(2002) 04 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5134 of 1989

Associated Stone Industries (Kotah) Ltd.	APPELLANT
Vs	
State of Rajasthan and Others	RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Rajasthan Minor Mineral Concession (Amendment) Rules, 1986 — Rule 18(3), 47
Rajasthan Minor Mineral Concession Rules, 1977 — Rule 18(3)

Citation : (2001) 4 WLC 7

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : G.S. Bafna and R.S. Mehta, for the Appellant; K.K. Sharma and Vimal Choudhary, CWP 5134/89, for the Respondent

Judgement

Madan, J.—These two writ petitions since relate to one and selfsame mining lease dispute as to the revision of dead rent and having been filed by petitioner M/s. Associated Stone Industries (Kotah) Ltd, have been jointly heard at the request of both the parties and are therefore disposed of by this common order.

2. Shorn in details relevant facts necessary for disposal of these petitions are epitomised thus. Admittedly the petitioner Company was granted mining lease for lime stone (building stone) for ten years w.e.f. 1.10.59 in respect of an area of 4810.16 acres in Ramganj Mandi on annual dead rent of Rs. 2 lacs. Even first renewal was undisputably granted on double the annual dead rent at Rs. 4 lacs and further followed by second renewal for 10 years from 1.10.79 as to area of 14.146 sq. km. vide Annexure 1 but at the annual dead rent being computed as per 2nd schedule of the Rajasthan Minor Mineral Concession Rules 1977 (for brevity 1977 Rules) which was fixed at Rs. 14,70,480/- subject to revision under Rule 18(3) of the 1977 Rules after 5 years.

3. A dispute arose when revision of annual dead rent was made by fixing it at Rs. 34,08,710/- on 3.7.86 making it effective from 1.10.84. Meanwhile the 1977 Rules were repealed by promulgating Rajasthan Minor Mineral Concession Rules,

1986 (for short, 1986 Rules). The dead rent of Rs. 14,70,480/- was revised to Rs. 34,08,710/-against which an appeal was preferred before the mines Director who by his order dated 30.8.86 remanded the matter with direction for denovo assessment of annual dead rent as per formula laid down under Rule 18(3) of Rules, 1986 by rectifying calculation mistake if any under Rule 47. Consequent upon remain the dead rent was revised to Rs. 24,90,339/- p.a. w.e.f. 1.10.84 but the State government in exercise of its power under Rule 47 of the 1986 Rules again revised dead rent to Rs. 34,10,081/- by its order dated 6.4.88 which was challenged by the petitioner in D.B. Civil Writ Petition No. 1545788 wherein this Court by its order dated 27.4.1989 quashed State Government''s order dated 6.4.1988 but directed to redetermine annual dead rent as per settled formula. Meanwhile third renewal became due so the petitioner admittedly applied for third renewal which was granted by the State Govt. on 15.9.89 (Ann. 2) to reduced area of 9.991 sq. km. Thus upto third renewal effective from 1.10.89, the mining leased area was admittedly 14.146 sq. kms. and annual dead rent upon third renewal was revised at Rs. 72,46,472/-, to which the petitioner protested by its representation dt. 20.9.89 (Ann. 3) followed by reminder dt. 30.9.89 (Ann. 4) to the respondents. But having received no response, hence the petitioner preferred writ petition No. 5134789 seeking direction to the respondents inter-alia:- (1) to determine annual dead rent of renewed mining lease of 9.991 sq. kms. as per Rule 18(3) of the Rules, 1986 and (2) to revise dead rent (a) treating existing dead rent at Rs. 24,90,339 and further (b) reducing existing dead rent in proportion to the area reduced i.e. from 14.146 to 9.991 sq. km.

4. In second writ petition No. 4096799, the petitioner sought relief for (1) quashing & setting aside order dated 15.3.99 of the Central Government (Ann. 8) so also that of the State Government dated 16.12.92 (Ann. 7) and (2) directing respondents to redetermine the dead rent on the basis of Rule 18(3) of the 1986 Rules. This second petition though relates to the revision of dead rent of the period (1984-89 but it pertains to final orders upon adjudication of the revision in question by the State and Central Governments on the appeals of the petitioner.

5. Relying upon Rule 18(3) of 1986 Rules, Shri Bafna learned counsel for the petitioner urged that the dead rent of the period w.e.f. 1.10.84 to 30.9.89 (for brevity impugned revision) was revised to Rs. 34,08,710/- as per formula under 1977 Rules whereas it since having been computed on 3.7.86 (i.e. after repeal of old 1977 Rules and promulgation of new 1986 Rules) ought not to have been done under 1977 Rules but under 1986 Rules, Shri Bafna added that as was urged in petitioner''s representation, the impugned revision of dead rent should have been at Rs. 24,43,409/-under Rule 18(3) of 1986 Rules inasmuch as once its appeal against wrong calculation was disposed of by the Mines Director on 30.8.86 (Ann. 2) directing the AEN (Mines) to revise the dead rent as per Rule 18(3) of 1986 Rules, therefore, as per this order (Ann. 2) which attained its finality because of having filed no appeal, Rule 18(3) of 1986 Rules is applicable and not the 1977 Rules. In my considered view, merely because the Additional

Director (Mines) in his order dated 30.8.86 (Ann. 2) directed to revise dead rent under Rule 18(3) of 1986 Rules, it cannot be said that 1986 Rules are applicable for the impugned revision period, as even if upon careful perusal of this order dated 30.8.86 (Ann. 2) it is crystal clear that such a direction was given by the Addl. Director while dismissing the petitioner''s appeal itself, holding it as not maintainable under Rule 43, and in fact only liberty was given to rectify calculation mistake in exercise of State Govt.''s power under Rule 47, while upholding impugned revision of dead rent at Rs. 34,08,7109/- against which appeal before the Mines Director was dismissed under order dt. 30.8.86 (Ann. 2).

6. Be that as it may, pursuant to liberty by order dt. 30.8.86 (Ann. 2), AEN (Mines) redelermined dead rent revising at Rs. 24,90,339/- by order dt. 4.3.87 (Ann. 3) which was recalculated at Rs. 34,10,081/- by the State Govt. in exercise of its power under Rule 47 by order dt. 6.4.88 (Ann. 5) in supersession of redetermination done by the AEN. However, recalculation order of the Stale dt. 6.4.88 (Ann. 5) was set aside by this Court under order dt. 27.4.89 in D.B. Civil Writ Petition No. 1545/88 as under:-

"Consequently we hereby allow this writ petition, set aside Annexure 8 dated 6.6.88 and the demand notice, and send the case back to the State Government with a direction to hear the parties and then redetermine the dead rent possible. The petitioner shall be free to raise all the objections. All the objections will be raised by the petitioner within two weeks to the State Government. The Stale Government is directed to decide the matter as soon as possible but in no case later than 3 months. We direct the parties to be present before the competent authority of the State Government on 22.5.89."

7. Thus, the matter was remanded back to the State Govt. to firstly hear the parties and then redetermine the dead rent. The petitioner was given liberty to raise all objections. The petitioner submitted objections pursuant to order dt. 27.4.89 of this Court on 11.5.89 but again, the State Govt. by its order dt. 16.1.91 redetermined the '' impugned dead rent at Rs. 24,10,081/- against which further writ petition No. 940/91 was preferred whereby on 20.11.91 the matter was remanded back to the State to, afford personal hearing to the petitioner before recalculating the dead rent.

8. Again, reiterating that this Court had directed to recalculate the impugned dead rent as per 1986 Rules, Shri Bafna vociferously argued that the State Govt. in its order dt. 16.12.92 (Ann. 7) ignored this significant aspect rather committed an error apparent on the face of its record while redetermining the impugned dead rent at Rs. 34.10.081/- as per 1977 Rules and this resulted in preferring revision petition u/s 30 of the Mines & Mineral (Regulation & Development) Act, 1967 which too was dismissed by the General Govt. under its order dt. 15.3.99 (Ann. 8), against which second petition No. 4096/99 is pending consideration herein.

9. Having heard the learned counsel for the parties and given earnest

consideration to their rival contention in consonance with relevant provisions of both the 1977 & 1986 Rules besides other material on record, I find that an ardent efforts were were made to complex the issue, itself, reiterating the selfsame controversy raised since 1986 despite the petitioners have undergone ordeal of litigations by playing several legal gimmicks and innings, whereas a very short controversy at issue is as to whether the 1977 or 1986 Rules are applicable for the revision of dead rent for the period from 1.10.1984 to 30.9.1989 if it were computed on 3.7.86?

10. Much emphasis was laid by Shri Bafna that since the impugned dead rent was actually computed on 3.7.86, therefore the 1986 Rules are applicable, may be for the revision which was due on 1.10.84, because on the day of computation of dead rent for the purpose of revision, the 1986 Rules were operative and the 1977 Rules stood repealed. Shri Bafna placed reliance upon the decisions in (1) Amarjeet Singh v. State of Rajasthan (1), (2) Mool Chand v. State of Rajasthan (2), following in (3) Gordhandas vs. State of Rajasthan (3), (4) Prabhulal Agrawal v. State of Rajasthan (4). Let me hasten to first state the observations made in aforecited decisions.

11. In Amarjeet Singh v. State of Rajasthan (supra), this Court held that inability to finalise the assessments relating to royalty would not confer any power on the competent authority to revise dead rent after a lapse of four years during the current span on the basis that assessment of royalty of first four years could not take place earlier. It was a case where question was as to whether non-finalisation of assessment of the royalty would have any effect as to the right to recover dead rent from the date when the earlier span of five years came to an end. Therefore, this Court observed that the formula envisaged that for the earlier span of five years, royalty of first four years would be taken into consideration and average excess would be arrived at and that would be added in the revised dead rent. This Court further observed that the formula would apply when such average excess can be arrived at the till that is done, formula cannot be implemented. Thus it was a case where assessment of royalty could not have been finalised for four years out of span of five years, therefore, revision of dead rent could not have taken place earlier.

12. As regards decision in Mool Chand v. State (supra), this was decided on the basis of judgment in Amarjeet Singh v. State (supra). It was a case where the lease was extended on 8.4.77 for 10 years instead of five years as already renewed on 15.1.75 and thus lease period was w.e.f. 28.6.73 to 27.6.83 but during extension vide order dt. 8.4.7, the dead rent was not fixed and after renewal of the lease, the 1977 Rules came into force and on 30.8.77, a formula for determinalion of dead rent was prescribed and-dead rent was fixed w.e.f, 28.6.78 to 22.3.80 in pursuance to the revised formula, therefore, this Court held that so far as the period prior to 22.3.80 is concerned the petitioner was liable to pay dead rent @ Rs. 1,07,777/- per year i.e. as per old Rules and after 22.3.80 as per 1977 Rules viz. Rs. 1,51,110.80p.

13. In Gordhandas v. State of Rajasthan (supra), dead rent was demanded to the tune of Rs. 8,745.35 p. for the period from 6.11.78 to 5.11.79 b notice dated 28.8.84. It was a case where this Court observed that inability to finalise assessment of dead rent by the mining department when such right accrued to them in the year 1979 does not authorise them in that case to assess the dead rent on 28.8.84 and to recover the same from the petitioner for the period from 6.11.78 to 5.11.79 by giving revision of dead rent dated 28.8.84 retrospective effect. It was a case where for the period 6.11.78 to 5.11.79, the petitioner was already assessed for royalty at Rs. 29,743.50 p. and dead rent at Rs. 22,000/- and Rs. 7743.50 being over & above, the dead rent was paid by the petitioner inasmuch as he surrendered the lease itself on 18.4.80, rather in that case there was reassessment for the dead rent vide order dt. 28.8.84 for Rs. 38,489.85 p. in place of Rs. 29,743.50p. as previously assessed and paid by the petitioners, therefore this Court observed as above.

14. While adverting to the present case, it is not in dispute that though dead rent was revised on 3.7.86 but applying the formula envisaged in 1977 Rules w.e.f. 1.10.84 when the revision had accrued and it was determined at Rs. 34,08,710/-. The grievance of the petitioner is that once practically the computation of dead rent so as to revise after five years was made on 3.7.86 i.e. after 1977 Rules were repealed and on 4.3.86, 1986 Rules were operative, therefore, 1986 Rules would be applicable and not 1977 Rules.

15. Revision of dead rent and its formula both have been provided and pre scribed in second proviso to Sub-rule (3) of Rule 18 in each of both either the 1977 c the 1986 Rules. So they are quoted as under after taking it from written arguments.

16. Sub-rule (3) proviso II of Rule 18 of 1977 duly amended by notification dl. 16.10.81 reads thus:-

"Provided further that the Government may revise dead rent after every 5 years from date of initial grant or of renewal of the mining lease in accordance with the following formula- Existing dead rent + 40% of existing dead rent + average excess royalty pf the last four years of each span of 5 years."

Sub-rule (3) proviso II of 1986 Rules envisages as follows:

"Provided further that competent authority may revise dead rent after every 5 years from date of initial grant or of renewal of the mining lease in accordance with the following formula-Existing dead rent + 40% of existing dead rent + average excess royalty of the first four years of each span of 5 years."

17. A comparative look at aforequoted twin Sub-rule (3) of Rule 18 or Rule 18(3) itself under 1977 & 1986 Rules makes it crystal clear that the lessee shall also pay for every year such yearly dead rent as fixed by the Government which at time of initial grant shall be as per rates specified in Schedule II which shall however not be applicable at the time of revision of dead rent, and the dead rent

was to be revised by the competent authority after every five years from the date of initial grant or of renewal of the mining lease in accordance with formula prescribed therein. In last proviso to Rule 18(3) similar provisions are contained in both the Rules of 1977 or 1986 that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever is higher in amount but not both.

18. It appears that in Gordhandas v. State of Rajasthan (supra) this Court could have neither noticed nor brought to its notice notification dated 16.10.81, amending Sub-rule (3)of Rule 18 of 1977 Rules prescribing formula of revised dead rent therefore this Court observed that under Sub-rule (3) of Rule 18 of the 1977 Rules there was no provision providing method for assessing the revised dead rent. Be that as it may, as analysed above, in my considered view, provisions of Sub-rule (3) of Rule 18 of 1977 are pari materia to Sub-rule (3) of Rule 18 of 1986 Rules except in formula that too in respect of taking note of average excess of royalty of four years. Under 1977 Rules formula, average excess royalty of last four year is taken whereas as per 1986 Rules, average excess royalty of first four years out of 5 years span is taken into consideration. Yet revision done either on the basis of formula given in second proviso of Rule 18(3) of both the 1977 and 1986 Rules would not make any difference. No doubt, the characteristics of the 1977 and 1986 Rules both are of subordinate legislation, these Rules would operate prospectively and not retrospectively unless Act No. 67 of 1957 authorised the Rule making authority to make such Rules which may have retrospective effect.

19. In the instant case albeit impugned revision of dead rent was computed and made on 3.7.1986 when 19.86 Rules were in force but it is not in dispute that the impugned revision of dead, rent was made as per formula prescribed in old Rules of 1977 obviously because such revision in case of the petitioner had accrued on 1.10.1984. Thus, it is not at all the case that 1986 Rules have been applied for retrospectively for the revision which accrued much before on 1.10.1984 when 1977 Rules were in force. However only case on behalf of the petitioner is as to retrospective effect viz. that for the revision though accrued on 1.10.84 but computed on 3.7.86, the impugned revision of dead rent ought to have been calculated as per formula under 1986 Rules and not under 1977 Rules. This case of the petitioner in my considered view is not at all tenable and is devoid of merit, because admittedly the impugned revision after second renewal of the lease had accrued after five years of the renewal on 1.10.84 and that impugned revision of dead rent was for the period from 1.10.84 to 30.9.89 as second renewal was to expire on 30.9.89 and on 1.10.89 not only third renewal was due rather further revision of dead rent was to be due. Hence, the contention on behalf of the petitioner that the action of the State Govt. in making revision of dead rent on 3.7.86 by applying old formula under 1977 Rules is illegal and contrary to law, is totally preposterous and misconceived.

20. Next plunk of attack on behalf of the petitioner is that the State Govt.

exercised power under delegated legislation and such power could be exercised prospectively and not retrospective. In other words, it is the case of the petitioner since the impugned revision of dead rent was ordered on 3.7.86 so it will be effective prospectively and not with retrospective effect i.e. 1.10.84. If such an argument is accepted in favour of the petitioner then certainly revision of dead rent would become effective from the date of revision order i.e. 3.7.86 which would result in its operation only for rest of years out of 5 years span, expiring on 30.9.89, i.e. for only about three years when next renewal would also become due besides further revision under Rule 18(3), but such an interpretation as put forth by Shri Bafna, in my considered opinion, is against the legislative intent and purpose for which Sub-rule (3) of Rule 18 for the revision of dead rent after every five years, has been framed. Moreover, if the interpretation put by Shri Bafna is accepted then also it would be against the public policy to collect the revenue inasmuch would encourage the bureaucrats to indulge in corruption and red tappism in dealing with revisions of annual dead rent against the mining lease holders by causing delay in dead rent rates revision so as to benefit the lease holders, for example in the present case to benefit the petitioner, the delay appears to have been caused in revision of dead rent, which cannot be allowed as it would cause enormous loss to State exchequer in depriving it of enhanced or revised dead rent for intervening period of delay in assessing revision of dead rent in case of the petitioner''s claim being accepted.

21. Thus viewed, with due respect, I am not fortified of the view taken in the decisions cited by Shri Bafna, whereas as per language of 2nd proviso of Rule 18(3) either of 1977 Rules or even 1986 Rules duly amended upto 3.7.86 revision of annual dead rent is prescribed after every five years either from the date of initial grant or renewal.

22. Original second proviso to Sub-rule (3) of Rule 18 of 1986 Rules has been duly substituted by amendment Notification No. 29 of 29.8.96 as under:-

"Provided further that the rate of annual dead rent shall stand revised after every five years from the date of initial grant or renewal of the mining lease in accordance with following formula."

23. Even original formula prescribed under 2nd proviso to Sub-rule (3) of Rule 18 of 1986 Rules was substituted by amendment notification No. 24 dt. 12.8.94 as under: -

"Revised dead rent-Existing dead rent @ 40% of existing dead rent."

"Provided further also that revised dead rent shall not exceed five times of the dead rent calculates as per Schedule II in force at the time of dead rent."

24. Right of impugned revision of dead rent had accrued on 1.10.1984 when repealed 1977 Rules were in force but its practical revision by the State Government or the competent authority under the 1977 Rules was made on 3.7.86 by then Rules of 1986 repealing the rules of 1977 came into force. No

doubt accrual of right to revise dead rent speaks about existence of right to revise dead rent whereas practical revision of dead rent speaks about such right after taking into account definable formula. If upon carefully look at the language of questioned second proviso to Sub-rule (3) of Rule 18 of both the repealed 1977 and repealing Rules of 1986, it is crystal clear that though there is omission of a provision of the questioned Rule 18(3) but admittedly there is simultaneous re-enactment by same repealing 1986 Rules of a new provision substantially covering the same field with certain rather slight modifications, i.e. too in the formula in question prescribed for revision of dead rent, only to the extent of taking into account "average excess royalty part out of each span of 5 years." with no change in rest part of either Rule 18(3) 2nd proviso or formula itself. Vesting of right of the authority to revise dead rent after every five years as was prescribed in the repealed 1977 Rules was made substantially the same with no change or amendment in the repealing 1986 Rules, rather Rule 2 of the repealing 1986 Rules provides for saving clause as per which anything done or any action taken under the provision of the rules so repealed shall be deemed to have been done or taken under the provisions of the 1986 Rules. The impugned revision of dead rent was an accrued right not only in the repealed but also in the repealing minor mineral concession Rules. Saving provision preserves the existing right accrued under the Old Rules which presumes that legislature did not intend to limit or to take away vested or accrued rights to revise dead rent nor repealing provision under Rule 2 or 18(3) clearly indicated to the contrary, inasmuchas repealing 1986 Rules by enacting Rule 18(3) for revision of dead rent as already provided in the repealed 1977 Rules i.e. 18(3), meaning thereby substantially covering the same field, in my considered view is regarded having force continuously, nor there is automatic extinguishment of rights accrued under repealed 1977 Rules, nor the repealing 1986 Rules have taken away expressly the right of the State Govt. to revise dead rent after every five years, rather provision of revision of dead rent after every five years has substantially been reiterated and continued even in Rule 18(3) of repealing 1986 Rules, also, which too did not envisage that the revision of dead rent would be effective from the date of order of revision.

25. Moreover, it is trite that rights vested in any person or authority under a repealed statute are not to be deemed to be interfered with by the repealing statute which expressly or by necessary implication interferes with the rights accrued to any person or body under the repealed statute. Similarly, the problem concerning retrospectivity of the enactments depends on events occurring over a period. It is settled iaw that if the enactment comes into force during a period it only operates on those events occurring then. The presumption against retrospective legislation does not necessarily apply to an enactment merely because a part of the requisites for its action is drawn from time antecedent to its passing.

26. As regards the contention that the State Govt. ignored the order dt. 27.4.89 of this Court in earlier writ petition No. 1545/88, suffice is to say that this Court

never held that revision of dead rent for the impugned period had to be done in accordance with formula under the 1986 Rules. I must hasten to quote from order dt. 27.4.89 as under:-

"So far as two factors relevant in that formula, namely the existing dead rent plus 40% of the existing dead rent are concerned, there is no dispute between the parties and the only dispute is in respect of the remaining factor "average of excess royalty of first four years of each span of five years."

27. Thus as per order dated 27.4.89 (Ann. 6), the dispute was as to third factor in the formula of revision of dead rent, which was different in both the repealed 1977 and repealing 1986 Rules. In the repealed 1977 Rules under which right to revise dead rent for the impugned period had accrued on 1.10.84, this factor was viz. average excess royalty of the last fours of five years span; which was prescribed by the State Govt. notification dated 16.10.81, as under:-

"Basic dead rent + 40% of dead rent + average excess royalty of the last four years of 5 years span."

28. This quoted formula under 1977 Rules duly amended in 1981 came to be substituted by following formula by repealing 1986 Rules on 4.3.86 covering substantially the same field as of first two factors but with slight modification in third factor of royalty.

"Basic dead rent + 40% of dead rent + average fexcess royalty of the first four years of 5 years span."

29. Thus the claim of the petitioner for application of formula under 1986 Rules for the impugned revision of dead rent for five years span (1.10.84 to 30.9.89) i.e. for action of revision from time antecedent to the passing of 1986 Rules, viz. 1.10.84 has been repelled by me as held above, because of the reason also that benefit of 1986 Rules cannot be given from a retrospective date. Hence I do not find any arbitrariness or illegality in any of the impugned orders either of the State Govt. dated 4.6.88 (Ann. 5) or 16.12.92 (Ann. 7) upheld by the Central Government its order dt. 16.3.99 (Ann. 8) in revision application. As a legal corollary thereto. I hold that aforesaid orders are not at all contrary to the earlier order of this Court dt. 27.4.89 and consequently, civil writ petition No. 4096/99 deserves to be dismissed and thereby another petition No. 5134/89 relating to the third renewal span (1.10.89 to 30.9.99) is also liable to be dismissed except for single aspect of proportionate reduction of dead rent for reduced mining lease area.

30. Last question is as to whether dead rent should be reduced in proportionate to the reduction in mining lease area during third renewal span. It is not in dispute at the bar that third renewal was granted on 16.9,89 to the petitioner for mining lease area of 9.991 sq. kms. by reducing original area of 14.146 sq. kms. but dead rent has been charged at Rs. 72,46,472/- w.e.f. 1.10.89 for original mining area- 14.146 sq. kms. under 1986 Rules. The only case on behalf of the

respondents State is that since admittedly the petitioner had surrendered an area measuring 4.155 sq. kms. so as to bring its lease within maximum limit of 10 sq. kms. as prescribed under 1986 Rules, the fixation of dead rent to the tune of Rs.72,46,472/- was correct, inasmuch as reduction in the mining area is not a valid consideration so far as revision of dead rent is concerned, and therefore, as per Shri Sharma, there is no question of proportionate reduction of the dead rent. On this aspect I am declined to accept the contention of Shri Sharma on behalf of the respondents. It is trite that fixation of dead rent depends on the mining area and as and when dead rent is revised as per Rules 18(3) of 1986 Rules, one of components is existing dead rent plus 40% of the existing dead rent should be taken into account. In my considered opinion also, "dead rent" in case of reduction of mining area it should also be proportionately reduced. I am fortified by the view taken in Prabhulal Agrawal v. State of Rajasthan (supra), and that being so, if the mining are a is reduced, the amount of dead rent for big area cannot be charged thereby while revising dead rent under Rule 18(3) of 1986 Rules upon third renewal w.e.f. 1.10.89 and while taking the component of existing dead rent, the dead rent proportionately reduced has to be taken into consideration but third component i.e. average excess royalty of the first four years of each span of five years, would have been the same.

31. As regards effect of interim orders passed in stay petition Nos. 4067/89 & 959/99 in writ petition No. 5134/89, once I have partly allowed writ petition No. 5134/89 declining to the case of the petitioner for treating existing dead rent at Rs. 24,90,339/-but holding dead rent revised at Rs.34,10,081/- by the State Govt. as correct for the period from 1.10.84 to 30.9.89, the petitioner is liable to pay excess amount with interest @ 15% p.a. from the date of demand till realisation as ordered by this Court on 10.12.90 in S.B. Civil Stay petition No. 4067/89 if not paid by the petitioner and not recovered by the respondents as a result of aforesaid stay order in respect of periods (11.10.84 to 30.9.89 and subsequent period of third renewals. Similarly the petitioner will also be entitled to interest @ 15% p.a. on refund accrued out of aforesaid order as to the proportionate reduction of dead rent for third renewal span from the date of deposit, if the petitioner had deposited entire amount of dead rent revised/ determined for mining lease area of 14.146 sq. kms. as against renewed & reduced lease area of 9.991 sq. kms. Consequently the State Govt. will adjust its due amount if recoverable from the petitioner out of refund due to the petitioner. Ordered accordingly.

32. As regards interim order dt. 27.10.99 (passed in the absence of the respondent No. 3) in civil 2nd stay petition No. 959/99 in writ petition No. 5134/89, since the petitioner was allowed to deposit entire dead rent of Rs. 1,42,03,086/- with the Government in lieu thereof the Government was directed to release "Rawannas", to which Mr. K.K. Sharma had agreed, thus it resulted in depriving the respondent No. 3 of the excess royalty from the petitioner. Hence in the interest of justice and further to avoid multiplicity of litigation, the State Government is directed to refund excess royalty with interest @ 15% p.a. after

deduction of Rs. 68,01,455/- out of Rs. 1,42,03,086 or excess if deposited in the Government treasury, to the respondent No. 3, who admittedly was the highest bidder of Royal Collection Contractor of the mining lease area of the petitioner, but subject to entitlement if any upon proportionate reduction of the dead rent due to reduction in mining lease area on third renewal.

33. In the net result, civil writ petition No. 4096/99 is dismissed but another civil writ petition No. 5134/89 is partly allowed only to the extent of proportionate reduction of dead rent revised upon third renewal on 1.10.89 and accordingly the State Government (respondents) are directed to reduce the dead rent proportionately as a result of reduction in the mining area from 14.146 sq. kms. to 9.991 sq. kms. while granting third renewal on 1.10.89. No order as to costs. All exercise as directed in last but one para as to the refund/adjustment of excess amount in favour of all the parties, be done by the State Government within three months from the date of receipt of certified copy of this judgment, for which the Registry of this Court is directed to sent it to the Chief Secretary of the respondent State for compliance in letter and spirit.