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Probe both 2G & Coal scams; Levy level-playing tax

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'REFORMS without regulations led to frauds, scams: Moily'. Similar eye-catching headlines appeared in several dailies on 28 February 2012.

The newspapers quoted Corporate Affairs Minister M Veerappa Moily as saying that the country would have been able to avoid corporate frauds and scams in high places had it put in place regulatory mechanisms and certain policies, along with the introduction of liberalisation regime in 1991.

Mr. Moily has shown the political courage to admit the mistakes in manning the liberalization regime. He would have won laurels from the public if he had identified the reasons for inordinate delay in making the liberalization resistant to frauds. He should have also explained as to why the Government is prone to repeating such mistakes at the cost of exchequer.

Mr. Moily can take up captive coal mining as the case study in this regard. The continued absence of competitive bidding framework for allocation of coal blocks as well as non-existence of independent coal regulatory authority has hurt the exchequer.

It has harmed public interest as much as the 2G scam whose only tip has been scratched by the combined might of the media, civil society and judiciary.

Both 2G and coal scams are similar. Yet only the 2G irregularities committed during the tenure of jailed ex-Communications Minister A. Raja have been targeted by NGOs and the mainstream media.

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The coal scam has virtually been overlooked by vigilant groups of all hues. Only a small aspect of this scam relating to captive coal mining for Sasan ultra mega power project has hit the headlines. This case is of course a subject of corporate litigation as well as CAG's scrutiny. Expect fireworks in the forthcoming session of Parliament on this specific case. It remains to be seen whether the focus would shift from Sasan to entire coal block allocations scam.

The competitive bidding for allocation of coal blocks for captive mining by power, steel and cement companies was recommended by the Committee on Integrated Coal Policy (CICP)/Chari Committee way back in May 1996. And the Government embraced this as a policy decision in February 1997.

A Cabinet Committee decided that "subject to legislative approval," the allocation of new blocks should be made on the basis of a competitive bidding process in which Indian companies including nationalized coal might participate, according to an official backgrounder issued at that time.

The Cabinet Committee also approved setting up of an independent body to monitor coal exploration and a separate regulatory body to resolve coal price issues between producers and consumers. Even the World Bank had taken note of the Cabinet decision in its report on India's coal sector rehabilitation project finalized in May 2002.

Sixteen years later, neither competitive bidding framework nor an independent coal regulatory authority has been put in place till today! Mr. Moily, please investigate this delay.

The idea of competitive bidding for allotment of coal blocks got fresh lease of life in 2004 when the Government realized that it was under pressure from diverse quarters for clearance of applications for allotment of blocks.

To wriggle out of this tight spot, the Coal Ministry decided that only applications receive up to 28 June 2004 would be considered for allotment of coal blocks. This seems to be similar to cut-off date in the 2G scam during Raja's tenure.

According to a Ministry document prepared in 2005, " Further allotments shall be made under a new process of selection through competitive bidding. The competitive bidding process of selection could be more objective and transparent, considering the large number of applicants per block making selection a difficult task. However, subsequently it was felt by the Government that he competitive bidding process will require amendment to the Coal Mines (Nationalisation) Act, 1973, which will take time Therefore, the position was reviewed and the Government

has, for the time being, decided to continue allocation of coal/lignite blocks for captive mining under the existing process of allocation through the Screening Committee."

The Parliamentary Standing Committee on Steel and Coal, in its report submitted in April 2005, disapproved this arrangement. It recommended that " the system of captive coal

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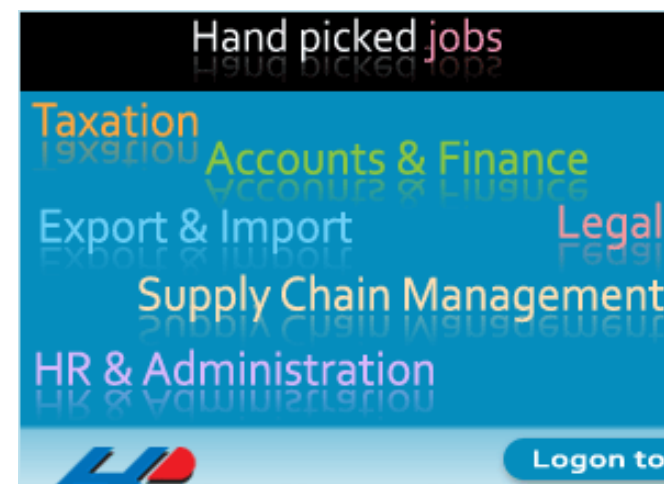
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mining may be thoroughly reviewed and remedial measures taken. The Committee desire that further allotment of captive coal blocks should put on hold and new allotments considered only after the system is fine-tuned and existing allotments are reviewed.”

Investment Commission also chipped in January 2006. It recommended that that coal blocks should be offered through competitive bidding organized on the pattern of that held regularly for oil and gas blocks under the New Exploration Licensing Policy.

In fact, the competitive bidding for coal blocks has been advocated by a few other panels too. The 11th plan Working Group on Coal, for instance, not only called for auction of blocks identified by the Government but also of the ones unilaterally identified by the private sector.

In its report submitted in November 2006, The Working Group stated: “In case of unsolicited projects proposed *suo moto* by private entrepreneurs/ companies or singular bids, the merits of the proposal need to be evaluated by the Government to ensure fairness, impartiality and cost effectiveness. The ‘Bonus System’ (as adopted by Governments of Chile and Korea) or the ‘Swiss Challenge System’ (as adopted by Government of Philippines) of competitive bidding should be followed where the claims, veracity and global competitiveness of the unsolicited proposals could be put to open test by inviting competitive proposals from other market players.”

As put by Coal Ministry, “with the progressive allocation of coal blocks, the number of coal blocks available for allocation is declining while the number of applicants per block is increasing, as the demand for coal keeps increasing. This has made selection of an applicant in respect of a block difficult and vulnerable to criticism on the ground of lack of transparency and objectivity .”

The Government has so far allocated 216 coal blocks with geological reserves of about 50 billion tonnes. Out of these, 24 coal blocks have been de-allocated. Out of cancelled allocations, two were later allotted to eligible companies. Thus, the net allocated blocks are 194 coal blocks with geological reserves of about 44.44 billion tonnes. Of these, 28 coal blocks have come into production. The rest of the blocks are in various stages of development.

The Ministry claims that it has not allotted a single coal block under the existing system since October 1998 when the bill to amend the mining law to pave the way for auction of coal blocks was introduced in Parliament.

Has anyone quantified the presumed revenue loss due to non-introduction of competitive bidding since February 1997, when the Cabinet Committee took a decision on this matter? How is it that this issue has not yet come under the scrutiny of the combined radar of public interest activists and judicial activists?

The induction of foreign partners by Swan and Unitech in their 2G licences through equity expansion and not through the sale of promoters' stake stirred a storm. It gave CAG an opportunity to calculate presumed loss as the difference between the price at which shares were sold to foreign investors and the licence fee which they paid.

In January 2008, the applicants paid the licence fee that was discovered through the bidding competition for 4th cellular licence in all telecom circles in 2001. For a pan-India licence, the fee was Rs 1650 crore.

The induction of foreign partners by the new 2G licencees with equity pricing higher than the licence fee emboldened PILs to file petitions in SC. And, the Apex Court has factored in such equity dilutions in its 2G verdict delivered on 2 February 2012.

A major issue in Raja-specific 2G scam is under-pricing of licences. In the case of coal blocks allocation, it is the absence of financial bidding. The latter is much more serious matter.

There have been several instances of coal block allocatees indulging in "rent seeking" by securing cashless equity, upfront payments and fees on per tonne basis by roping in joint venture partners or by entering into mine development-cum-operatorship arrangement with strategic partners. In almost all cases, allocatees have selected partners through competitive bidding.

How is it that the "public spirited citizens" that SC praised in its 2G verdict have overlooked such instances in the coal scam? And what about pre-Raja 2G scams?

A case of Swan-Unitech type equity infusion in coal sector is that of Maharashtra State Mining Corporation (MSMC). MoC had allotted its three coal blocks to MSMC. In 2007, the company invited bids to induct joint venture partner. It solicited 26% "cashless equity in the proposed JV, apart from seeking premium/tonne of coal that would be mined by JV partner who would serve as mine developer-cum-operator.

áXYKno Capital Services Ltd, which helped MMSC in this public private partnership (PPP) initiative, has prepared a fact sheet on the success achieved by MMSC in this effort.

áXYKno says: "Bidding was carried out in a transparent manner wherein 163 corporates including international players participated in the bidding process. Bidding process enabled MSMC to select a technically and financially strong JV Partner who will bring best global technology for development of the mine. Selection of competent JV partner enabled fast tracking of development of the coal blocks. Project resulted into Cash flow of Rs 100 crore as upfront sweat equity and another Rs 300 crore by way of staggered payments till coal production to the ailing Corporation. MSMC turned into a profit making organization after the bidding process."

This and all other instances of bidding competition for mine developer-cum-operator organized by captive coal blocks holders shows the potential for revenue generation through auction of mining licences. It also indicates the quest among companies to seize business opportunities through fair competition.

With the apex court declaring that the Government is a trustee of natural resources and FCFS is fundamentally flawed, it is the duty of PLIs and other vigilant groups to put their act together on all commercially exploited natural resources.

BJP, which is as much a party to promotion of crony capitalism as the Congress Party in both

2G and coal scams, has quantified losses in coal scam. In July 2011, BJP released the list of coal block allotments during 2006-2009. It described this period as the "intervening period of passage of the law for auctioning of the coal block."

BJP contended that the Govt should have stopped the allotment during this period but instead it chose to allot blocks at frantic speed. "This is nothing but a Black Gold Scam in which natural deposits worth 51 lakh crore of rupees were allotted for free. The alleged pay off is more than Rs.75, 000 crore. More interesting aspect is that the Prime Minister himself was the Coal Minister during 2006-2009," it added.

The real dimensions of the coal scam should be assessed right from July 1993 when the Government started considering applications for allotment of coal blocks on FCFS basis.

Now that the Union Government is set to petition the Supreme Court on the applicability of FCFS or competitive bidding in allocation of natural resources, PLIs should place all facts before the judiciary.

The 2G verdict would perhaps would have been different had the petitioners placed facets relating to all facets of 2G scam that began in 1992.

FCFS must be revisited keeping in view the fact that Metro and other pre-Raja cellular licences have been given excess spectrum above the contractual right and without subjecting this precious asset to competitive bidding.

These pre-Raja licencees were also give post-tender favour of doubling of the licensing period to 20 years. The BJP-led NDA Government had also given them post-contract favour – the Government discretion to extend the licence by another 10 years!

Imagine the benefits that would have accrued both to the exchequer as well as the public (through competitive telephone tariff), had the spectrum in excess of contracted ceiling of 4.2 megahertz been auctioned and had new comers been given a chance to bid for such spectrum. **Had the licence period remained 10 years, there would have been another pan-India round of bidding. This 2G scam is much more sinister than the one that happened during Raja days.**

As 2G and coal scams are similar and originated around the same time, it is moral duty of PLIs to bring all facts about these scams before the apex court.

Coal Ministry now intends to auction coal blocks. At its behest, a subsidiary of Coal India Limited, CMPDIL, is scouting for an auctioneer.

According to a global tender notice issue by CMPDIL on 22 February 2012, the selected service provider would suggest the methodology for fixing the reserve price of the offered blocks and later help the Ministry select most competitive bidders.

Prior to this, the Government notified Competitive Bidding of Coal Mines Rules on 2 February 2012 for which Minerals (Development and Regulation) Act was amended in 2010.

The actual start of tendering competition might take one or more year as each block has to

be first assessed diligently both for reserves, quality of coal and its intrinsic value.

The Government has so far made up its mind only on competitive bidding of coal blocks, what about mining rights for other major minerals such iron ore and bauxite?

Time has come for the Government to clearly identify natural resources that need not be allocated through competitive bidding. It would be ideal for the Government to issue a consultative paper on this subject.

Simultaneously, it must consider creating a level playing field between firms that secured spectrum and captive coal mining rights (crony capitalists) without bidding competition and the new comers who have to go through the auction rigour.

One rational option would be levy level-playing tax on companies that have consummated spectrum and coal mining rights without putting in financial bids.

Alternatively, the Government must phase out their licences for subsequent auction. The validity of cellular licences, for instances, can be rolled back to 10 years.

Will the Finance Minister Pranab Mukherjee bite the bullet?

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