

Ehsan Khalid

v.

Union of India Thr. Secretary & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE R.M. LODHA HON'BLE MR. JUSTICE MADAN
B. LOKUR

Writ Petition (Civil) No. 429 Of 2013 | 05-08-2013

1. Permission to argue in-person is granted.

2. In this Writ Petition (Public Interest Litigation), the issue with regard to divestment of 10% equity of Coal India Limited (CIL) in October 2010 has been raised. It is alleged that powerful financial institutes usurped the natural resources only on payment of Rs. 15,200 Crores and caused loss to the exchequer of Rs. 1.75 Lakh Crores to the nation. According to the petitioner, the proposal of equity disinvestment was neither legal nor transparent. The existing norms and government laid down policies were flouted.

3. On July 15, 2013, this Court directed the petitioner, who appears in-person, to serve a copy of the Writ Petition along with all annexures to Mr. D.S. Mahra, advocate-on-record, to enable Mr. Siddharth Luthra, learned Additional Solicitor General, to take instructions in the matter.

4. We have heard Mr. Ehsan Khalid, petitioner-in-person and Mr. Siddharth Luthra, learned Additional Solicitor General.

5. Mr. Siddharth Luthra placed before us Office Memorandum dated 03.08.2013 alongwith annexures. He stated that entire process of Initial Public Officer (IPO) of CIL was carried out in a transparent manner and as per the rules and regulations laid down by the Securities and Exchange Board of India (SEBI). The procedure is laid down in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR). As required by ICDR, intermediaries such as Book Running Legal Managers, legal

counsel (domestic and international), advertising agency, register, etc. were appointed to guide the deal and to give the professional advise at every stage. All these appointments were made on competitive basis.

6. As regards the valuation, it was brought to our notice that, inter alia, three valuation methodologies which investors typically use were applied. These three methodologies are - (i) EV (Enterprise Value)/EBITDA (Earnings before Interest, Tax, Depreciation and Amortization), (2) Price to Earnings (Ratio of Market price to earning per share of a company) and (3) Price to Book (Ratio of current market price to book value of each share of the company).

7. As per the first methodology, a price band of Rs. 220-238 per share was calculated. In second methodology, a price band of Rs. 234-246 per share was arrived at. As per third methodology, a price band of Rs. 128-135 per share was arrived at. Finally, the price band for IPO was fixed at Rs. 226-245 per share.

8. The petitioner alleges that the assets valuation methodology was not adopted which is the most appropriate methodology of valuation.

9. What was involved in the present case was not the sale of assets but sale of equity capital. If after following the ICDR and on taking into consideration the relevant methodologies of valuation for sale of equity capital the price band of Rs. 226-245 per share was fixed, it cannot be said that the price band so fixed was unreasonable or sale of 10% equity capital by CIL was unfair. Where challenge is laid to a government policy, particularly economic policy, this Court does not interfere in such policy matter in its power of judicial review unless the impugned policy is found to be grossly arbitrary or unfair or unreasonable or irrational or violative of constitutional provisions or contrary to statutory provision.

10. In view of what we have discussed above, we are satisfied that no case for interference in the policy matter in our extra-ordinary jurisdiction under Article 32 of the Constitution of India is made out.

11. Writ Petition (PIL) is, accordingly, dismissed in limine.