

**SC doubts law requiring PSUs to obtain COD approval- directs review**

**CCE vs. Bharat Petroleum Corporation (Supreme Court)**

In **ONGC vs. CCE** 104 CTR (SC) 31, the Supreme Court directed the Central Government to set up a '**Committee on Disputes**' to monitor disputes between the Government and Public Sector Enterprises and give clearance for litigation. It was held the no litigation could be proceeded with in the absence of COD approval. This was followed in **ONGC vs. CIDCO** (2007) 7 SCC 39 and it was held that even disputes between PSUs and State Governments would require COD approval. HELD doubting the correctness of this law and referring the matter to a larger bench for reconsideration:

“In our experience, **the working of the COD has failed**. Numerous difficulties are experienced by the COD, which are expressed in the letter of the Cabinet Secretary, dated 9th March 2010. Apart from the said letter, we find in numerous matters concerning public sector companies that different views are expressed by COD which results not only in delay in filing of matters but also results into further litigation.

In the circumstances, we find merit in the submission advanced before us by learned Attorney General that **time has come to revisit the orders passed by the three Judge Bench of this Court in the case of Oil & Natural Gas Commission vs. Collector of Central Excise** (supra)”.  
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**S U P R E M E C O U R T O F I N D I A**

**RECORD OF PROCEEDINGS**

**CIVIL APPEAL NO(s). 1903 OF 2008**

**COMMISSIONER OF CENTRAL EXCISE**

Appellant (s)

**VERSUS**

**M/S BHARAT PETROLEUM CORP. LTD.**

Respondent(s)

**WITH**

S.L.P.(C) NO. 2538 of 2009 (With prayer for interim relief)

Civil Appeal NO. 7571 of 2009 (With appln. for stay)

S.L.P.(C) NO. 31136 of 2009

(With appln. (s) for c/delay in filing SLP and directions and

With office report)

Date: 06/04/2010 This Appeal was called on for hearing today.

**CORAM:**

**HON'BLE MR. JUSTICE S.H. KAPADIA**

**HON'BLE MR. JUSTICE SWATANTER KUMAR**

For Department:

in all matters: Mr. G.E. Vahanvati, A.G.

Mr. Arijit Prasad, Adv.

Mr. D.D. Kamath, Adv.

Mr. B.V. Balaram Das, Adv.

Mrs. Anil Katiyar, Adv.

For Petitioner(s)

in SLPs. Mr. M. Chandrasekharan, Sr.Adv.

Mr. Rupesh Kumar, Adv.

Ms. Pankhuri Shrivastava, Adv.

For Respondent(s)

in CA 1903/08: Mr. Parijat Sinha, Adv.

**UPON hearing counsel the Court made the following**

**ORDER**

**S.L.P.(C) No.31136/2009:**

**De-linked, to be listed separately.**

Civil Appeals Nos.1903/2008, 7571/2009 & S.L.P.(C) No.2538/2009:

On 11th October, 1991, a Bench of three Judges of this Court, in the case of Oil and Natural Gas Commission vs. Collector of Central Excise, reported in 1995 Supp (4) SCC 541, after noting the Report of the Cabinet Secretary, ordered as follows:

"3. We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters.

This Court would expect a quarterly report about the functioning of this system to be furnished to the Registry beginning from 1.1.1992."

By a subsequent order dated 7th January, 1994 in the case of Oil and Natural Gas Commission Vs. Collector of Central Excise, reported in (2004) 6 SCC 437, another Bench of three Judges clarified that the Order dated 11th October 1991, passed in ONGC's case was not to efface statutory remedies, nor was the purpose of the constitution of High-Powered Committee to take away these remedies. It was, accordingly, ordered that an appeal could be filed without clearance but thereafter an application should be made to the High-Powered Committee for clearance.

In our experience, the working of the COD has failed. Numerous difficulties are experienced by the COD which are expressed in the letter of the Cabinet Secretary, dated

9th March, 2010. Apart from the said letter, we find in numerous matters concerning public sector companies that different views are expressed by COD which results not only in delay in filing of matters but also results into further litigation.

In the circumstances, we find merit in the submission advanced before us by learned Attorney General that time has come to revisit the orders passed by the three Judge Bench of this Court in the case of Oil & Natural Gas Commission vs. Collector of Central Excise (supra).

One more order needs to be highlighted because, in our view, even that Order needs to be revisited. In the case of Oil & Natural Gas Commission Vs. City Industrial Development Corporation, Maharashtra Ltd. & Ors. reported in (2007) 7 SCC 39, a Division Bench of this Court has held that even a controversy between the Central and State Governments as well as their companies would also require an NOC from COD.

For the afore-stated reasons, we are of the view that the above judgments need reconsideration. We would have done so. However, we are unable to do so because the judgments in the case of ONGC (supra) have been delivered by Benches of three Judges of this Court.

In the circumstances, the Registry is directed to place these matters before Hon'ble the Chief Justice of India for appropriate directions.

**(N. Annapurna)**  
**AR-cum-PS**

**(Madhu Saxena)**  
**Asstt. Registrar**