

INDIA POWER CORPORATION LIMITED

FPPCA 2019-20

COMPLIANCE REPORT

ANNEXURE-III

INDIA POWER CORPORATION LIMITED
COMPLIANCE REPORT ON COAL
LINKAGE INITIATIVES
12 MW DISHERGARH POWER STATION



Submitted in response to WBERC Letter no. WBERC/OA-244/16-17/2681



COMPLIANCE REPORT ON COAL LINKAGE INITIATIVES

BACKGROUND:

1. India Power Corporation Limited ("IPCL") [formerly known as DPSC Limited] is a distribution licensee since 1919 and is distributing power in the Asansol-Raniganj Belt of West Bengal.
2. It had an old embedded generation plant of 12.2 MW at Dishergarh, which used to get B/C graded coal from Eastern Coalfields Limited ("ECL") under the coal linkage allocation of Ministry of Coal.
3. The said old power station was dismantled in the year 2012-13 as per the directions of the Hon'ble Commission in view of the environmental concerns.
4. In place of the old power station, IPCL commissioned a new 12 MW power plant at the same location on 25th September, 2012.
5. As per the requirement of new power station which uses lower grade coal, IPCL had submitted an application for transfer of coal linkage in respect of its Old DPS Plant 12.2 MW to the newly set up 12 MW Plant with a change in coal grade from B/C to E/F to suit the design parameters.
6. This report is being submitted as part of the response to query of the Hon'ble Commission vide letter no. WBERC/OA-244/16-17/2681 dated 17.08.2018 regarding the actions taken to establish the required linkage of coal with Coal India Limited ("CIL").

ACTIONS TAKEN FOR COAL LINKAGE:

7. As informed in the earlier para no. 5 above, after IPCL submitted an application for transfer of coal linkage in respect of its Old DPS Plant 12.2 MW to the newly set up 12 MW Plant with a change in coal grade from B/C to E/F, the Ministry of Power vide their Office Memorandum F.No.FU-1/2011-IPC (Vol.II) dated 23rd December, 2011 supported IPCL's request based on the recommendation of Ministry of Coal.
8. The Ministry of Coal, vide their Letter Ref No.23021/115/2004-CPD dated January 30, 2012, cleared the request and advised ECL to take appropriate action so that FSA can be signed from their end.
9. Vide a letter No.CIL/C-4B/47252 (new Pol)/466 dated 26th June, 2012 issued by Coal India Limited (CIL) to Ministry of Coal enclosing a letter of ECL No. ECL/HQ/Linkage/DPS dated 8th May, 2012, CIL sought some clarifications regarding the guideline of coal linkage.
10. The Ministry of Coal clarified the contents in the said ECL letter and issued a letter No.23021/115/204-CPD dated 17th September, 2012 to CIL and advised the concerned coal company to decide the matter as per powers delegated by SLC(LT) for the 1x 12 MW Power Plant.



COMPLIANCE REPORT ON COAL LINKAGE INITIATIVES

11. Based on IPCL's letter dated 4th December, 2012, Ministry of Coal issued a communication to CIL vide letter No.23021/115/2004-CPW dated 14th February, 2013 clarifying the position of 12 MW plant and requested them to take action regarding the execution of FSA.
12. Based on the advice of Ministry of Coal, CIL issued a letter No.CIL/S&M/Ministry/77 dated 26th February, 2013 to ECL advising them to take appropriate action regarding the transfer of coal linkage from 12.2 MW to 12 MW with a change from B/C grade to F grade.
13. Referring the above decision, IPCL wrote letters to Director (Technical Operations) of ECL dated 23rd July, 2013 and 1st August, 2013 requesting them to take up the matter as per the instruction of Ministry of Coal and CIL to sign the FSA and supply the coal to 12 MW power station.
14. There was no positive response from ECL. Since, IPCL is unable to get the FSA signed with CIL/ECL in spite of its best effort, it has preferred a Writ Petition Numbering W.P.35231(W) of 2013 before the Hon'ble High Court of Calcutta seeking for its direction upon ECL towards execution of the Fuel Supply Agreement (FSA). At present, the matter is subjudice before the Hon'ble High Court of Calcutta.
15. IPCL would like to inform the Hon'ble Commission that in spite of its best effort it has not yet been able to get a Coal Linkage from ECL for its 1x12 MW Power Plant. IPCL, from time to time, has apprised the Hon'ble Commission regarding the status of signing of FSA with ECL.

INTERIM COAL SOURCING FOR 12 MW POWER STATION:

16. In view of the failure/delay to obtain coal linkage for its new 12 MW power plant at Dishergarh due to non-cooperation from ECL, IPCL had to procure coal from local traders during the initial brief period of operation at a high price.
17. Thereafter, with the in-principle clearance of the Hon'ble Commission vide order dated 11th September 2013 in Case No. WBERC/OA-163/12-13, IPCL started procuring coal through e-Auction in the interim.
18. In view of the high cost of e-Auction coal, IPCL made efforts to reduce the coal consumption cost by mixing e-Auction coal and washery rejects/coal rejects from other local suppliers.
19. Generation from 1x12 MW Plant is utilized for meeting the demand from consumers in Dishergarh Circle and therefore for an uninterrupted power supply to consumers generation from 1x12 MW Plant is absolutely necessary.
20. We would like to re-iterate that IPCL has made sincerest and best effort to get the coal linkage from ECL. However, even in absence of the coal linkage, IPCL has procured coal through E-Auction to maintain continuous supply of power to the consumer. It has also reduced the coal consumption cost by mixing E-Auction Coal with washery rejects to consumers of Dishergarh.



COMPLIANCE REPORT ON COAL LINKAGE INITIATIVES

Circle have been benefitted from the un-interrupted power supply as otherwise Consumers would have to face power cut.

FURTHER INITIATIVE FOR COAL LINKAGE:

21. It is expected that Shakti Scheme, which was earlier conducted by the Central Government in August 2017, may again be conducted in subsequent period. IPCL is exploring the possibility to participate in the subsequent version of Shakti Scheme, whenever it is conducted next time by the Government of India.

CONCLUSION:

- a) IPCL has been making sincerest efforts to get coal linkage from ECL.
- b) The WRIT Petition no. W.P.35231(W) of 2013 before the Hon'ble High Court of Calcutta, in respect of coal linkage with ECL is under subjudice.
- c) IPCL has continued to provide un-interrupted power despite sourcing coal from open market, where price is very much volatile.

ENCLOSURES:

1	APPENDIX - A	COPY OF CORRESPONDENCES REGARDING COAL LINKAGE
2	APPENDIX - B	COPY OF WRIT PETITION FILED BEFORE HON'BLE HIGH COURT OF CALCUTTA



Appendices - A

F No TU 12011 IPC/Vel/11
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, dated 23rd December, 2011

OFFICE MEMORANDUM

Sub: Transfer of Long term coal linkage for 12 MW project of DPSC Ltd., West Bengal.

The undersigned is directed to refer to Ministry of Coal's OM No. 23021/372/2010-CPD dated 31.12.2010 on the above subject and to enclose a copy of CEA's ID No 164/GC/BO/CE/TP&H/2010/2919 dated 5.9.2011. In view of the observations made by CEA, this Ministry supports the request of M/s. DPSC Ltd for transfer of coal linkage allocated for the existing units of 12.2 MW capacity to the new unit of 12MW with change of grade from BAC grade as at present to F grade.

2. This issues with the approval of Secretary (P)

End: as above

(S. Narayanan)
Under Secretary to the Govt. of India
Tel: 23765236

Ministry of Coal,
(Shri G. Srinivasan, Under Secretary)
Shastri Bhawan,
New Delhi

Copy to M/s. DPSC Ltd, Centre for Excellence, Plot No. X 1, 2 & 3 Block EP, Sector-V,
Salt Lake City, Kolkata - 700091



Dipkanta
9650583499

1856
316/2011

No. 23021/115/2004 -CPD
Government of India
Ministry of Coal

Shastri Bhawan,
New Delhi the 30th January, 2012

To

General Manager(S&M),
ECL, Sanctoria, WB

Sub: Transfer of coal linkage allocated for the existing units of 12.2 MW capacity to the new unit of 12 MW with change of grade from "B/C" grade to "F" grade. M/s. DPSC Ltd

Sir,

I am directed to forward herewith a copy of OM No. FU-1/2011-IPC (Vol-II) dated 23.12.2011 received from Ministry of Power on the above mentioned subject.

The request is for the following in respect of DPSC's Dishergarh plant:-

- i) reduction of capacity from 12.2 MW to 12 MW
- ii) conversion of existing coal linkage from B&C grade to F grade.

SLC(LT) for Power in its meeting held on 18.4.2011 has authorized the concerned coal companies to decide requests for reduction/enhancement in the capacity, subject to certain conditions. The request for grade change is also to be decided by the concerned coal co., which is already being done by the coal companies themselves

ECL is requested to take appropriate action as per norms in the matter, under intimation to this Ministry

Encl: as above

Yours faithfully,

G. Srinivasan

(G. Srinivasan)

Under Secretary to the Govt. of India

Copy to:

1. Ministry of Power (Sh. S. Narayanan, US), Shram Shakti Bhawan, New Delhi w.r.t. their OM No. FU-1/2011-IPC (Vol-II) dated 23.12.2011
2. CGM(S&M), CIL, 15, Park Street, Kolkata - for information

✓ Copy also to: M/s. DPSC Ltd. Sanctoria, Dishergarh-713 333, WB



From:



COAL INDIA LIMITED
 (A Maharatna Company)
 (Govt. of India Undertaking)
 (Marketing Division)
 Apeejay House, B-Block, 6th Floor,
 15, Park Street, Kolkata 700 016.

Phone: 22276092, 22293425
 Fax: 033-22472338/0495
 E-Mail: mktgCIL@cal3.vsnl.net.in
 Website: www.coalindia.nic.in

No. CIUC-4B/47252 (New/8C)/466

Date: 26/6/2012

Sri G. Srinivasan,
 Under Secretary to the Govt. of India,
 Ministry of Coal,
 New Delhi.
 Dear Sir,

Sub: Transfer of coal linkage allocated for the existing units of 12.2 MW capacity to the new unit of 12 MW with change of grade from B/C grade to F grade - M/s. DPSC Ltd.

Please refer to the letter no. ECL/HQ/linkage/DPSC/4605 dated 8/5/2012 from Sri V.K. Singh, GM (S&M), ECL, Sanctoria addressed to CGM (S&M), CIL, Kolkata with a copy endorsed to you, a copy of which is enclosed for your ready reference.

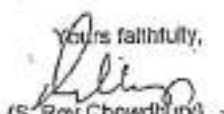
It may kindly be noted from the contents of the above mentioned letter of GM (S&M), ECL that DPSC Ltd. had a pre-NCDP linkage on ECL for a total combined capacity of 42.2 MW (10 MW x 3 at Chinakuri and 12.2 MW at Disergarh) in B/C grade, out of which 30 MW capacity at Chinakuri was owned by ECL and the balance 12.2 MW capacity at Disergarh belong to DPSC Ltd.

As per decision taken in the SLC (LT) meeting held on 14/2/2012, the change of category from CPP to IPP appears to have been made for 12.2 MW capacity belonging to DPSC Ltd, whereas earlier as per your letter no. 23021/115/2004-CPD dated 30/1/2012, it was advised for reduction in capacity from 12.2 MW to 12 MW and also for conversion of the existing coal linkage from B/C grade to F grade. In this connection it may be mentioned that the guidelines given in the SLC (LT) meeting of 18/4/2011 for reduction/enhancement in capacity, the guidelines are applicable for the power station coming through LoA route, whereas DPSC Ltd was having a pre-NCDP linkage. Moreover, as mentioned in the letter of GM (S&M), ECL, grade F coal can not be made available for this unit.

Under the above circumstances it appears that further advice from MoC/SLC(LT) is needed in the matter.

Encl: As above.

Yours faithfully,


 (S. Roy Chowdhury)
 General Manager (S&M/QC)

cc to: CGM (S&M), CIL, Kolkata
 cc to: GM (S&M), ECL, Sanctoria.

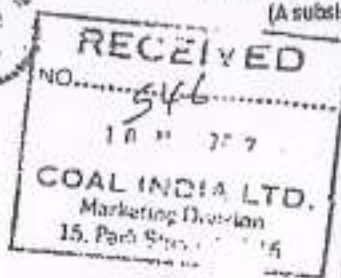


ECL

ECL/HO/Linkage/DPSC/

4605

The
Chief General Manager (S&M),
Coal India Ltd,
15, Park Street,
Kolkata-16



Eastern Coalfields Limited

(A subsidiary of Coal India Limited)

Sanctoria, PO: Dishergarh,
Dt. Burdwan, Pin- 713333

Dated : 08.05.2012

Sub : Transfer of coal linkage allocated for the existing units of 12.2 MW capacity to the new unit of 12 MW with change of grade from B/C grade to F grade - M/S DPSC Ltd

Dear Sir,

We are in receipt of memo no 23012/115/2004-CPD dated 30.1.2012 (copy enclosed) from MOC regarding the captioned subject.

DPSC have a pre-NCDP linkage on ECL for total combined capacity of 42.2 MW (10 MW X 3 at Chinsakuri & 12.2 MW at Dishergarh) in B/C grade. Out of the total capacity of 42.2 MW, 30 MW capacity is owned by ECL and was given on lease to DPSC Ltd and the current lease period has expired on 31.3.2012.

DPSC Ltd has requested for reduction of capacity from 12.2 MW to 12 MW for their plant at Dishergarh and change to grade from B/C grade to F grade. MOC vide the aforesaid memo has advised the coal company to deal with the request of reduction in capacity in terms of the decision of SLC(LT) for Power meeting held on 18.4.2011 authorising concerned coal company to decide for reduction/enhancement in capacity, subject to certain conditions. However, the procedure laid down in the SLC(LT) for Power meeting held on 18.4.2011 for reduction of capacity pertains to units under LDA and DPSC Ltd have a pre-NCDP linkage.

As regard to change in grade from B/C to F, it may please be noted that DPSC Ltd have a linkage for a combined capacity of 42.2 MW in B/C grade. Change in capacity and grade will require reassessment of quantity. Moreover, there is negative coal balance on Rajmahal, the only source of grade F coal in ECL mainly servicing NTPC plants of Farakka and Kahaiguan.

The matter was also deliberated in SLC(LT) for Power held on 14th February 2012 under item no. (xvii) Change of Category from CPP to IPP-M/S DPSC Ltd. vide which it has been stated at point (i) "In view of the recommendation of MOP and facts of the case the request for conversion from 'CPP' to 'IPP' in respect of DPSC Ltd. can be agreed to". We understand that the capacity of DPSC may be restricted to 12.2 MW in the near future as mentioned under item no. (xvii) - excerpt enclosed.

Recently, we have received a letter no. CM&CS/Coal/002/12-13 dated May 4, 2012 (copy enclosed) vide which DPSC Ltd. has requested for making them available F grade coal for immediate operation of their 12MW unit at Dishergarh Plant under IPP category.

In view of the above, you may like to advise on the matter.

Yours faithfully

(V.K. Singh)

General Manager (S&M)

c.c. DT(OP), ECL, Sanctoria
c.c. Sri G Srinivasan,
Under Secretary to the Govt of India,
Ministry of Coal, Shastri Bhavan, New Delhi - with the above enclosures
c.c. GM (E&M), ECL Sanctoria



No. 23021/115/2004-CPD
Government of India
Ministry of Coal

Shastri Bhawan,
New Delhi, the 17th Sept, 2012

To

General Manager(S&M/QC),
Coal India Limited, Marketing Division,
15, Park Street, Kolkata

Subject: Transfer of coal linkage allocated for the existing unit of 12.2 MW capacity to the new unit of 12 MW and change of grade from B/C grade to F grade- DPSC Ltd

Sir,

I am directed to refer to CIL's letter No. CIL/C-4B/47252(New Pol)/468 dated 26.6.2012 on the above mentioned subject and to say that M/s. DPSC vide their letter dated 18.5.2012 (copy enclosed) had made certain requests, which have been examined in the Ministry.

2. The Competent Authority has taken the view that there is no need to frame separate guidelines/instructions for pre-NCDP linkage holders coming up with the requests for reduction in capacity, which are very few in number. The issues related to pre-NCDP linkage holders (including M/s. DPSC), can be considered on the same lines as adopted for the power plants coming through LoA Route, by the CIL/concerned coal company.

3. The CIL/ECL are therefore requested to take a view on the request of M/s. DPSC for reduction in the capacity of their power plant (IPP) from 12.2 MW to 12 MW. The matter of supply of E/F grade coal in place of B/C grade coal with the appropriate quantity may also themselves be decided by CIL/coal company as per the powers delegated by SLC(LT) in its meeting held on 18.4.2011. The action taken in the matter may thereafter be apprised to this Ministry.

Encl: as above

Yours faithfully,

G. Srinivasan
(G. Srinivasan)

Under Secretary to the Govt. of India

Copy to: CGM(S&M), ECL, Sanctona, WB
Copy also to: M/s. DPSC Ltd., Sanctona, Dishergarh-713 333, WB





4th December, 2012.

Mr. Shailesh Kumar Singh, IAS,
Joint Secretary,
Ministry of Coal,
Government of India,
Room No.321-A; Shastri Bhawan,
New Delhi - 110 001.

Dear Sir,

TRANSFER OF COAL LINKAGE ALLOCATED FOR THE EXISTING UNIT OF 12.2 MW CAPACITY TO OUR NEW UNIT OF 12 MW CAPACITY AND CHANGE OF GRADE FROM B/C TO F GRADE

This has reference to your MoM No.23021/115/2004-CPD dated 17th September, 2012 issued to General Manager (S&M/QC), Coal India Limited with copies to CGM (S&M), Eastern Coalfields Limited and DPSC Limited.

We have met the representatives of Coal India Limited (CIL) and Eastern Coalfields Limited (ECL) and had a series of discussion at length on the subject, based on your communication dated 17th September, 2012. We have requested them to advise the concerned coal company to execute the FSA for the above 12 MW plant so that we can get the coal at an early date. The representative of CIL has communicated to us that though the concerned Ministry vide their above MOM has requested CIL/ECL to consider our case on the same line as adopted for the power plants coming through LOA route, the name of our company has not been mentioned in the list of power plants as per the circular of Coal Ministry dated 17th February, 2012. As a result, execution of FSA through LOA route on immediate basis has become difficult for us.

Against this backdrop, we would like to elucidate some points with regard to our company for your kind perusal and consideration :-

- 1) You may be aware that DPSC Limited is a 93-year old private power utility engaged in the business of generation and distribution of power through its distribution network of 618 sq.km. licensed area in the Asansol coal-belt and power tariff regulated by the Hon'ble West Bengal Electricity Regulatory Commission (WBERC). In accordance with the New Coal Distribution Policy (NCDP) guidelines, CIL and its concerned subsidiaries executed the FSA with all the existing power plants operational as on 31st March, 2009 without the LoA route. Accordingly, the power stations of West Bengal State Elec. Board, CESC etc. entered into the FSA with CIL. Though Dishergarh Power Station had been in existence since 1981, DPSC Limited, at that time, could not execute the FSA since it had already entered into an agreement with ECL as per the existing coal linkage of 2005 in respect of its Chinakuri and Dishergarh Power Stations. Over and above, the Company was trying to change its category from CPP to IPP as its category was inadvertently mentioned as CPP in our earlier linkage. This technical snag prevented DPSC Limited from signing the FSA for our existing power



station. The time we received the clearance for the change of status from CPP to IPP, the 20 year lease agreement with ECL for our Chinakuri Power Station had expired. Presently the 30 MW Chinakuri Power Station owned by ECL is not in operation but we have been able to renovate the 12.2 MW existing DPS Unit to the new unit of 12 MW.

- 2) This power station which has been in operation for a long time stands in close proximity to various coal mines of ECL, to whom we supply power. The required quantity of coal for this power station is also very small, say, to the tune of around 9000 MT of E/F grade coal per month.
- 3) During the discussion with CIL they have confirmed that our present application may be considered through LOA route. As we have a running power station and the renovation of the plant i.e. 12 MW has already been completed, we are hopeful of achieving the milestone under the guidelines as applicable for the power stations coming through LOA route and of submitting our application and signing of FSA accordingly.
- 4) As regards the change of coal grade from B/C to E/F, we have been assured by CIL that they will take care of it from their end.
- 5) As a power utility company our tariff is regulated by the WBERC and for the benefit of the consumers, we are not allowed to purchase coal at a higher price through e-auction route from outside. This being the fact, we are totally dependent on the linkage coal to run the power station.

Considering the above facts and taking cognizance of utilizing present resources including the 200 nos. of the existing workforce attached to our newly renovated plant, we would fervently appeal to you to offer us some relief by providing us some ad hoc allocation of 9000 MT of coal per month at least for three months, by which time we will be able to complete all the necessary formalities through LoA route as per the NCDP guidelines. This will enable us to supply reliable power to the industries and collieries in that region.

We hope that our appeal will meet favourable consideration by your good office and necessary advice may kindly be given to the concerned departments to enable us to run the power stations uninterruptedly.

Yours faithfully,
DPSC Limited

(Suresh Dasgupta)
President - Corporate Affairs & Admin

- ✓ c.c. Director (Marketing), Coal India Limited.
- c.c. General Manager (S&M/QC), Coal India Limited.
- c.c. General Manager (S&M), Eastern Coalfields Ltd., Sanctoria



No. 23021/115/2004-CPD
Government of India
Ministry of Coal

Shastri Bhawan,
New Delhi, the 14th February, 2013

To
General Manager(S&M/QC),
Coal India Limited, Marketing Division,
15, Park Street, Kolkata

Subject: Transfer of coal linkage allocated for the existing units of 12.2 MW capacity to the new unit of 12 MW change of grade from B/C grade to F grade- DPSC Ltd

Sir,

I am directed to refer to Ministry of Coal's letter of even number dated 17.09.2012 and to forward therewith a copy of the representation dated 04.12.2012 received from M/s DPSC Limited on the above mentioned subject.

2. The power plant of M/s DPSC Limited at Dishergarh is a pre - NCDP linkage holder and was getting coal from ECL. On the introduction of NCDP 2007, M/s DPSC Limited was to sign FSA with ECL, but it could not be done since the matter of conversion of the category of the power plant from CPP to IPP was under consideration of the Ministry. The category of the power plant was changed as per the recommendations of SLC (LT) in its meeting held on 14.02.2012. In the meanwhile, in December, 2010, MoC had also written to CIL/ECL to sign FSA with the power plant as CPP, on which no action has been taken.

3. Since the category of the power plant has been changed from CPP to IPP and it is a pre-NCDP linkage holder, there should not be any difficulty in signing of FSA with M/s DPSC Limited for their Dishergarh plant as IPP.

4. CIL/ECL are requested to take further necessary action on the request of M/s DPSC Limited, after taking a decision on reduction of the capacity from 12.2 MW to 12 MW, keeping in view the MoC's earlier communication dated 17.09.2012. Action taken in the matter may be appraised to this Ministry.

Yours faithfully,

S. Bhattacharya
(S. Bhattacharya)

Under Secretary to the Govt. of India

Copy to: GM(S&M), ECL, Sanctoria, WB

Copy also to: M/s. DPSC Ltd., Sanctoria, Dishergarh-713 333, WB

GM(S&M)
To examine for needful
action
Rud

Asst. Secy (S&M) (Gen)
S. M. (S&M) op
14/2/13





COAL INDIA LIMITED
A Maharatna Company
(Govt. of India Undertaking)
(Marketing Division)
Apeejay House, B-Block, 6th Floor,
15, Park Street, Kolkata 700 016.

Phone: 22293421, 22293425
Fax: 033-22172338/0495
E-Mail: mktgcil@cal3.vsnl.net.in
Website: www.coalindia.nic.in

Ref. No.CIL/S&M/ MINISTRY/ 77

Dated: February 26, 2013.

To
The General Manager(S&M),
Eastern Coalfields Limited,
Sanctoria.

Sub: Transfer of coal linkage allocated for the existing units of 12.2MW capacity to the new unit of 12MW - change of grade from B/C grade to F grade - DPSC Ltd.

Dear Sir,

Please find enclosed herewith a copy of letter no.23021/115/2004-CPD dated the 14th February 2013 from S. Bhattacharya, Under Secretary to the GOI, MOC, New Delhi addressed to this office with a copy to you on the above subject for taking appropriate action in the matter.

Enclo: As stated.

Yours faithfully,


(LK Mishra)
General Manager(S&M).

Copy to: M/s. DPSC Ltd., Sanctoria, Disergh - 713 333.





DPSC Limited

Registered Office :
Plot No. X-1, 2 & 3
Block EP, Sector - V, Salt Lake City, Kolkata - 700 091-
Phone : 8609 4300/8609/10/11/12, Fax : 2357 2452
Visit us at : www.dpssl.com

23rd July, 2013

To
✓ The Director (Technical) Operation
Eastern Coalfields Limited
Sanctoria, P.O. Dishergarh
Dist. Burdwan,
West Bengal

Sub: Transfer of coal linkage allocated for the existing units of
12.2MW capacity to the new unit of 12MW-change of
grade from B/C Grade to F Grade – DPSC Limited

Dear Sir,

Apropos of the sanctioned Reference No.23021/115/2004-CPD dated 14th February, 2013 of Government of India, Ministry of Coal, dated 14th February, 2013 on the above subject issued by Shri S. Bhattacharyya, Under Secretary to the Govt. of India and subsequent letter No.CIL/S&M/Ministry/77 dated 26th February, 2013, we would like to inform you that we have not received any communication so far from your esteemed office.

We shall be grateful if you kindly send your immediate response in this subject to enable us to take necessary arrangement for signing of FSA with you to supply coal for our power station mentioned above.

Encl : As stated

Thanking you,

Yours faithfully,
DPSC Limited


(Somesh Dasgupta)
President – Corporate Affairs & Admin.

C:C Director (Marketing)CIL
C:C. GM(S&M/Comm.& Legal) ,ECL,Kolkata Sales Office
C:C. GM(S&M),ECL,Sanctoria,WB

RECEIVED
DATE 24/07/13
D (T) OP'S SECTT
ECL (H.O.) SANCTORIA





1st August, 2013

The Director (Technical Operation),
Eastern Coalfields Limited,
Sanctoria,
Dist. Burdwan 713 333,
West Bengal

Dear Sir,

Sub: Transfer of coal linkage allocated for the existing units of 12.2 MW capacity to the new unit of 12 MW – change of grade from B/C Grade to F Grade – DPSC Limited

Kindly refer to our letter dated 23rd July, 2013 received by your office on 24th July, 2013 about execution of the FSA with your esteemed Company, Messrs. Eastern Coalfields Limited (ECL).

So many letters we have written since March, 2013 but till date we have received neither any communication nor any advice from your end. Hence, we would like to know what is the next course for us to fulfill so that DPSC is in a position to carry out the instructions of the Ministry of Coal towards executing the FSA with your esteemed organization i.e. ECL.

We shall be grateful to receive your advice in the matter suitably to enable us to take up the subject with the appropriate authority forthwith.

Thank you,

Yours faithfully,
DPSC LIMITED

Somesh Dasgupta
Somesh Dasgupta
President – Corporate Affairs & Admin.

RECEIVED CONTENTS
NOT VERIFIED
[Signature]
19 AUG 2013
...TD.
...Kolkata-91

- Cc: Director (Marketing), CIL, Kolkata
- Cc: GM(S&M/Comm. & Legal), ECL, Kolkata Sales Office
- Cc: GM (S&M), ECL, Sanctoria, Disbargarh.



Appendices-B

DISTRICT: BURDWAN

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 3523 (W) of 2013;

In the matter of:

An application under Article 226 of the
Constitution of India;

And

Group - IX Head - NIL

In the matter of:

INDIA POWER CORPORATION LIMITED &
ANR.

— PETITIONERS

-VERSUS-

UNION OF INDIA & ORS.

— RESPONDENTS

ADVOCATES-ON-RECORD

Sd/-

SHOUNAK MITRA, Advocate
Emerald House
1B, Old Post Office Street
Kolkata 700001



DISTRICT: BURDWAN

(I)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P. No. 35231 (W) of 2013;

In the matter of:

An application under Article 226 of the
Constitution of India;

And

In the matter of: Etc. Etc.

And

In the matter of:

Letter dated 14th February, 2013 issued by
the Government of India, Ministry of Coal,
letter dated 26th February, 2013, issued by
Coal India Ltd. and in the Letter dated 24
October 2013 issued by the Eastern
Coalfield Limited;

And

In the matter of: Etc. etc.

And

In the matter of:

INDIA POWER CORPORATION LIMITED &
ANR. PETITIONERS

-VERSUS-

UNION OF INDIA & ORS. RESPONDENTS

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DISTRICT: BURDWAN

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 35231 (W) of 2013;

In the matter of:

An application under Article 226 of the
Constitution of India;

And

In the matter of:

Appropriate Writ or Writs and/or Direction
or Directions thereunder;

And,

In the matter of:

National Coal Distribution Policy, 2007;



In the matter of :

Inaction on the part of the respondent authorities to execute Fuel Supply Agreement in favour of the petitioner No.1;

And

In the matter of :

1. INDIA POWER CORPORATION LIMITED (formerly known as DPSC Limited), an existing company within the meaning of the Companies Act, 1956 and having its registered office at Plot No.X-1, 2 and 3, Block-EP, Sector-5, Salt Lake City, Kolkata-700091.
2. SRI SAMRAT CHATTERJEE, a shareholder of Petitioner No.1 and also working for gain at Plot No.X-1, 2 and 3, Block-EP, Sector-5, Salt Lake City, Kolkata-700091.



... PETITIONERS

-VERSUS-

1. UNION OF INDIA, service through the Secretary, Ministry of Coal, having his office at Shastri Bhavan, New Delhi-110001.
2. COAL INDIA LIMITED, a Government of India Undertaking, having its registered office at 10, N.S. Road, Kolkata-700 001.
3. EASTERN COALFIELDS LIMITED, a company incorporated under the Companies Act, 1956, having its registered office at Sanctoria, Post Dishergarh, District Burdwan, 713333, West Bengal.
4. GENERAL MANAGER (Sales and Marketing) working for gain at Coal House, 13, R N Mukherjee Road, Kolkata 700 001.



5. GROUP GENERAL MANAGER (Sales and Marketing), working for gain at Eastern Coalfields Limited, Sanctoria, Post Dishergarh, District Burdwan, 713 333, West Bengal.

--- RESPONDENTS

To:

The Hon'ble Mr Banerjee, Acting Chief Justice and His Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the
Petitioners abovenamed-

MOST RESPECTFULLY SHEWETH:

1. The petitioner company was previously known as Dishergarh Power Supply Company Limited. The company was registered under the Companies Act, 1913 and is therefore an existing company within the meaning of the Companies Act, 1956. The name of the petitioner company changed thereafter and is presently known as "India Power Corporation Limited". The petitioner company is engaged in the business of generation, supply and distribution of electricity since 1919. In



this connection, the electricity licence granted by the Government of West Bengal in favour of the petitioner No.1 is annexed hereto and marked as Annexure "P-1". The petitioner No.2 is a citizen of India. The petitioner No.2 is also working as an employee in the petitioner No.1 company as Officer, Legal at its registered office at Salt Lake, Kolkata. Your petitioner No.2 is also a shareholder of the petitioner company.

2. By reason of the wrongful acts and conduct of the respondents and their failure to execute a Fuel Supply Agreement in favour of the petitioner, your petitioner company is suffering financial loss and the right of your petitioner No.2 as such shareholder of your petitioner company is seriously jeopardized.
3. The petitioner company operates two Power Generation Stations, one at Chinakuri and the other at Dishergarh. The plant situated at Chinakuri is owned by the respondent No.3. The plant situated at Dishergarh is owned by the petitioner company since 1919. The subject matter of the instant writ petition only relates to the plant at Dishergarh. In respect of the plant situated at Chinakuri, there are separate disputes and differences between the petitioner company and the respondent No.3 which are not the subject matter of the instant writ petition and for which several proceedings are pending.
4. Coal India Ltd. (hereinafter referred to as the respondent No.2) is a wholly owned Government of India undertaking, Eastern Coal Fields Ltd ("ECL") (hereinafter referred to as "the respondent No.3") is a coal producing company



and is a wholly owned subsidiary of the Coal India Ltd., the respondent No.2. The respondent no.2 is the Apex Body and controls all its subsidiary including ECL, the respondent No.3. The respondent nos.2 and 3 are all state and/or instrumentality and/or agency of State and/or amenable to the Constitutional Writ Jurisdiction of this Hon'ble Court. The respondent no. 4 is the Group General Manager (Sales and Marketing) of the respondent no.3. The petitioners are affected and aggrieved by actions and/or inactions of the respondent authorities in the manner stated hereinafter.

5. For the purpose of operating the power generating station, your petitioners required coal of grades "B" and "C" having Gross Calorific Value of 5006 minimum and 5002 minimum respectively. Any inferior quality coal cannot be used for running the power generating stations of the petitioner company. The inferior quality of coal would have serious environmental issues due to generation of unburned carbon on account of less combustion in the Boiler and thereby generating high fly ash (to be buried in the deserted mines) and also Clinker in the Boiler. The petitioner company was all along supplied with good quality grade "B" or grade "C" coal by the respondent No.3 by way of allocation month wise. Copies of documents showing supply of "B" grade coal and "C" grade coal by the respondent No.3 to the petitioner company are annexed hereto and collectively marked as Annexure "P-2".

6. The main customer of electricity for the petitioner company has at all material times been the respondent No.3. The respondent No.3 has a number of Mines.



The respondent No.3 carries on mining operation in Asansol belt and for the said purpose needs electricity. Inasmuch as the petitioner company has a power distribution licence in the said area and, in particular, Dishergarh Plant, the petitioner company has been supplying and distributing such power generated from Dishergarh Plant to the respondent No.3.

7. The petitioner no.1 prior to 2010 belonged to Andrew Yule Group of Companies and was, therefore, a Government Undertaking. There was a change of management of the petitioner company in the year 2010 and the petitioner company was ceased to be a Government Undertaking. From the records which are available with the present management of the petitioner company, it appears that there has not been much dispute between the petitioner company and the respondent no.3 as long as Andrew Yule Group of companies was in control of the petitioner company and the petitioner company was a Government of India Undertaking. The practice and the manner in which supply of coal was regulated to the plants of the petitioner company by the respondent no.3 is not fully known to the present management and as such the petitioners make no further comments with regard thereto.
8. The Government of India, in 2005, formulated and approved a new Coal Distribution Policy (NCDP) whereby and where under the coal supplies to bulk users were to be regulated through long term linkages established and sanctioned by the Ministry of Coal, Government of India.



9. The Chinakuri plant of the petitioner no.1 has a capacity of 3 x 10 MW that equal to 30 MW. Linkage in respect of Chinakuri plant was approved by the Ministry of Coal in two installments, one by the order dated 22 August 2005 which related to only 20MW and the other by the letter dated 7 August 2006 which was related to both Chinakuri and Dishergarh plants. It would appear from the letter dated 7 August 2006 that the linkage related to 22.2MW since 12.2MW related to Dishergarh plant while 10MW related to the balance linkage for Chinakuri plant, which was not covered in the earlier letter dated 22 August 2005. Copies of the orders dated 22 August 2005 and 7 August 2006 are annexed hereto and marked Annexure "P-3" and Annexure "P-4" respectively.
10. NCDP policy contemplated execution of a Fuel Supply Agreement. Although the linkage had been approved in respect of the two plants, Chinakuri and Dishergarh in two installments, a common Fuel Supply Agreement was forwarded in the name of the petitioner company by the respondent no.3 sometime about November 2005.
11. From the records available with the petitioner company, it does not appear that the respondent no.3 ever forwarded a Fuel Supply Agreement in respect of the 12.2MW plant at Dishergarh. The draft Fuel Supply Agreement which had been forwarded by the respondent no.3 in or about November 2005 related only to Chinakuri plant.
12. The National Coal Distribution Policy, 2007 was published by the Government of India.



India, Ministry of Coal on 18th October, 2007 which provided, inter alia, that 100% of the quantity as per normative requirement of consumers would be considered for supply of coal through Fuel Supply Agreement by Coal India Ltd. at fixed prices to be notified and declared by Coal India Ltd. Although the policy was published, your petitioner company in view of being a Government Company and belonging to Andrew Yule Group of Companies, did not act strictly on the basis of the said guidelines and the respondent coal authorities continue to supply coal as per the existing requirement to the petitioner company.

13. In both the linkage letters dated 22 August 2005 and 7 August 2006 for the Chinakuri plant and Dishergarh plant, the respondent Coal authorities have classified the two plants as Captive Power Project (hereinafter abbreviated as CPP), although the petitioner company was an Independent Power Project (hereinafter abbreviated as IPP).
14. Accordingly, by a letter dated November 15, 2009, your petitioner company requested the Additional Secretary, Ministry of Coal, Government of India to reclassify your petitioner company as a power utility and not a captive power project. A copy of the letter dated November 16, 2009 written by your petitioner company to the Additional secretary, Ministry of Coal, Government of India is annexed hereto and marked as Annexure "P-5".
15. Meanwhile, the quality of coal supplied by the respondent No.3 to the generating stations of your petitioner company deteriorated drastically and



Instead of "B" grade coal and good quality of 'C' grade coal, the respondent No.3 started supplying inferior quality of 'C' grade coal which was totally unsuitable for operating the thermal power stations of your petitioner company. It is pertinent to mention that such inferior supply of coal also resulted in huge financial loss for the petitioner company as not only production suffered but also The West Bengal Electricity Regulatory Commission (hereinafter referred to as WBRC) disallowed such production loss through annual performance review and fuel and power purchase adjustment cost.

16. It is during this time that the take over and change of management of the petitioner company took place in January, 2010.

17. On June 22, 2010, your petitioner company wrote a letter to the respondent No.3 stating that in view of the upgraded Design of the boilers at the thermal power stations of your petitioner company, your petitioner company requires supply of 100% 'B' grade coal and good quality of 'C' grade coal for operating the thermal power stations. Your petitioner company further informed the respondent No.3 that the Central Electricity Authority had assured the petitioner company that it would inform the Ministry of Power that your petitioner company was a private power utility and not a captive power project. Pending the same, your petitioner company requested the respondent No.3 to formalize the Fuel Supply Agreement (FSA) on the basis that your petitioner company is a private power utility inasmuch as the said position has also been accepted by the respondent No.3. A copy of the letter dated June 22, 2010 is annexed hereto and



marked as Annexure "P-6".

18. Your petitioner company in view of the aforesaid formulated a plan for installing modern machinery and equipment at the Dishergarh Power Plant. Your petitioner company has made substantial investments for the purpose of installing modern machinery and equipment and developing suitable infrastructure at the Dishergarh Power Station.
19. After the takeover and change in management of the petitioner company, coal supplied to your petitioner company became very irregular. Further, the coal which was being supplied by the respondent coal authorities was very inferior quality which was not at all suitable for operation of the plant. By reason of non availability of good quality of coal, the power generation at the Thermal Power Station both at Dishergarh and Chinakuri came to a halt on and from 8th July, 2010. The petitioner company, however, continued to supply electricity to various Mines of the respondent No.3 at exorbitant cost and for the said purpose had to purchase power from outside sources including WBSEDCL and Damodar Valley Corporation at huge costs.
20. After power generation at the Thermal Power Stations were stopped by the petitioner company, the respondent coal company abruptly stopped supply of any coal under the Linkage Policy to the petitioner No.1. The petitioner company sent several requests to the Ministry of Power, Government of India for change in the category of the Power Station of the petitioner company from Captive



Power Project to Independent Power Project.

21. By an office Memorandum dated July 30, 2010, the Under Secretary of the Government of India, Ministry of Power notified that Ministry of Power supported the proposal for change in category of the power stations of the petitioner company from captive power projects to independent power project. A copy of the Office Memorandum dated July 30, 2010 is annexed hereto and marked as Annexure "p-7".
22. After obtaining the clearance from the Ministry of Power regarding categorization of the status of Power Station to Independent Power Project, the petitioner company wrote repeated letters to the Ministry of Coal for re-categorization of petitioner company as an Independent Power Project. In this connection, letter dated 7th August, 2010 is annexed hereto and marked as Annexure "p-8".
23. To meet the exigency by reason of total shut down of supply of coal, the petitioner as an interim arrangement entered into a Memorandum of Understanding (MOU) on 4th October, 2010 with respondent No.3 for supply of coal. The said Memorandum of Understanding was an interim arrangement pending signing of the Fuel Supply Agreement and the same would be borne from the terms and conditions of the Memorandum of Understanding. A copy of the said Memorandum of Understanding is annexed hereto and marked as Annexure "p-9".



24. This arrangement under the said MOU dated 8th October, 2010 continued for a period of six months till March 2011 as mentioned in the said MOU dated 8 October, 2010. Since then the respondent No.3 is not supplying any coal to the petitioner company. The petitioner company is generating power by purchasing coal through different means including 'E' auction by paying much higher price to continue uninterrupted supply of power to the gassy and critical mines of the respondent No.3.
25. It is pertinent to mention that the price at which the petitioner company is purchasing coal to generate electricity is much higher in comparison to the price at which coal is supplied to the consumers with whom the respondent No.3 has entered upon with a Fuel Supply Agreement. As a result, the generation of electricity by the petitioner company is becoming unviable and/or uneconomic.
26. Your petitioner company on several occasions has met the concerned authorities and requested their intervention in the process of re-categorization of your petitioner company from CPP to IPP.
27. On 14 February, 2013 the Ministry of Coal, Government of India informed the respondent No.2 that re-categorization of the petitioner company had already taken place so FSA between the respondent No.3 and your petitioner company should be executed immediately. A copy of the said letter dated 14 February, 2013 is annexed hereto and marked with Annexure "P-10".

Prior to the aforesaid letter dated 14th February, 2013, the respondent No.2 had



given no intimation to the petitioner company regarding re-categorization of the petitioner company to Independent Power Project.

29. The respondent No.2 on 26 February 2013 issued a further letter requesting the respondent No.3 to take appropriate action for the purpose of execution of the Fuel Supply Agreement between your petitioner company and your respondent No.3. A copy of the said letter dated 26 February, 2013 is annexed hereto and marked with Annexure "P-11".
30. Your petitioner company after receiving the letters dated 14 February 2013 and 26 February 2013 met the executives of the respondent No.3 on several occasions requesting them to take appropriate steps and action for the execution of the fuel supply agreement. At all material times, your respondent No.3 verbally assured your petitioner company that they are looking into the proposal of your petitioner company and initiating necessary steps to execute the fuel supply agreement.
31. The petitioners by several letters, inter alia, dated 23rd July, 2013, 1st August, 2013 and 19th August, 2013 have reminded the respondent No.3 about the communication of the Government of India dated 14th February, 2013 and 26th February, 2013, issued by the respondent no.2 and requested the respondent No.3 to act in terms of such letters and execute the Fuel Supply Agreement in favour of the petitioner company. Copies of the said letters are annexed hereto and collectively marked as Annexure "P-12".



32. In the above circumstances, your petitioner on or about 20 September, 2013 had filed an Application under Article 226 of the Constitution of India being W.P. No.29998(W) of 2013 sought for the following reliefs:-

- a) A Writ of and/or in the nature of Mandamus do issue commanding the respondents and each one of them and, in particular, the respondent Nos.2 and 3 to forthwith execute the Fuel Supply Agreement in respect of Dishergarh Power Plant in favour of the petitioner company as an Independent Power Project;
- b) A Writ of and/or in the nature of Mandamus do issue commanding the respondents and each one of them and, in particular, the respondent Nos.2 and 3 to adhere to and to act in terms of the Letter dated 14th February, 2013 issued by the Government of India, Ministry of Coal and letter dated 26th February, 2013, issued by Coal India Ltd contained in Annexures "P-10" and "P-11" respectively;
- c) A Writ of and/or in the nature of Prohibition do issue directing the respondents and each one of them to forbear from acting contrary to and/or in derogation of the recommendations and instructions given by the Ministry of Coal, Government of India vide their letters dated 14th February, 2013 and 26th February, 2013 contained in Annexures "P-10" and "P-11" respectively;

A Writ of and/or in the nature of Certiorari do issue directing the



respondents and each one of them to transmit and certify the records of the instant case so that conscionable justice may be rendered;

- e) Rule NISI in terms of prayers above;
- f) Injunction restraining the respondents and each one of them, their servants, agents and assigns to forbear and/or from acting contrary to and/or in derogation of the recommendation and instruction given by the Ministry of Coal, Government of India vide their letters dated 14th February, 2013 and 26th February, 2013;
- g) Ad-interim order in terms of prayer above;
- h) Costs of and incidental to this petition be borne by the respondent coal authorities;
- i) Such further or other order or orders be passed and direction be given as to this Hon'ble Court may deem fit and proper.

A copy of the said Writ Application being W.P. No.29998(W) of 2013 without annexure is annexed hereto and marked Annexure "P-13".

33. By an Order dated 30 September, 2013 the Hon'ble Justice Sanjib Banerjee was pleased to dispose of the said Writ Application by directing the General Manager (Sales & Marketing) of Eastern Coalfields Limited to issue a response to the Petitioners latest representation of August 19, 2013, within 3 weeks from the



date. By the said order it was further directed that in the unlikely event that the fuel supply agreement is declined by the Eastern Coal Fields Limited. Due reasons in support of such decisions should be communicated to the petitioners within the time permitted. A photocopy of the said order dated 30 September, 2013 is annexed hereto and marked Annexure "P-14".

34. By a letter dated 5 October, 2013 your petitioners forwarded a photocopy of the order dated 30 September, 2013 to the respondent No.4 for compliance of the order. A copy of the said letter dated 5th October, 2013 is annexed hereto and marked with Annexure "P-15".
35. After receipt of the said letter dated 5th October, 2013, the respondent No. 4 who is the General Manager (Sales & Marketing) of Eastern Coalfields Limited, requested the petitioners to send a website copy of the order dated 30th September, 2013 for taking necessary action in the matter. A copy of the said letter dated 17 October, 2013 is annexed hereto and marked with Annexure "P-16".
36. In as much as there was delay on the part of the respondent No. 4 to comply with the directions contained in the order dated 30th September, 2013 the petitioners by a letter dated 21st October, 2013 reminded the respondent No. 4 of the order dated 30th September, 2013 and wanted to know the status of the Fuel Supply Agreement which was to be executed. A copy of the said letter dated 21st October, 2013 which was received by the office of the respondent on 25th



October, 2013 is annexed hereto and marked with Annexure "P-17".

37. Immediately after receipt of the said letter on the same date the respondent No. 4 issued a letter dated 25th October, 2013. The respondent No. 4 who is the General Manager (Sales & Marketing) and who was directed to comply with the directions contained in the letter dated 30th September, 2013 acknowledged receipt of the letter dated 21st October, 2013 and assured the petitioners that the letter was receiving attention at the highest level of the respondent No. 4. The said letter of 21st October, 2013 of the respondent No. 4 was received by the petitioners on 29th October, 2013. A copy of the said letter dated 25th October, 2013 issued by the respondent No. 4 along with the envelope are annexed hereto and collectively marked with Annexure "P-18".

38. Your petitioners state and submit that after the order dated 30th September, 2013 all correspondences with the respondent No. 3 and the petitioners were with the respondent No. 4 since it was the respondent No. 4 who was directed to comply with the directions contained in the order. The name of the respondent No. 4 was suggested at the time of passing of the order and no objection was ever raised by learned counsel appearing on behalf of the respondent coal authorities that the respondent No. 4 was not the competent authority.

39. Although the respondent No. 4 by the letter dated 25th October, 2013 had assured that the matter was receiving attention at the highest level of the respondent No. 3, on 5th November, 2013 the petitioners were surprised to



receive a letter dated 24th October, 2013 issued by the respondent No. 5 representing himself to be the Group General Manager (Sales & Marketing). The existence of a Group General Manager (Sales & Marketing) of Eastern Coalfields Limited was not known to the petitioner and in fact no correspondence was ever exchanged by the petitioners with any Group General Manager (Sales & Marketing). Needless to mention that the order dated 30th September, 2013 also did not specify the name of a Group General Manager (Sales & Marketing). A copy of the said letter dated 24th October, 2013 along with the envelope are annexed hereto and collectively marked Annexure "P-19".

40. Your petitioners state that it appears that the letter purportedly dated 24th October, 2013 issued by the respondent No. 5 was despatched sometime on November, 2013 after the respondent No. 4 had informed the petitioners that the matter was receiving attention at the highest level of Eastern Coalfields Limited. Till date there is no decision of the respondent No. 4 as per the directions contained in the order dated 30th September, 2013. The decision of the respondent No. 5 is not in terms of the order dated 30th September, 2013 and the said decision is liable to be set aside on that ground alone. That apart, it is obvious that the respondent No. 4 who was directed by the order dated 30th September, 2013 to come to a decision, till date has reached no independent decision. In fact, it would be evident from the document disclosed that the purported decision of the respondent No. 5 was taken without consulting the respondent No. 4 and on a date when the respondent No. 4 was not even aware



that such a decision had been taken. The decision as contained in the letter dated 24th October, 2013 is a perverse decision.

41. In the letter dated 24th October, 2013 the only ground made out as to why the respondent No. 3 has refused to execute Fuel Supply Agreement is according to the respondent No. 3 "F" grade coal is only produced in the Rajmahal area and the entirety of "F" grade coal has been allotted to NTPC against Fuel Supply Agreement and there is no surplus allegedly available to cater to additional demand. Along with the said letter the respondent No. 5 has forwarded a letter dated 11th June, 2013 informing the Ministry of Coal that no surplus coal of "F" grade is available to cater to the needs of the petitioners. There is yet another ground mentioned in the said letter dated 11th June, 2013 which of course does not find any mention in the decision of the respondent No. 5 in the letter dated 24th October, 2013. The letter dated 11th June, 2013 was issued by the respondent No. 5 in his capacity as General Manager (Sales & Marketing) and one of the grounds alleged in the said letter was that the petitioners had not paid lease amount and not withdrawn court cases pending against Eastern Coalfields Limited. A copy of the said letter dated 11th June, 2013 is annexed hereto and marked Annexure "P-20".
42. The respondent No. 5 has acted in biased and in a malafide manner. The decision of the respondent No. 5 is tainted with perversity. The reference to pending court cases has deliberately been not mentioned in the letter dated 24th October, 2013 because the respondent No. 5 is fully aware of the fact that such



decision would not stand in the eye of law. No person can never be prevented from filing legal proceedings for vindication of his grievance against a coal company. The allegation that the petitioners have not paid lease amount is, in any event, a dispute in respect of Chinakuri Power and pending court proceedings are all relating to the Chinakuri power plant of the petitioner and have nothing to do with Dishergarh power plant.

43. The reference to non-availability of "F" grade coal is again misleading. Firstly, the categorization of "A", "B", "C", "D", "E", "F" and "G" grades of coal by coal companies is now obsolete and since 2012-2013 it is now the practice of all coal companies including Eastern Coalfields Limited to sell coal not on the basis of Useful Heat Value (UHV) but Gross Calorific Value. In this connection, a circular has also been issued by the Ministry of Coal and a copy of the said circular is annexed hereto and marked Annexure "P-21". Although the said circular was effective from 1st January, 2012, as a matter of practice, Eastern Coalfields Limited has started selling coal on the basis of Gross Calorific Value and not UHV since 1st January, 2012. In this connection, reference may also be made to the news clippings uploaded in the web site of the Ministry of Coal, dated 30th December, 2011 which is followed by all coal companies. A copy of the said CMPDI circular is annexed hereto and marked Annexure "P-22". In terms of the said circular, coal is now sold on the basis of Gross Calorific Value only. On the basis of Gross Calorific Value the grades of coal which was earlier being sold under grades have been allotted different levels of Gross Calorific Value. What



was before Grade "F" has been allotted, level G-10 to G-12 Gross Calorific Value, as per the circular of the said Institute. A chart showing the different levels allotted to different grades of coal is annexed hereto and marked Annexure "P-23".

44. Coal is always sold under different grades. The higher the grade of coal more is the value. For example, Grade "A" coal which has been allotted levels G-1, G-2, G-3 is the most expensive and what was previously Grade "F" falls under level G-10 to G-12 and is cheaper quality coal. There are grades of coal upto G-14 which can also be utilized for boilers, but the same would be even cheaper than Grade G-10 to G-12 (which was previously Grade "F"). In the past, the petitioners had applied for Grade "B" and Grade "C" coal which now falls under level G-3 to G-6 which is more expensive than G-10 to G-12 (Grade "F") grade coal. The reason why the petitioners in the past by several letters had requested for supply of Grade "F" coal (now G-10 to G-12 grade) is because G-10 to G-12 grades of coal is cheaper and also suited for the boilers. This does not mean that G-3 to G-4 coal (previously Grades "B" and "C" coal) are not suited for boilers. The only difference is that the price is higher. Obviously, if the respondent coal authorities are unable to supply Grade "F" coal (now G-10 to G-12 level coal); the petitioners have no objection to purchase coal of superior quality by paying higher price. The petitioners are prepared to purchase coal on the basis of a Fuel Supply Agreement upto G-14 level starting from G-6 and all such coal from G-6 upto G-14 level are suited for boilers. The plea taken by the respondent No. 5 that Grade "F" coal is not



available is without basis and without any application of mind. The sanction letter and the direction of the Ministry of Coal as contained in the letter dated 14th February, 2013 and 26th February, 2013 are not restricted to Grade "F" only and the direction is really to execute a Fuel Supply Agreement. All that the petitioners are interested is in the execution of a Fuel Supply Agreement. The Fuel Supply Agreement can always include various qualities of coal with different prices and depending on the availability of a particular grade the same can be supplied to the petitioners. To restrict supply of coal only to Grade "F" is not what the petitioners had requested. In fact, the respondent No. 3 has failed to appreciate the nature of the submissions and representations made by the petitioners which are really for execution of a Fuel Supply Agreement. The malafide and perversity of the letter dated 24th October, 2013, would be more evident from the fact that even the Ministry of Coal is being wrongly advised by Eastern Coalfields Limited and the same is at the instance of the respondent No. 5. The respondent No. 5 does not want that a Fuel Supply Agreement is executed in favour of the petitioners in respect of the Dishergarh plant by the respondent No. 3 and by a letter dated 11th June, 2013 had informed that there is no surplus coal of "F" grade to cater to the needs of the DPSC. Yet, subsequent to such letter several e-auctions have been held by the Eastern Coalfields authorities where level G-11 (which was previously "F" grade) coal have been sold. Relevant documents in this connection are annexed hereto and collectively marked "Annexure P-24".



45. The attempt on the part of the respondent No. 3 is not only to mislead the Ministry of coal by issuing the letter dated June 11, 2013 but also to mislead this Hon'ble Court and is an attempt to harass the petitioners. There is mandatory direction on the petitioners to execute a Fuel Supply Agreement and the petitioners are interested in complying with the requirement of law. The respondent authorities are preventing the petitioners from executing a Fuel Supply Agreement.
46. Your petitioner states that the respondent authorities are deliberately withholding the formal execution of the Fuel Supply Agreement. Each days delay is causing tremendous financial loss to the petitioners' company. The respondent Coal Authorities are under an obligation to execute Fuel Supply Agreement and in the said letter dated 24 October, 2013. There is no justifiable reason as to why the said Fuel Supply Agreement is not being executed by the respondent Coal Authorities.
47. Your petitioners state and submit that the main customer of your petitioner is the respondent No.3. The petitioner company is committed to supplying electricity to the respondent No.3. Being reason of refusal of supply of Grade-F coal the petitioner company has no option but to purchase coal through E-auction and/or any other sources and the price at which your petitioner company purchases such coal is a price much higher than which the petitioner could otherwise have to pay under Fuel Supply Agreement.



48. The wrongful and illegal acts of the respondent authorities on the petitioner company affect the petitioner's rights to carry on its trade and business as enshrined in Article 19(1)(g) of the Constitution of India.
49. The petitioner company, however, is committed to meet its obligations to its consumers including the respondent No.3. The petitioner company, therefore, often has to purchase power from outside sources at exorbitant rates to meet the demand of various consumers including the respondent No.3. The price which the petitioner company, however, charges from the consumers is, however, now regulated by the West Bengal Electricity Regulatory Commission (WBERC), which is a Regulatory Commission. The said Tariff was formulated in the year 2012. At the time when representations were made to the Tariff Authority and the Tariff was formulated, the petitioner company reasonably believed that the Fuel Supply Agreement would be executed within a short time. More than 1½ years have elapsed since the tariff has been fixed; yet Fuel Supply Agreement has not been executed.
50. By reason of the failure on the part of the respondent authorities to execute a Fuel Supply Agreement and to adhere to the guidelines and recommendations of the Government and by reason of the impugned letter of the respondent No. 5 dated 24th October, 2013, your petitioners beg to file the instant writ petition on the grounds under Article 226 of the Constitution of India, which are without prejudice to the aforesaid summarized hereinbelow:



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G R O U N D S:

- I. For that the respondent coal authorities have failed and neglected to adhere to the National Coal Distribution Policy, 2007;
- II. For that the respondent coal authorities failed and neglected to comply and adhere to the instructions given by the Ministry of Coal, Government of India vide their letters dated 14th February, 2013 and 26th February, 2013;
- III. For that there is no justifiable reason on the part of the respondent coal authorities not to execute Fuel Supply Agreement in favour of the petitioner company in respect of Dishergarh Power Plant;
- IV. For that the respondent Coal Authorities failed and neglected to comply the order dated 30 September, 2013 passed by the Hon'ble Justice Sanjib Banerjee in W.P. No.29998(W) of 2013.
- V. For that the letter dated 24 October, 2013 issued by the respondent No.3 is wholly illegal and with mala fide intention.
- VI. For that the respondent authorities illegally insist the petitioner company purchasing coal through different means including E-



uction by paying much higher price.

VII. For that the respondent coal authorities in spite of being informed that there has been re-classification of the Power Plant of the petitioner company from Captive Power Project to Independent Power Project, have failed and neglected to execute Fuel Supply Agreement in favour of the petitioner company;

VIII. For that the respondent coal authorities have failed to appreciate that the Dishergarh Power Plant is an independent Power Plant of the petitioner company for which the Fuel Supply Agreement has to be executed;

IX. For that the respondent authorities have failed to take into account relevant considerations and are taking into account irrelevant considerations;

X. For that the respondent authorities have failed to reply to the various requests and representations of the petitioners to execute the Fuel Supply Agreement;

XI. For that the respondent authorities ever since change of the management of the petitioner since January, 2010 have been harassing the petitioner company;

For that the respondent coal authorities are under an obligation



to execute the Fuel Supply Agreement with all bulk consumers, have failed and neglected to execute such Fuel Supply Agreement with the petitioner company who is a bulk consumer;

- XIII. For that the letter dated 24th October, 2013 is perverse;
- XIV. For that the letter dated 24th October, 2013 has been issued in excess of jurisdiction;
- XV. For that the respondent No. 5 has issued the letter or direction by the order dated 21st September, 2013 was given to the respondent No. 4;
- XVI. For that the respondent No. 4 has failed to take any independent decision in terms of the order dated 30th September, 2013;
- XVII. For that the respondent No. 3 and its officers have purported to mislead the Ministry of Coal by writing a letter dated 11th June, 2013 and by alleging that no surplus "E" grade coal is available when actually the same is being offered under e-auction by the respondent No. 3;
- XVIII. For that the real reason for not executing Fuel Supply Agreement is pendency of various proceedings instituted by the petitioners against Eastern Coalfields Limited;



XIX. For that the attempt on the part of the Eastern Coalfields Limited is to prevent the petitioners from pursuing its legal remedy for vindication of wrong done against the petitioners;

XX. For that the decision of the respondent No. 5 is capricious and without any application of mind;

XXI. For that the respondent NO. 5 in issuing the letter dated 24th October, 2013 has failed to take into action relevant considerations and taken into account irrelevant considerations;

XXII. For that the attempt on the part of the respondent No. 3 and its officers is to mislead this Hon'ble Court by alleging that "F" grade coal is not available;

XXIII. For that various documents relating to availability of "F" grade coal are being suppressed by the respondent No. 3;

XXIV. For that the respondent No. 3 has failed to ensure execution of a Fuel Supply Agreement in favour of the petitioner;

XXV. For that the respondent No. 3 has failed to appreciate the true scope, purport and directions on guidelines of the Ministry of Coal;

XXVI. For that the respondent No. 3 has failed to appreciate that the



petitioners have no objection in accepting supply of coal other than "F" grade coal;

XXVII. For that the reason of the wrongful act and conduct of the respondent the petitioners are not being able to comply with the requirements of law;

XXVIII. For that the act of the respondent coal authorities are violative of Article 14 of the Constitution of India;

XXIX. For that the act of the respondent coal authorities are violative of Article 19(1)(g) of the Constitution of India;

XXX. For that the acts and conduct of the respondent coal authorities are violative of Article 16 of the Constitution of India;

XXXI. For that the acts and conduct of the respondent coal authorities are violative of Article 300A of the Constitution of India;

XXXII. For that the acts and conduct of the respondent authorities is otherwise bad in law and/or in fact;

51. By a letter dated 16th November, 2013 your petitioners have demanded justice and requested the respondent No. 4 to take necessary steps for execution of a Fuel Supply Agreement and have also called the respondent No. 3 not to give effect to the letter dated 24th October, 2013 issued by the respondent No. 5



and/or otherwise set aside and rescind the said letter. Till date no step has been taken by the said respondent. A copy of the said letter dated 16th November, 2013 is annexed hereto and marked Annexure "P-25". Your petitioners have demanded justice and the same has been denied. Any further demand for justice will be an idle and futile formality.

52. If the letter dated 24th October, 2013 is not set aside or stayed forthwith, the respondent No. 4 will be unable to comply with the order dated 30th September, 2013 and otherwise take steps for the purpose of execution of Fuel Supply Agreement.

53. Your petitioners state that the Ministry of Coal, Government of India has already by letter dated 14th February, 2013 and 26th February, 2013 issued by the respondent no.2 directed the respondent No.3 to act in terms of such letters. The respondents are taking no step pursuant to such letters and your petitioners apprehend that the respondent coal authorities who are otherwise duty bound to follow instructions of the Ministry of Coal are purporting to act contrary to and/or in derogation of such instructions unless restrained by an order of injunction.

54. Your petitioners do not have any adequate efficacious and/or alternative remedy than by way of the instant petition and reliefs, if granted, would give complete redress to your petitioners.

Your petitioners have not filed any other writ petition involving the same cause



of action in respect of Bishergadh Power Plant in any other Court of Law including the Hon'ble Supreme Court of India, save and except the previous writ petition which was dismissed by the Order dated 30 September, 2013.

56. Your petitioners state and submit that the respondent coal authorities are under an obligation to execute the Fuel Supply Agreement and such Fuel Supply Agreement has to be executed at the office of the respondent coal authorities within the jurisdiction of this Hon'ble Court. The supply is being effected by the petitioner company also within the jurisdiction of this Hon'ble Court.
57. The records of the case are lying within the jurisdiction of this Hon'ble Court.
58. The balance of convenience and inconvenience is in favour of orders being passed as prayed for herein.
59. Unless orders as prayed for herein are granted, your petitioners will suffer irreparable loss, prejudice and injury.
60. This petition is filed for and made for the ends of justice.

Your petitioners therefore, most humbly pray Your
Honour for the following orders:-

- a) A writ of and/or in the nature of
Mandamus to issue commanding the
respondents and each one of them and in



particular the respondent No.2, 3 and 4 to
forbear from giving any effect of the letter
dated 24 October, 2013 issued by the
respondent No. 5;

b) A Writ of and/or in the nature of
Mandamus do issue commanding the
respondents and each one of them and, in
particular, the respondent Nos.2 and 3 to
forthwith execute the Fuel Supply
Agreement in respect of Dishegarh Power
Plant in favour of the petitioner company as
an Independent Power Project;

c) A Writ of and/or in the nature of
Mandamus do Issue commanding the
respondents and each one of them and, in
particular, the respondent Nos.2 and 3 to
adhere to and to act in terms of the Letter
dated 14th February, 2013 issued by the
Government of India, Ministry of Coal and
letter dated 26th February, 2013, issued by
Coal India Ltd contained in Annexures "P-
10" and "P-11" respectively;



- d) A Writ of and/or in the nature of Prohibition do issue directing the respondents and each one of them to forbear from acting contrary to and/or in derogation of the recommendations and instructions given by the Ministry of Coal, Government of India vide their letters dated 14th February, 2013 and 26th February, 2013 contained in Annexures "P-10" and "P-11" respectively;
- e) A Writ of and/or in the nature of Certiorari do issue directing the respondents and each one of them, their servants, agents and/or assigns to transmit and certify the records of the instant case and in particular the letter dated 24th October, 2013 so that the same can be set aside and conscionable justice be rendered;
- f) A Writ of and/or in the nature of Prohibition do issue restraining the respondents and each one of them, their servants, agents and/or assigns from giving effect and/or further effect to the letter dated 24th



October, 2013 issued by the respondent No.

5 contained in Annexure "P-19" hereof;

- g) Rule NISI in terms of prayers above;
- h) Injunction restraining the respondents and each one of them, their servants, agents and/or assigns to forbear and/or from acting contrary to and/or in derogation of the recommendation and instruction given by the Ministry of Coal, Government of India vide their letters dated 14th February, 2013 and 26th February, 2013;
- i) Injunction restraining the respondents and each of them, their servants, agents and/or assigns not to give effect and/or further effect to the letter dated 24 October, 2013 issued by the respondent No.3;
- j) Ad-interim orders in terms of prayer above;
- k) Costs of and incidental to this petition be borne by the respondent coal authorities;
- k) Such further or other order or orders be



passed and direction be given as to this

Hon'ble Court may deem fit and proper.

And for this act of kindness, your petitioners as in duty bound, shall ever pray.

sd/-

sd/-



AFFIDAVIT

I, SOMESH DASGUPTA, son of Mr Dhiren Dasgupta, aged about 53 years, by religion Hindu and working for gain at Plot No.X-1, 2 & 3, Block-EP, Sector-V, Salt Lake City, Kolkata 700091 do hereby solemnly affirm and say as follows:-

1. That I am the President, Corporate Affairs and Administration of the Petitioner No.1 abovenamed and am well acquainted with the facts and circumstances of the instant case. I have been duly authorised by the petitioner No.1 to sign the petition, execute vakalatnama and affirm affidavit on behalf of the petitioner No.1.
2. That the statements contained in paragraph Nos.1 to 53 are based on records and true to my knowledge and paragraph Nos.54 to 59 are my humble submissions before this Hon'ble Court.

Prepared in my office
Advocate *S/L*

The deponent is known to me
Clerk to: *S/L*

Advocate

SOLEMNLY AFFIRMED before me
on this day of December, 2013.

COMMISSIONER

I certify that all annexures are legible.

S/L
Advocate



AFFIDAVIT

I, Samrat Chatterjee, son of Kamal Chatterjee, aged about 36 years, by religion Hindu, a shareholder of the petitioner no.1, and working for gain at Plot No.X-1, 2 & 3, Block-EP, Sector-V, Salt Lake City, Kolkata 700091 do hereby solemnly affirm and say as follows:-

1. That I am the Petitioner No.2 and also share holder of DPSC Limited, the petitioner No.1 abovenamed and am well acquainted with the facts and circumstances of the instant case.
2. That the statements contained in paragraph Nos.1 to 53 are based on records and true to my knowledge and paragraph Nos.54 to 59 are my humble submissions before this Hon'ble Court.

Prepared in my office

S/L
Advocate

The deponent is known to me;

Clerk to: *S/L*

Advocate

SOLEMNLY AFFIRMED before me
on this day of December, 2013.

COMMISSIONER

I certify that all annexures are legible.

S/L
Advocate

