 million ton washery. It is averred in the application that the buildings have been constructed and expensive state of art machineries and equipments have also been purchased and

A installed. The petitioner has mentioned that trial run was also
done in the wahsery nearly two years ago and the petitioner is
not able to operate the washery only due to refusal by SECL
to issue Transit Passes/Delivery Orders for transport of coal
purchased by the linked and other consumers through the
B petitioner's wahsery before delivery to such purchasers.
According to the petitioner, the only ostensible reason for SECL
to refuse grant of Transit Passes/Delivery Orders is the dispute
as to the title of the land between the State of Chhattisgarh and
SECL. The claim advanced by the petitioner is that washing
C of the coal before consumption has significant environmental
benefits and is also in the public interest and as there is
significant shortage of coal washeries, the petitioner's washery
should be permitted to operate. Under the circumstances, the
petitioner has filed this application and claimed relief to which
reference is made earlier.
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6. The respondents have filed affidavit in opposition.

7. This Court has heard the learned counsel for the parties
at great length and in detail. The Court has also considered the
documents forming part of the instant application as well as
E SLP (C) No.20238 of 2006.

8. During the course of hearing of the application, it was
made clear by the learned counsel for the petitioner that the
petitioner company is ready to take the land on lease from
F SECL and pay rent to the said company. The record shows that
several cases have been clubbed together and Civil Suit No.1-
A of 2008 relating to title of the land leased to the petitioner
company by the State Government is pending disposal. The
averments made by the petitioner that on the leased land, the
G petitioner has expended almost Rs.100 crores to set up a 10
million tons washery and has installed expensive machineries
could hardly be controverted by the respondents. The petitioner
company is neither claiming title to the land nor asserts that the
coal coming to its company for wash belongs to it. By a scientific
H process, the petitioner washes the coal brought to the factory

by the purchasers. Once SECL sells coal to the highest bidder and the bidder pays the price, the property in coal would stand transferred to the purchaser and the purchaser would be free to deal with the quantity of coal purchased like any other prudent purchaser. Here, the petitioner-company is not concerned at all with the title of the coal in question. The building constructed and machineries installed have remained unused since long causing great financial loss to the petitioner-company. It is relevant to notice that as on date, there is no order subsisting which restrains the petitioner from operating the washery in question. The assertion made by the petitioner that it has received all necessary approvals for running the washery including the approval from the Ministry of Environment, Electricity Department, Commercial Tax Department, licence under the Factories Act etc. is not disputed by any of the respondents. Therefore, this Court is of the opinion that the prayer made by the petitioner-company in the instant application deserves to be granted, of course, subject to certain conditions.

9. For the foregoing reasons, the application partly succeeds. M/s South Eastern Coal Field Ltd. is hereby directed to start supply of coal and issue Transit Passes/Delivery Orders through the washery of the petitioner on behalf of linked and other customers based on instructions/requests from them. It is clarified that the grant of this interim relief will be subject to the result of Civil Suit No.1-A of 2008 pending in the High Court of Chhattisgarh at Bilaspur. It is also clarified that if issue of the title is held in favour of M/s. South Eastern Coal Field Ltd., it would be open to the said company to lease the land to the petitioner-company or to take other steps with reference to the said land in accordance with law. Subject to above mentioned clarifications/observations, rule is made absolute. There shall be no order as to costs.

R.P.

Application Partly allowed.