

Coal, On The Right Track At Last

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Under Part V, Chapter 1 of the Constitution the executive power of the Union vests in the President, but under Article 74 he is required to act in accordance with the aid and advice of his Council of Ministers, headed by the Prime Minister. Under Article 75 Council of Ministers is collectively responsible to the House of the People, but because the executive power of the Union is to be exercised only in accordance with the advice of the Council of Ministers, the Council is very much a part of the Executive. Because the Council of Ministers is required to aid and advise the President, clearly the framing of policy and proposals for legislation fall within the domain of the Council of Ministers. The officers through whom the President acts will certainly help the departmental minister in the framing of policy or in drafting legislation approved by the minister, but the final decision vests in the minister. Based on the decision of the minister or of the Council of Ministers the officers are required to implement policy. Initiation of legislation before Parliament is the responsibility of Members of the Council of Ministers. In other words, the system gives the authority to frame policy and to initiate legislation to the ministers. Unfortunately not every minister cares much about policy because many of them involve themselves in such petty executive functions as deciding postings and transfers of low level officials and in interfering in issues which are purely relating to implementation. This has diluted the authority of the officers, made them excessively dependent on the ministers in matters which lie exclusively within the domain of the officer, shirk decision making and generally create a cloud of red tape in which nothing moves. It is the job of the minister to prevent such administrative logjams but that is precisely that we do not do. As for framing policy, many of them have no knowledge of a wider picture, nor are they interested in issues which relate to long term policy. With ministers whose horizons are narrow and who are not interested in policy framing, with officers who shun decision making, it is no wonder that the administration has virtually collapsed in India. One prime example of this is the 2 G Spectrum allocation. No one cared to review policy framed several years ago and decide whether it needs a change under existing circumstances. Instead a minister took it upon himself to twist the rules to the benefit of certain parties and in the process allegedly made illicit money. Ultimately the matter blew up in the face of government and both audit and the police in the form of CBI took notice and then started action. The Secretary of the Ministry, instead of insisting on the matter being dealt strictly according to the Rules of Business, decided to wash his hand of the affair, which is tantamount to gross neglect of duty.

Something very similar happened in the matter of allocation of coal blocks in which it is alleged that either there were no rules or that rules and norms were openly flouted. Investigation of criminal offences apart, this resulted in the Supreme Court ultimately cancelling almost all the allocations, thus creating a major problem for power generation and coal using industries such as steel and cement. It is such a refreshing change that the new government did not just sit around bemoaning the Supreme Court's order and wringing its hand in despair. Instead it has come out with an ordinance which creates a completely new scenario with regard to coal. The ground covered by the ordinance is comprehensive, the policy approach is most appropriate and the ordinance itself is a fine piece of drafting.

By following the legal route of legislation, initially by ordinance, no doubt to be replaced by an Act of Parliament, government has achieved both transparency in the matter of the mining for coal and brought the entire process under the ambit of law, thus eliminating arbitrariness and undue discretion from the system. This is a remarkable achievement. The ordinance also fairly and squarely addresses the main issues relating to coal block allocation. These include the meeting of the coal requirements of the public sector, availability of coal in the private sector, the status and role of Coal India and the question of using coal to pass revenue to States in which the coal mines are located. Seriatim the ordinance states that (1) Public sector users of coal like power plants, electricity boards, public sector steel, cement, etc., companies will be allotted coal mines for their exclusive use. Because the mines would be allotted to undertakings in the public domain there can be no objection to this. (2) For private sector users of coal such as power plants and private sector cement and steel

plants, a pool of coal mines will be created, which would be auctioned through e-process and from which the private sector undertakings can obtain coal according to their requirements. It is realised by government that these units cannot function without coal and, therefore, a patently transparent process has been adopted whereby coal will be mined and coal will be available to the private sector. (3) Coal India, which is the largest coal mining company in the world, will remain intact as a public sector undertaking. (4) In a path breaking departure from normal the entire proceeds of the e-auctions will be transferred to the States in which the mines are located. Thus a huge chunk of revenue will be transferred to the States, with maximum benefit flowing to West Bengal, Jharkhand, Bihar and Chhattisgarh, with Madhya Pradesh and Maharashtra also being marginally benefited. This is an extremely bold step because the States which possess the natural resource of coal will now receive a huge amount of money through the sale of coal mines, thus substantially improving their own financial position. The Centre has brought the States in as partners by this one move.

The crafting of this ordinance required the highest level of political decision making because no civil servant can cover the four areas enumerated above. It is a policy decision to give captive mines to the public sector, to pool coal blocks for the private sector, to protect the interests of Coal India and it is a very bold political decision to transfer the totality of resources to the States in which the coal mines are located. After a very long time this country now has a government in which the Council of Ministers actually begins to frame policy. I compliment Narendra Modi, Prime Minister, Piyush Goel, Coal Minister, Arun Jaitley, Finance Minister for the lead taken by them in the matter of this ordinance. Why did the previous government not think along these lines?
