
(1970) 02 MP CK 0004
In the Madhya Pradesh High Court
Case No : M. No. 307 of 1967

Amalgamated Coalfields Limited and another	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 09-02-1970

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 16, 16(1), 18, 20

Citation : (1975) ILR (MP) 607 : (1970) JLJ 477 : (1970) MPLJ 286

Hon'ble Judges : Bishambhar Dayal, C.J; P.K Tare, J

Bench : Division Bench

Advocate : K. A. Chitale and P. P. Naolekar, for the Appellant; K. K. Dube, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. K. Tare, J.

This is a petition by a Coal Company seeking a writ of certiorari against the order, dated 14th June 1967 (petitioner's annexure T) passed by the Central Government refusing to entertain the petitioner's revision under rule 54 of the Mineral Concession Rules, 1960, read with section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, directed against the order of the State Government, dated 11th May 1967 (petitioner's annexure "C") coupled with the demand notices (petitioner's Annexures "C-1" to "C-7").

The petitioner has been a lessee prior to the coming into force of the present Act as also the Mines and Minerals (Regulation and Development) Act, 1948. The leases were granted to the petitioners some time between the years 1933 and 1946 at different points of time in respect of different quarries. According to the petitioner, the calculations made by the State Government in the demand notices are not in accordance with the provisions of the present Act, especially section 9(1) read with Schedule II. Therefore, the only question for consideration is whether the order of the Central Government refusing to entertain a revision is

erroneous in law.

The contention of the learned counsel for the petitioner is that no sooner section 9(1) of the Mines and Minerals (Regulation and Development) Act, 1967, is made applicable to coal mines, then the necessary corollary will be that Section 30 of the Act providing for revisional power to be exercised by the Central Government will be attracted. In this connection attention is invited to the provisions of section 30-A of the Act which is as follows:-

30A. Special provisions relating to mining leases for coal granted be/ore 25th October, 1949.

Notwithstanding anything contained in this Act, the provisions of sub-section (1) of section 9 and of sub-section (1) of section 16 shall not apply to or in relation to mining leases granted before the 25th day of October, 1949, in respect of coal, but the Central Government, if it is satisfied that it is expedient so to do, may, by notification in the Official Gazette, direct that all or any of the said provisions (including any rules made under sections 13 and 18) shall apply to or in relation to such leases subject to such exceptions and modifications, if any, as may be specified in that or in any subsequent notification.

It is relevant to note that the first part of the section excludes the application of section 9(1) and section 16(1) of the Act unless the said sections are applied by a notification issued by the Central Government. The second part confers such power on the Central Government to apply those sections coupled with the power to apply rules made under sections 13 and 18 subject to such exceptions and modifications in respect of leases granted before 26th October 1949. Therefore, the clear implication of the section is that ordinarily sections 9 and 16 of the Act will not be applicable to coal mines in respect of leases granted before 26th October 1949; but upon such notification being issued, the said sections will be applicable. As such, what is done by applying section 9(1) of the Act is to provide for fixation of rate of royalty according to the provisions of Schedule II of the Act, thereby superseding any terms to the contrary in the lease. It is, therefore, clear that the calculation of the amount due as per the rate mentioned u/s 9(1) coupled with Schedule II of the Act will be a function performed by the State Government under the provisions of the Act and, therefore, we have to examine whether such an order passed by the State Government will be revisable by the Central Government u/s 30 of the Act.

The contention of the learned Government Advocate is that it is only section 9(1) which has been made applicable. It is pointed out that section 16(1) of the Act has not been made applicable by the notification, dated 1st January 1966 (petitioner's annexure "B"). It is further pointed out that the rules framed under sections 13 and 18 also have not been made" applicable. It may be so; but as the State Government performs a statutory duty u/s 9(1) of the Act, the necessary corollary will be that the other provisions of the Act will be attracted in respect of orders u/s 9(1) also unless they are specifically excluded. We are

unable to accept the suggestion of the learned Government Advocate that this Act is altogether excluded so far as the leases granted prior to 25th October 1949 are concerned. As against this, we may advert to section 20 of the Act which provides as follows:-

20. Act and rules to apply to all renewals of prospecting licences and mining leases.- The provisions of this Act and the rules made thereunder shall apply in relation to the renewal after the commencement of this Act of any prospecting licence or mining lease granted before such commencement as they apply in relation to the renewal of a prospecting licence or mining lease granted after such commencement.

It is, therefore, clear that the question of renewal of any lease granted prior to the commencement of the Act will be governed by the provisions of this Act. Reference may further be made to section 24 of the Act which relates to the power of entry and inspection. That power can also be exercised in respect of leases granted prior to the commencement of the Act. Similarly, section 25 refers to recovery of sums as arrears of land revenue. By no stretch of imagination can application of section 25 of the Act be said to have been excluded in respect of leases granted prior to the commencement of the Act. Moreover, there is nothing further to indicate that this Act will not at all be applicable in respect of old leases, but the only provision made is the one contained in section 30-A of the Act.

It may be that the notification may not have made the rules framed under sections 13 and 18 applicable to such leases. But the mere failure to apply the rules cannot deprive the petitioner of the statutory remedy which will be available to it as provided by section 30 of the Act because of the application of section 9(1) of the Act. For this reason, we are of opinion that the contention of the learned counsel for the petitioner is correct and it was a case of failure to exercise jurisdiction vested in the Central Government by law.

We, therefore, quash the order of the Central Government, dated 14th June 1967, by issuing a writ of certiorari and further by a writ of mandamus we direct the Central Government to decide the said revision petition on merits. Consequently this petition succeeds and is accordingly allowed with costs. Counsel's fee in this Court is fixed at Rs. 100. The outstanding amount of the security deposit shall be refunded to the petitioners.