

Is India's Ministry of Coal Effective in Supporting Coal Production?

The Comptroller and Auditor General's Audit of the Coal Industry | October 2016

INTRODUCTION

Coal is a nationalized industry in India, and Coal India Limited (CIL) is the state-owned company responsible for coal production. In the past, open-cast coal mines were allocated free of charge to companies producing steel, cement, and power; however, the three industries' prices were also controlled by government. After economic reforms in 1991, the system of government-administered prices for these three industries ended, and prices were determined by the market. To meet growing industrial demand for thermal power and because of the limited capacities of CIL, captive coal blocks were allocated free to producers in the three industries.

The administrative system set up for the allocation of coal blocks included a recommendation by a State (provincial) government and the approval of a central government-led Screening Committee that allocated coal blocks for captive use by both public-sector entities and private companies.

Because the gap between the demand for coal and the supply continued to widen, the Comptroller and Auditor General (CAG) of India conducted an audit investigation to examine the adequacy of the measures to increase production that were adopted by CIL and the Ministry of Coal (MOC). This audit exposed lack of transparency, gross irregularities, and inefficiency in the process during the period of 2004-2009. The CAG [audit report](#) revealed the following issues: 1) many spurious companies successfully applied for coal blocks; 2) there was no CIL verification of end use of coal; and 3) significant losses of revenue occurred. According to the CAG audit report, a much more expeditious administrative process that did not require any changes in the laws would be to allocate coal blocks based on competitive bidding. After 1991, when market-based prices were introduced for products like steel, cement, and power, it was only consistent to shift to market-based prices for inputs like coal as well.

While the audit report came short of signaling corruption, the main opposition party, the Bharatiya Janata Party (BJP), logged a complaint that resulted in a Central Bureau of Investigation (CBI) probe into the matter. As a result, in 2013, the CBI named a dozen firms in a First Information Report (FIR), which is the first step of criminal investigation.

In 2014, after public interest litigation, a Supreme Court decision ordered all captive coal blocks allocations to be annulled and new ones to be auctioned. This led to important revenue gains (at least INR 80,000 crore for 11 coal blocks allocated in 2015) for the government of India in 2015. In addition, a few individuals went to jail. To date, developments are still unfolding in this regard.

Like CAG's earlier report on the allocation of 2G spectrum to telecommunications companies, this CAG audit on coal blocks allocations marked a shift from reporting only on tax assessment and collection to looking into losses of revenue related to husbanding national resources. This shift meant that CAG was examining the value obtained for the money allocated by the State to private companies in light of market valuation.

AUDIT REPORT FINDINGS AND RECOMMENDATIONS

The CAG audit report highlighted the lack of transparency and pointed out the inefficiency of the way captive coal blocks were allocated. The audit report concluded that 1) the central government had the authority to auction the coal blocks; and 2) as a result of continuing old inefficient practices, recipients had been given a "windfall gain" for their balance sheets. Thus the audit report listed a series of recommendations to the Coal Comptroller Organization (CCO), the CIL, and the Ministry of Coal.

- CCO should conduct regular physical inspections of allocated blocks.
- CIL should: 1) fix its production targets in line with targets fixed by the Planning Commission; 2) expedite setting up coal washeries; and 3) synchronize excavation and transportation capacities.
- MOC should: 1) work out the process for allocation of coal blocks for captive mining through competitive bidding; 2) create a system of incentives and disincentives to encourage production performance; and 3) assess the success of the declared objectives of "Power to all by 2012" so as to allow for midcourse corrections.

LIST OF EVENTS HELD DURING AND AFTER THE AUDIT REPORT RELEASE

- 1) The CAG draft audit report leaked out to the media in March 2012.
- 2) In May 2012, in response to a complaint by two opposition BJP members of Parliament (MPs) on corruption allegations, the Central Vigilance Commission (CVC) demanded a CBI inquiry. A dozen

- firms with connections to state governments, MPs, and central government ministers would be named for criminal investigation.
- 3) By the end of June 2012, the Ministry of Coal set up an Inter-Ministerial Group (IMG) that would later recommend deallocation of some coal blocks and encashment of bank guarantees of other recipients.
 - 4) In August 2012, CAG tabled the final audit report to Parliament. Prime Minister Manmohan Singh, who was also the Coal Minister for a significant period, read a defense statement in Parliament, questioning the CAG's report on its selective reading of the advice of the Ministry of Law and arguing that consensus building was required for changing the law governing allocation of coal blocks.¹
 - 5) In September 2012, the Supreme Court questioned the coincidence that several blocks were secured by politicians, their associates, and a few private companies. The Supreme Court dismissed the Solicitor General's objections that the investigations relied heavily on the CAG report by underscoring the fact that CAG was a constitutional body.
 - 6) Due to allegations of government interference in the investigations, in March 2013, the Supreme Court asked the CBI director not to share details of the coal blocks allocation investigations with political leaders and officials and to report only to the Court.
 - 7) In April 2013, a report of the Parliamentary Standing Committee on Coal and Steel was released, denouncing the manner in which coal blocks were allocated between 1993 and 2008 and demanding that allotment of all mines where production was yet to start should be cancelled.
 - 8) Following three public interest litigation petitions (PIL), the case reached the Supreme Court in April 2013. The Supreme Court was asked to cancel the allotment of over 100 coal blocks on grounds of arbitrariness, illegality, unconstitutionality, and public interest. Another public interest litigation was filed by the NGO Common Cause.
 - 9) In July 2014, the Supreme Court of India announced the creation of a special CBI court to try cases regarding the coal blocks allocations' scandal.

¹ However, it must be noted that the retired secretary from the Ministry of Coal, who had proposed switching to an administrative policy of auctions as early as 2004, [spoke to the media](#) in 2012 in support of CAG's report. As a result, he was hounded by UPA government, though he defended himself successfully in court.

10) In September 2014, the Supreme Court of India decided to cancel 214 out of 218 coal blocks allocated since 1993. In addition, operational mines were mandated to pay a penalty of Rs. 295 for every ton of coal extracted since they started.

ACCOUNTABILITY FOR INDIVIDUALS AND AGENCIES

In order to seek accountability, the Supreme Court ordered that existing allocations of coal blocks be cancelled and put to auction. Financial penalties were imposed on companies for every ton of coal extracted, and company executives were sent to jail for committing fraud in applying for such coal allocations. Also, FIRs were filed on charges of conspiracy, cheating, criminal breach of trust by public servants, and misconduct.

To prevent this situation from happening again, new corrective measures were adopted. The government introduced a competitive bidding process for coal allocations, resulting in increased government revenues in subsequent years.

WHY THE AUDIT WORKED

There were a few building blocks that helped create this “conspiracy of good will”: the CAG audit report (which focused on the revenue losses); two opposition MPs who filed an initial complaint triggering a CBI investigation; media coverage and the public outcry against corruption; the expertise of NGOs, which initiated public interest litigations in the Supreme Court in order to prevent this from happening again. After the CAG report, the CBI investigation, and the public interest litigations, some individual citizens came forward and shared the visitors’ register of the CBI director’s official residence with Common Cause, unearthing a series of meetings between the CBI director and some of the accused in his own official house. These individuals might not have been able to go against public institutions by themselves. Thus, the steps first taken by CAG, then by the media and CBI investigations, and later through the PIL and the Supreme Court encouraged ordinary citizens to come forward and share additional information and kept the case alive.

Above all, actions undertaken upon CAG’s audit report cannot overlook a key feature of the institution: its autonomy. Independence is a distinctive trait of CAG and is well established both by law and conventions of the legislature. CAG leadership became evident in the coordinated work by two different areas within the CAG: the commercial audit wing that audits government companies and the civil audit wing that audits ministries.

In addition to CAG’s leadership, the Supreme Court, enforcing agencies, CSOs, and individuals all contributed to the accountability effort.

- *The sensitivity of the topic to public opinion.* The media followed this case closely, contributing its own investigative reports associated with the issues involved and preceded by a series of scandals (2G spectrum, etc.). This led to public outrage. The CAG audit report was tabled in Parliament in 2012 in the aftermath of the 2011 Anna Hazare-led mass protests against corruption across cities and towns of India. This nonviolent movement protested against widespread corruption and cronyism of the ruling government coalition called United Progressive Alliance (comprising the Congress Party, DMK, RLD, etc.) and demanded adoption of anti-corruption legislation (i.e., an Ombudsman Lokpal bill).
- *The watchdog role of the media.* The draft CAG report was leaked to the media. During the years 2012-14, the audit report received unprecedented publicity. Many journalists covered bits and pieces, which helped keep this case alive.
- *Role of the opposition party.* The report was widely quoted by the opposition party. When the case was initially exposed in Parliament, the opposition party refused to attend sessions, which then had to be postponed. Also, two opposition MPs filed a complaint which triggered a CBI investigation. The coal blocks allocations' scam (also known as "Coalgate"), together with other scandals, generated public outrage, which helped to swing the electoral mood in the country against the United Progressive Alliance (UPA) government. Thereafter, the BJP won with an absolute majority in the 2014 general elections.
- *Public interest litigation (PIL) in the Supreme Court.* The Indian NGO [Common Cause](#) took this case to the Supreme Court on the basis that this was not only a matter of poor due diligence and possible conspiracy for fraud but of lack of institutional integrity. So Common Cause asked the question "Who is the actual owner of the natural resources?" Common Cause argued that all coal mines were concentrated on only a few hands, there was no level playing field, and shady companies were benefitting from captive coal blocks' allocations. In general, bringing corruption cases to courts is challenging, even if one or two pieces of proof may exist, and there is rarely a written document which could serve as the official source, so PIL-NGOs are very selective about cases they pursue. Thus the CAG audit report came as a vindication for Common Cause, which cited the CAG audit report extensively in its petition to the Supreme Court. Common Cause had already relied on other CAG audit reports to initiate public interest litigation in the Supreme Court (i.e., the case concerning the 2G spectrum for telecom companies).
- General elections were held in 2014, and a new ruling party won. It auctioned the coal blocks and received a huge amount in government revenue.

It is noteworthy that the Public Accounts Committee (PAC) did not feature prominently in seeking accountability. Indeed, PAC fails to review many CAG reports.