Competition Act Triumphs: SC verdict extends Competition Act to Government Companies

Recently, a three-judge bench of the Supreme Court ruled on the question of whether Coal India Ltd., a government owned entity, was subject to the provisions of the Competition Act. The court's judgment has wide-reaching ramifications and is a defining judgment on the question of whether Government owned companies fall within the purview of the Competition Act. Back in 2014, the Competition Commission of India (CCI) had previously passed an order against Coal India Ltd. while imposing a Rs 1,773 crore penalty, also upheld by the Competition Appellate Tribunal. Coal India subsequently appealed to the hon'ble Supreme Court which has now established that the company is within the scope of the Competition Act 2002 (Competition Act) and has to carry its operations within the ambit of the Act.

This post aims to analyses the judgment passed of the Supreme Court in the case of Coal India Limited and Anr. v. Competition Commission of India. The post delves into the arguments presented before the court, takes cognizance of the analysis by the court and concludes with an examination of the implications of this judgment on future legal jurisprudence and its effects on the related industry.

I. Courtroom exchanges: Dueling Arguments Presented Before the Court

1.(i): Coal India's Defense: Navigating Statutory Directives and Legislative Immunity

1.(i)(a) Shielded by the Competition Act: Protection Claimed by Coal India

Coal India Ltd. (Coal India) contended that the Coal Mines (Nationalization) Act, 1973 (Nationalisation Act) was enacted to vest the ownership and control of coal mines with the 'State' and monopolize the operation of coal in the hand of the Central Government thereby creating a legislative monopoly as against an ordinary monopoly. Emphasis was laid on the nature of the functions of the company and how it was directed to function within the walls of different legislations having a welfare-objective.

Article 31B of the Indian Constitution (Constitution) provides that none of the Acts mentioned in the Ninth Schedule of the Constitution shall be deemed void even if they limit some rights provided by other relevant sections. The contention raised was that the Nationalisation Act was deemed

necessary to be provided immunity accorded through the Ninth Schedule due the nature of its subject matter i.e., the resource 'Coal', which is of highest economic value and national importance.

Further it was argued that Article 39 (Constitution) directs certain principles to be followed by the State and states that "*the ownership and control of the material resources of the community are so distributed as best to subserve the common good*". Coal India asserted that the company was bound by Directive Principles contained in Article 39(b) and thus contended that the company worked for 'welfare' initiatives rather than 'commercial sense' in order to fulfill constitutional obligations. Such initiatives often are inconsistent with the principles of fair and neutral competitive economy, and thus Government companies cannot adhere to the provisions of the Competition Act.

1.(ii)(b) Protection under the Competition Act, 2002

Coal India argued that Section 19 (Competition Act) provides for 'inquiry into certain agreements and dominant position of enterprise' and stipulates that in determination of abuse of dominant position, CCI shall consider factors including "monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company…" (Section 19(4)(g) – Competition Act). It was argued that the entity is not an ordinary monopoly, but rather a special one as it has an added feather of Article 39(b) of the Constitution and that this factor was not considered by the CCI.

1.(ii): Unraveling Inconsistencies: The Collision of the Competition Act and the Nationalization Act

Coal India argued that it does not work in the 'commercial sphere'. For instance, 345 out of the 462 mines had suffered massive losses (2012-2013) while contributing only 9% to the total coal production, these mines were not shut down as any other private entity would have done, as they employed around 1,80,726 personnel.

It was argued that Section 4(2)(b), Competition Act mandates that abuse of dominant position can be established if an entity inter alia, limits or restricts production of goods or provision of services. However, in compliance with Article 39(b), the Ministry of Coal often allocates more coal in backward areas as part of its policy. Furthermore, Coal India is obligated to follow the policies set

by the Central Government and thus such actions would be inconsistent with Section 4(2)(b), but otherwise, if not undertaken, would nullify objectives of the Nationalisation Act.

Further, Section 32 of the Nationalisation Act mandates that there can be no proceedings in any Court to wound up the mining companies without the consent of the Central Government. However, when Coal India follows welfare policies vis-à-vis pricing and distribution of coal which are inconsistent with the Competition Act, CCI under Section 27(a) has the power to order winding up under Section 28(2)(e); however, such an order would ultimately be inconsistent with Section 32 (Nationalisation Act).

II. Respondents' Retort: Challenging Government Monopolies

The respondents argued that 'state monopolies' are harmful for the economic policy and hamper the interests of the nation (Raghavan Committee Report). When the 'State', enters the commercial sphere through its agencies, it is bound to follow the laws of the land, a principle previously established through judicial precedents[1].

It was argued that the CCI, undertakes significant efforts to follow the procedure established by law in order to determine whether there has been an abuse of dominant position by an enterprise. Experts appointed by CCI, investigate every complaint following a three-fold check mechanism, including ascertaining whether the entity under investigation qualifies as an 'enterprise' (Section 2(h) – Competition Act); whether such enterprise holds a dominant position (Section 19(4) – Competition Act) and whether there has been an abuse of such a dominant position (Section 4(2) – Competition Act).

Further, it is the consumers that occupy the center-stage under the scheme of the Competition Act; as it was enacted for the 'common good' of consumers. Moreover, the preceding act i.e., the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), stated that it did not apply to any government agencies[2]. However, the current Competition Act, which repealed the MRTP Act, does not provide for a similar explicit provision. Section 54, provides that the Central Government

[1] New Delhi Municipal Council v. State of Punjab & others, (1997) 7 SCC 339
[2] Section 3, Monopolies and Restrictive Trade Practices Act, 1969.

may exempt the application of the current Act to certain enterprises via notification. However, no such exemption has been granted to Coal India.

Conclusively, Nationalisation Act itself has been repealed and the Act was also removed from the Ninth Schedule (Constitution) in 2017, which further undermines contentions raised by Coal India.

II. Decoding the Verdict: Analyzing the Court's Decision

Chronologically, the scheme of the MRPT Act was such that the Act did not apply to Government owned enterprises unless specifically notified (Section 3, MRTP Act). However, the repealing Act i.e., the current Competition Act is opposite in its approach as it applies to all unless the Central Government specifically exempts an enterprise. The intention of the legislation, as affirmed by the Court, has thus been to promote a 'competitive and fair' economy.

The judgment notes that the case of Coal India is largely based on the anomalies that stood to arise if the Competition Act was made applicable to Coal India and its subsidiaries. It should be noted that there exits an irreconcilable difference between the 'welfare' mandate of the Government Companies and Section 4(2) of the Competition Act. The bench however, also emphasized that a fiercely competitive economy is unequivocally the desired goal of the nation. The parliament, knowing the previous laws (Nationalisation Act) still enacted the Competition Act, in order to usher in a new era of a democratic and vibrant competitive economy with the object of achieving 'common good'.

It is worth noting the three acts of parliament which expresses the intention of bringing the 'State monopolies' within the ambit of the Competition Act. The parliament knowingly enacted the Competition Act with clear objectives, removed 'Coal' as an essential commodity under the Essential Commodities Act, and the step to include a reference to state monopolies under Article 19(4)(g) (Competition Act). The court noted that the CCI under Section 28 has a 'special' power to order division of an 'enterprise', which should be judiciously used. However, there is a balance of power in the hands of the Central Government that should it deem necessary, it can inter alia, exempt any entity from the provisions of the Act under Section 54.

The court held that observed that CCI undertakes detailed investigation on every issue to reach any conclusion. The Commission should therefore work in a manner that it does not reduce

Government Companies to mere profit-making entities neither lets them act in caprice in violation of the objections of the Competition Act.

III. Paving the Path Forward: Charting the Way Ahead

While it is important for a certain level of state monopoly to persist through legislative backing, it is equally pertinent to assess if such legislations become anti-competitive in their nature. To put it in context, the Indian economy after independence required Government companies with statutory monopolies to work towards the socialist goals of the nation. However, such requirements have changed with a more dynamic economy of the nation taking shape. The policies prevalent earlier, if rigidly applied now, can hinder the holistic development of the nation. 'Common Good' as envisaged under Article 39(b) is a dynamic concept rooted in Benthamite principles.

While Government owned companies function with the extended objective of public welfare, the Competition Act too promotes consumers' interests and a 'neutrally competitive' economy. Both are complementary and not necessarily contradictory. In the current economic ecosystem, it is important to ensuring a balancing of objectives for Government Companies. A comprehensive assessment of the specific circumstances, market dynamics, and the overall policy objectives of the government can be undertaken in order to achieve the desired objectives.

The Competition Act, by itself is well equipped to navigate the above-mentioned balancing of objectives. The CCI employs an expert panel to investigate into complaints and is statutorily mandated to consider certain factors when handling investigations. Further, if the Central Government finds it necessary, any entity can be granted an exemption under the Competition Act in order to pursue the welfare objectives.

The ruling to bring Government owned companies within the spectrum of Competition Act ensures a level playing field for all, eliminating any perceived advantages that government-owned entities may have had. Private companies may perceive an opportunity for enhanced collaboration with government entities within the framework of the Competition Act. This could lead to partnerships that leverage the strengths of both sectors for mutual growth and societal welfare. On the other hand, the ruling could lead to market disruptions for Government-owned companies. These companies could further be required to restructure operations, change pricing strategies, exit certain markets etc.