
(1997) 05 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 2477 of 1996 (R)

Central Coalfields Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 7, 9
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9, 9(1)

Citation : (1998) 1 PLJR 330

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : M.M. Banerjee and R.S. Majumdar, for the Appellant; J.C. to Standing Counsel No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. The question, which has arisen for determination in this case, is as to whether the Petitioner/lessee is liable to pay royalty only on extraction of mineral or only when the same is removed from the lease hold area.

3. The short facts, giving rise to this application, are as follows:

A certificate case, being Certificate Case No. 13/1982-83 was filed against the Petitioner for realisation of a sum of Rs. 10,826/- as royalty. Pursuant to the notice u/s 7 of the Bihar and Orissa Public Demands Recovery Act, the Petitioner filed his objection u/s 9 of the said Act stating therein, inter alia, that the difference in opening and closing balance is due to the fact that the coal was not lifted by the contractors and after joint measurement of saleable coal by C.I.L. and C.C. Ltd. the figure of 16,271 Mts. of different grades of coal was shown in the opening balance of 1996 and as such the difference was bound to be there between the figure of actual raising and despatch, and, accordingly, the assessment of the District Mining Officer was not correct and, therefore, the

Petitioner was not liable to pay royalty as demanded by the certificate holder.

4. After considering the objection filed u/s 9 of the Bihar and Orissa Public Demands Recovery Act, the Certificate Officer (Respondent No. 4), vide order dated 23.12.1985 determined the liability upon the Petitioners and directed it to make payment of the certificate dues. The Petitioner being aggrieved by the order passed by the Respondent No. 4, went in appeal and the appeal was dismissed and, thereafter, the Petitioner went in revision before Respondent No. 2 and ultimately the revision was also dismissed, giving rise to this writ application.

5. Mr. M.M. Banerjee, learned Counsel appearing on behalf of the Petitioner, submitted that since the coal was not removed from the lease-hold area, the Petitioner was not liable to pay royalty as required u/s 9 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act"). Mr. Banerjee further submitted that unless and until the mineral is removed from the lease hold area royalty is not chargeable on mere extraction of the mineral from the mine and only after its removal/despatch the Petitioner was liable to pay royalty.

6. The question, therefore, has arisen as to whether the Petitioner is liable to pay royalty on extraction of the mineral or only after removal of the same from the lease hold area.

7. Section 9(1) of the Act reads as under:

The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of (any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee) from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

8. On bare reading of Section 9(1) of the Act, it appears that the holder of the mining lease, notwithstanding anything contained in the instrument or in any law in force at such commencement shall pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or sub-lessee from the leased area. A plain reading of Sub-section (1) of Section 9 of the Act gives an impression that only when the mineral is removed from the lease hold area, royalty is chargeable. If the word "removal" as envisaged under Sub-section (1) of Section 9 of the Act is given a simple meaning then, in my opinion, anomalous position shall arise and the lessee shall not pay royalty for non-removal of the mineral from the lease hold area. In such a situation the lessee may be in a position to say that he is not liable to pay royalty even at the sufferance of the lessor. If the simple meaning of the word "removal" is given then the lessee, may not remove/despatch the mineral for years together and shall not pay royalty to the lessor, i.e., the State of Bihar. Therefore, in my opinion, the word "removal" must be given an extended meaning. The word used

as "removal" under Sub-section (1) of Section 9 of the Act shall also include the extraction of the mineral from the mine itself and if the mineral has been mined the lessee shall be liable to pay royalty for the mineral raised, and, therefore, it must be held that the taxing event shall commence on mere extraction of the mineral and not on removal of the same.

9. In the case at hand, there is no dispute that the mineral has been extracted. Only what is disputed is this that the mineral lying in the lease hold area has not been removed. The mere non-removal of the mineral from the lease hold area shall not exempt the lessee, in my opinion, from payment of royalty, as removal of mineral from the lease hold area is a purely physical act and it has got nothing to do with the marketability or non-marketability of the mineral. The moment the mineral is extracted it must be given the meaning of removal of the mineral and, therefore, it must be held that the Petitioner is liable to pay royalty only on extraction of the mineral from the lease hold area.

10. A Bench of this Court, while dealing with the question of payment of royalty in some different circumstance, doubted the statement made on behalf of the Petitioner in C.W.J.C. No., 1321 of 1993(R) to the extent that the taxing event was the removal of the extracted mineral from the leased area and not its mere extraction from the mine and after seeing the provisions of Section 9(1) of the Act observed as follows:

We are, however, of the opinion that in the facts and circumstance of this case, the submission has hardly any relevance at all in so far as the amount of coal, described by the Petitioner as non-vendable, is concerned.

11. For the reasons aforementioned, I, therefore, hold that the Petitioner is liable to pay royalty on the coal already extracted by it.

12. In the result, I find no merit in this application. It is thus dismissed, but without cost.