
(2005) 09 JH CK 0020

In the Jharkhand High Court

Case No : C.W.J.C. No"s. 478 and 526 of 1999 (R)

Central Coalfields Ltd. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Mineral Concession Rules, 1960 — Rule 64A

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 13(2), 25, 9(3)

Citation : (2005) 4 JCR 203

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Prasad and A.K. Das, for the Appellant; A.K. Sinha, A.G. and P. Modi, GP-I, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In these two writ petitions the short question that falls for consideration is whether the petitioners are liable to pay interest on the late payment royalty and also whether interest on royalty is recoverable from the respondent as public demand.

2. The petitioners' case is that there are two Collieries known as Kurhurbaree and Serampur collieries in the district of Giridih. Kurhurbaree Colliery was a part of erstwhile Kurhurbaree Estate and by virtue of indenture the East India Railway Company took the lease of the said Colliery from the Secretary of State for India in Council and is recorded in Tauzi No. 15 of Giridih Collectorate. In the Khewat of this Tauzi, the then Secretary of State for India in Council is recorded as Khewatdar. Similarly, the Serampur Colliery was a part of erstwhile Serampur Estate and was formerly held by the East India Railway Company under a perpetual lease which vested in the Secretary of State for India in council by virtue of East India Railway company Purchase Act, 1879 and is recorded in Tauzi No. 10 of the Giridih Collectorate. In the Khewat of this Tauzi, the then Secretary

of the State for India is recorded as Khewatdar. The petitioners' further case is that the East India Railway Company worked the aforesaid two Collieries till they were nationalized and vested in the Union Government. The said Collieries thereafter worked by the Union Government as absolute owner thereof.

3. In the background of the aforesaid facts, Mr. P.K. Prasad, learned Counsel appearing for the CCL, submitted that since the aforesaid two Collieries are owned by the Central Government as absolute owner, in respect of the proprietary right thereof, the said Collieries cannot be the subject matter of vesting under the Bihar Land Reforms Act, 1950 and, therefore, no rent or is are payable to the State of Bihar. Learned Counsel further submitted that since no royalty in respect of the said Collieries is payable to the State Government, the question of payment of interest on royalty does not arise. Learned Counsel relied upon a decision of the Supreme Court in the case of Saurashtra Cement and Chemical Industries and Anr. v. Union of India and Ors. AIR 2001 SC 8.

4. The respondents-State in their counter affidavit have stated that the petitioners sold these two Collieries to different consumers and realized royalty on behalf of the State Government. But this amount of royalty was not deposited in the accounts of the State Government, although the amount of royalty was relating to the period from 1977-78 to 1995-96. The petitioners deposited the amount of royalty in 1996-97 in four instalments and started paying current royalty from 1997. Besides the above, it is stated that by virtue of operation of Bihar Land Reforms Act, 1950, the Collieries in question came in possession of the State of Bihar and the State of Bihar became the owner of the said Collieries.

5. Sri A.K. Sinha, learned Advocate General, on the other hand submitted that since all these Collieries were taken over under the Nationalization Act, the petitioners became the lessee under the State Government and therefore royalty is payable to the Government. Learned Counsel drew my attention to Section 25 of the Mines and Minerals (Regulations and Development) Act, 1957 and Rule 64-A of the Mineral Concession Rules. Learned Counsel put reliance on the decision of the Supreme Court in the case South Eastern Coalfields Ltd. Vs. State of M.P. and Others, .

6. Before appreciating the cases of the parties, I would first like to refer the two decisions of the Supreme Court relied upon by the learned Counsel appearing for the parties.

7. In Swaraj Cement and Chemical Industries (supra), the Apex Court was considering the constitutional validity of Section 9(3) of the Mines and Mineral (Regulations and Development) Act, 1957, on the ground that the levy of royalty on minerals is not a tax and the Union Legislature did not have the power under Entry 54 of List I to enact such law which denudes the right of the State Legislature to levy tax on mineral rights under Entry 50 of List II. It was held that it is within legislative competence of Parliament to make the law levying tax on minerals and neither Entry 23 of List II nor Entry 50 of List II would be

attracted. In my considered opinion the ratio decided by the Supreme Court has no application in the instant case.

8. In the case of South Eastern Coalfields Ltd. (supra), exactly same question arose for consideration to the effect as to whether in case of delay in payment of royalty the lessee is liable to pay interest on the said amount of royalty, considering Rule 64-A of the Mineral concession Rules and other provisions, Their Lordships observed that :

"We have carefully perused all the three decisions. All these decisions relate to recovery of tax whereon interest was ought to be levied for delayed payment. The Court chose to assign a literal meaning to the provisions of the substantive law as opposed to a liberal interpretation, and hold that to empower levy of interest for delayed payment of tax there must be a substantive provision in the taxing statute. All the case relied on by Shri S. Ganesh, the learned senior counsel, are such cases wherein the levy of interest was sought to be justified by reference to some provision made in the rules, which provision was held to be beyond the rule making power as delegated by the parent statute and the statute itself did not make a provision for payment of interest. The levy of such interest was held to be ultra vires the power of the authority levying the interest. Such is not the case before us. Here it is clear from the several provisions of the Act and the rules quoted hereinabove, no mining operation is permissible except in accordance with the terms and conditions of a mining lease and the rules made under the Act. The rules clearly provide for payment of interest. The lease deed executed by the Coalfields incorporates a recital for the payment of interest. It is one of the terms and conditions of obtaining a mining lease that any delay in payment of royalty, referable to a period beyond the sixtieth day of the expiry of the date fixed by the Government for payment of such royalty, shall carry a liability to pay simple interest calculated at the rate of 24% per annum on such amount of royalty. Rule 64-A has been framed in exercise of the powers conferred on the Central Government by Section 13 of the Act. The terms for payment of royalty, and for payment of interest for the period of delay, are authorized by the power to make rules for regulating the grant of mining lease. That apart, interest is included within the expression "other charges"-the phrase as employed in Clause (i) of Sub-section (2) of Section 13 of the Act. A decision by a Suvarna Cements Limited and Another Vs. Union of India and Others, has been brought to our notice. The Division Bench has held--"It cannot be said that the term "charges" occurring in Section 13(2)(i) does not include "interest". Undoubtedly, interest payable by lessee for delayed payment is a financial liability on the lessee and, therefore, a debt. It may also be construed as a cost or price or compensation payable to the contracting State authority for delay in payment of dues such as cess, royalty, etc." We find ourselves in respectful agreement with the view of the law so taken by the High Court."

9. As noticed above, after the Nationalization Act came into force and also by operation of the Bihar Land Reforms Act, 1950, the petitioner became the lessee

and continued mining operation after obtaining lease from the State Government. It is also not in dispute that the petitioner paid royalty for the entire period and also started paying current royalty to the respondents-State. In that view of the matter, the petitioner is bound to pay interest on the delayed payment of royalty. In my considered opinion, therefore, the respondents have rightly initiated proceeding for recovery of the interest and there is no reason for interfering with the summary proceedings and the orders passed therein.

For the aforesaid reasons, there is no merit in these writ petitions, which are accordingly dismissed.