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**Suicidal UPA botched CAG probe into Coalgate**

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**HALF-KNOWLEDGE** is dangerous. So is suppression of facts. An amalgam of these two developments in the Coalgate has distorted the entire debate over the row. Unfortunately, all debate participants – UPA Government, the Opposition parties, the mainstream media and Comptroller and Auditor General (CAG) have contributed to confusing babble. Thus, falsehood, half-truths, plain ignorance and mix-up of private gains (computed by CAG) and loss (invented by ignorant ones) have vitiated the democratic conflict resolution process.

The discourse has overshadowed the fact that the Government has already sown statutory seeds for more Coalgates in future! And this issue has escaped the notice of CAG. UPA Government's proposed coal auction blocks policy is fundamentally flawed as we will discuss later.

CAG report on 'Performance Audit Report on Allocation of Coal Blocks and Augmentation of Coal Production' makes a conservative estimate of presumptive gains to the coal block allottees (CBAs) on the basis of one criterion, even through other strong criterion are available. The other criteria that cannot be overlooked include such as upfront fee, facilitation fee or production-linked revenue and cashless equity charged by CBAs from mine develop-cum-operator (MDO).

To understand all dimensions of the Coalgate, one has to first know the facts. The foremost fact is that self-destructive UPA Government is misleading the country by repeatedly claiming that it was the first to moot auctioning of coal blocks. And in that process getting all the brickbats for Coalgate, which is actually the creation of several parties including the BJP, regional parties and the Left parties.

As put by Prime Minister Dr. Manmohan Singh in Lok Sabha on 27 th August: *"It was the UPA-I Government which, for the first time, conceived the idea of making allocations through the competitive bidding route in June 2004."*

CAG considered this as *Lakshman Rhekha* beyond which it should not investigate the murky business of discretionary dole-out of coal blocks. Thus UPA's factual blunder and its acceptance by CAG's as the fact gives a completely distorted picture of Coalgate. This is mis-governance at its best!

The decision to auction coal blocks was actually taken by Deva Gowda/ United Front Government on 11 February 1997. Finance Minister P. Chidambaram was the Finance Minister in that Government too and would have in all probability attended the Cabinet meeting at which this decision was taken.

This decision formed part of package of coal reforms including phased decontrol of prices of different grades of coal that Cabinet took on the basis of recommendations made by Committee on Integrated Coal Policy (CICP)/ Chari Committee in May 1996.

The auction decision figured in the Economic Survey for 1996-97 that Mr. Chidambaram presented to Parliament. The Survey stated: *"The Mines and Minerals (Regulation and Development) Act, 1957 (MMRDA) will be amended to set up an independent body to allocate blocks on the basis of a competitive bidding process."*

How is that Mr. Chidambaram, who has a razor-sharp memory, not apprised his cabinet colleagues in UPA about this crucial decision? How is it that the Coal Ministry has got away with this factual blunder? How is that the Cabinet Secretariat, which is supposed to monitor all Cabinet decisions, failed to verify Coal Ministry's claim?

The auction decision was originally announced through an undated Press Note issued by Press Information Bureau, which also later issued a background on the subject. The Cabinet had also decided, among other things, to move a bill in Parliament to amend Coal Mines (Nationalisation) Act 1973 (CMNA) to allow any Indian company to mine coal and lignite not only for captive consumption but also for sale.

The World Bank (WB) in its Staff Appraisal Report dated 31 July 1997 on Coal Sector Rehabilitation Project (CSR) had listed reforms initiatives decided at the Cabinet meeting of 11 February.

The decision to offer coal blocks through competitive bidding was reiterated by governments of different political coalition over the years as answers to different questions in both houses of Parliament.

With multiple availability of same information in public domain, there is no rationale to stick to UPA's suicidal insistence that it first mooted competitive bidding for coal blocks in June 2004. If ignorance of law is no excuse, ignorance of facts available aplenty in public domain is also

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no excuse for policy makers and auditors.

Constitutional and professional duties should propel CAG to re-audit discretionary allotment of coal blocks right from February 1997 or ideally from May 1993 when the allocation process was initiated.

While CMNA amendment bill was belatedly introduced by BJP-led NDA Government in Rajya Sabha in April 2000, MMRDA Amendment Bill was neither introduced by United Front Government nor by the successor NDA Government.

It is here important to note that the former legislation was to be introduced in Parliament by 31 December 1997 as committed by the Government to World Bank.

Such slippages in implementation of coal reforms in fact invited adverse comments from the World Bank and led to premature closure of the Bank funded USD 1.7-billion Coal Sector Rehabilitation Project (CSR) in July 2000.

A conspiracy of indifference now emerged across the political class over paving the way for auctions through amendment of the MMRDA or through new rules under the existing Act.

After prolonged legal confabulations over the legal framework for facilitating auctions, the UPA Government introduced The Mines and Minerals (Development and Regulation) Amendment Bill in Rajya Sabha in October 2008. Though this bill became an Act in 2010, the Government notified Competitive Bidding of Coal Mines Rules in February 2012. Coal Ministry is currently awaiting the report of a consultant on valuation of coal blocks, etc. Available indications suggest that bidding is likely to start only in 2013.

CAG or any other independent entity should probe the reason for 15-year delay in start of auctions that could have been started through a mere administrative action in the late nineties.

CMNA bill has remained stuck in Rajya Sabha since its introduction on 24 April 2000 due to opposition from coal trade unions and political parties that espouse the cause of Unions or just wallow in vote-bank populism.

As put by Coal Ministry's Induction Note prepared in December 2005, "*Smt. Mamta Banerjee, the then Minister of Coal and Mines had taken a meeting with the representatives of Central Trade Unions on 12th January, 2004 at Kolkata where Secretary (C), Chairman (CIL) and CMDs of other subsidiaries of CIL were present. In the said meeting it was decided that Coal Mines (Nationalisation) Amendment Bill, 2000 will not be moved in the Parliament without arriving a consensus with Trade Unions. As such the Bill is pending in the Rajya Sabha.*"

**Mamta didi was then in NDA Government. And now she is in UPA Government.** The opposition to employment generating-coal reforms has thus moved from one coalition to another!

NDA Government was apparently over-awed by strikes and strike threats by coal workers unions during that period. It thus did not move the CMNA bill even after it was approved by Parliamentary Standing Committee (PSC) on Energy in its report on CMNA Amendment Bill 2000 in August 2001.

It is worth noting that PSC favoured auction of coal blocks. It stated: "*the apex Chambers of Commerce and Industry pleaded for transparency in the matter of allocation of mining blocks, by the constitution of an Authority to oversee such a function.*"

It thus recommended "*constitution of an Independent Regulatory Authority (IRA) for determining such matters as criteria for defining size of coal blocks/prospects and rules/regulations for award of prospecting/mining lease while allocating coal blocks to private parties, regulation of price of coal, including auction of blocks by open bid, etc.*"

Expenditure Reforms Commission (ERC) had made a similar recommendation in its second report submitted in September 2000.

ERC noted: "*The Ministry of Coal has been contemplating setting up of an independent body for allocating coal and lignite blocks on a competitive basis for exploration and mining. A new legislation titled "The Coal and Lignite (Regulation & Development) Act" on the lines of Mines and Minerals (Regulation & Development) Act, 1957, setting out the powers and provisions of the independent regulatory body is said to be under consideration.*"

ERC thus recommended "*Instead of going in for a new legislation, the purpose could be achieved by amending the existing Coal Bearing Areas (Acquisition & Development) Act, 1957 to accord similar treatment to public and private sectors in the matter of issuance of prospecting and mining licenses and also to enable setting up an independent body/regulatory authority for coal industry.*"

NDA Government's stance on this easy reforms route is hard to come by in public domain. In its answers to questions on ERC's coal recommendations, NDA kept saying that the recommendations were under consideration.

NDA Government, however, unveiled a new coal policy for mining by State-owned enterprises in 2001, which was later availed to the hilt by private companies through diverse tie-ups with such CBAs. This gave a new dimension to discretionary allotment of coal blocks and thus indirectly confirming the urgent need for transparent and direct auctions of coal blocks without any restrictions on coal sale.

After UPA did loud thinking on auctions in June 2004, different entities from the State Governments rushed to apply for coal blocks. Several of them have made a fortune by handling over these coal blocks to private sector firms operating as joint venture partners or as just MDOs.

Ice cubes column was perhaps the first to give a concrete evidence of scam in coal blocks allocations on 9 January 2007 under the headline "[Coal mining licence raj turns public enterprises into commission agents!](#)"

In fact, a fortnight before draft CAG report on allocation of coal blocks was leaked to Times of India (TOI) the term Coalgate originated, Ice Cubes pointed similarities between 2G scam and coal blocks scam and wondered why vigilant groups had overlooked the latter scam.

That write-up was headlined **'Probe both 2G & Coal scams; Levy level-playing tax'**

The crux of the matter is that State PSUs have been allotted coal blocks with clear-cut right to sell coal in the open market. This privilege is currently not available to private sector CBAs. Private companies are, however, allowed to go around this legal restriction by forming joint ventures with state-owned CBAs and gaining control over the coal output.

Take the case of Madhya Pradesh State Mining Corporation Limited (MPSMCL). It has a joint venture with Jaiprakash Associates Limited (JAL) to develop Coal mine, produce and sell coal from Block allotted to MPSMCL.

MPSMCL has 30% equity at *"Zero investment" in the JV named Madhya Pradesh Jaypee Minerals Limited formed for developing AMELIA (North) Coal Block in Sidhi District to MADHYA PRADESH. The output from this block would fire a coal-based power plant of Jaypee group.*

*A JAL released issued in January 2006 says: " MPSMCL will not be required to make any financial contribution and/or any financial commitment to the JV Company of any nature at any time. MPSMCL is guaranteed of assured income by way of Facilitation Fee on each tonne of Coal produced – estimated at Rs. 1000 Crores during the life of Coal Block."*

MPSMC has also formed similar joint ventures with cement major ACC and Sainik group.

A financial consultancy firm that assisted MPSMCL has posted this testimonial from the latter's CEO on its website: *"I had recently taken up the position of Managing Director of MPSMC, and was looking out for transaction advisors, we had interacted with couple of big guys and we finally zeroed in on a 'XYKno Capital based on their capabilities and experience. We had six coal blocks up for private participation, the PPP model was implemented in a transparent and time-bound manner, which would bring upwards of Rs. 850.00 crores of Profits Before Taxes from the private participants to the Corporation every year with a build in escalation matrix besides best strategic partners, 51% cashless equity in the those Joint Venture Companies."*

One does not know whether Mr. Chidambaram read such testimonials before stating: *"if coal is not mined and it remains buried in mother earth, where is the loss."*

One can cite several MPSMCL-type success stories, many of which are in the works as is evident from tenders invited by CBAs. The basic contention is private companies have embraced competitive bidding. They are shelling out big bucks to become participants in coal blocks allotted to public enterprises. The money from such deals that would have accrued to the exchequer in case of direct auction of coal blocks is now being pocketed by State enterprises under non-standardized parameters for involving private firms.

Unfortunately, none of such market phenomenon figures in CAG report.

CAG has dropped central and State PSUs that were separately allotted coal blocks under the Government dispensation route.

It has even excluded joint ventures of PSUs with private parties in computation of gains on the ground that blocks were allotted to PSUs as Government nominees.

The inclusion of this group in its draft report led to higher estimate of gain to beneficiaries of discretionary allocation of coal blocks by the Union Government.

With Competitive Bidding of Coal Mines Rules in February 2012 providing for discretionary allotment to State enterprises, private companies would prefer easier and better option of developing blocks allotted to such enterprises. The risk of tender manipulation, transparency deficit and new scams are more in the States' domain.

The proposed auction process would get further subdued by bundling of coal blocks with tariff-based bidding for power projects as envisaged under the Rules. Such bundling would never help the exchequer realize the market value of blocks.

The benefit of lower power tariff would get divided between power generating company (genco) and distribution companies (discoms) from different States that agree to buy power from the genco.

The benefits may get further shared with distribution franchisees appointed by discoms. The chances of public getting cheaper power under such arrangement are dim. This is because regulators approve retail tariff after taking into account all costs (that can easily be manipulated) borne by discoms.

And what is the guarantee that the Union Government would not exercise its discretion to let gencos sell so-called surplus coal output to a merchant power plant?

Thus the continuation of the existing policy of bundling coal blocks with power projects and discretionary allotment of blocks to State enterprises under the proposed rules bristles with prospects of scams.

As the number of coal blocks are limited, UPA must make auctions mandatory for acquisition of blocks by all including Coal India Limited. **This should be patterned on New Exploration Licensing Policy for oil and gas under which even as is the case with Oil and Natural Commission and Oil India Limited bid for exploration blocks.**

To resolve the row over coalgate and to prevent more such scams, the Government must first cancel all CBAs and levy windfall tax on those blocks that are already in production.

In fact, the Opposition is not the first to demand such cancellations. Much before coalgate, PSC, in its report on MMDR Amendment Bill, had made a similar demand.

In its report submitted in February 2009, PSC said: *"The Committee are of the firm opinion that if the coal block already allotted are not developed as per the time-frame set by the Ministry, their allocation should be automatically stand de-allocated and such coal blocks may be disposed off through new policy initiative now being contemplated. After this exercise is completed, only then new blocks may be allotted through competitive bidding."*

Second, the Government should set up an independent enquiry commission that should probe coalgate right from the start in May 1993. This is because the policy for allocation of block

for captive mining was diluted by powerful lobbying by CBAs. Some of them employed eminent legal experts such as P. Chidambaram and KapiSibal to overawe the Coal Ministry into relaxing the norms for development of blocks.

This columnist has already discussed this subject in an article in Gfiles magazine (gfilesindia.com) headlined Coal Scam – [Robbing the Black Gold](#).

All said and done, auction of major mineral resources including iron ore and bauxite mines is unavoidable as the markets want it. **If markets are pulsating for auctions, why should national and state exchequer not generate additional revenue for public benefit?**

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