
(2012) 04 CAL CK 0059

In the Calcutta High Court

Case No : A.P.O. No. 10 of 2011 and W.P. No. 44 of 2007

Coal India Limited

APPELLANT

Vs

Rahul Industries Limited

RESPONDENT

Date of Decision : 04-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 39(b)

Citation : (2012) 5 CHN 539

Hon'ble Judges : Pinaki Chandra Ghose, J;Mrinal Kanti Chaudhuri, J

Bench : Division Bench

Advocate : Anindya Mitra, A.K. Banerjee, Prodyut Das and Debabrata Das, for the Appellant;S. Pal, Shukla Banerjee and Pallab Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Mrinal Kanti Chaudhuri, J.—This appeal is preferred against the judgment and order dated 25th November, 2010 passed by Hon''ble Single Judge in W.P. No. 44 of''2007. The writ petitioners/respondents challenged the interim policy dated 15th December, 2006 which was effected from 1st December, 2006 till October, 2007 after which final policy was framed. Hon''ble Single Judge vide judgment and order dated 25th November, 2010 allowed the said writ petition holding that interim coal sale policy by which 20% extra of the notified price was fixed to the non-core linked sector is unreasonable and unjustified as Coal India Limited failed to strike a balance between its financial interest (including its subsidiary), the interest of the petit inner namely non-core linked sector who manufacture smokeless fuel, the interest of the ultimate consumer of such smokeless fuel. Learned Single Bench, therefore, directed the Coal India to refund of said 20% extra price which the respondents had to pay over and above notified price.

2. Being aggrieved by and dissatisfied with the said order, Coal India Limited has preferred this appeal as appellant.

3. It is submitted by learned Counsel appearing on behalf of the appellant/Coal

India Limited that the respondents did not take any ground that the interim coal policy is in violation of Supreme Court direction in *Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others*, . It is further submitted that learned Single Bench framed two issues, (1) was CIL and its subsidiaries competent to formulate the impugned order as an interim coal sale policy and (2) if the issue No. 1 is answered in the affirmative, was the actual fixation of 20% above the notified price a reasonable exercise of power of price fixation? (3) the third issue is "do the answer to the above issues stand concluded by reason of judgment of the Supreme Court in *Pallavi Refractories*.

4. It is submitted that Hon"ble Single Judge felt that Coal India Limited perhaps had such authority to formulate interim coal sale policy as Hon"ble Apex Court did not say that this Coal India Limited has no authority to make interim coal sale policy. Secondly, it is further submitted that Hon"ble Single Bench did not hold that the interim coal sale policy of fixing 20% over and above notified price is unfair and unreasonable and that the respondent cannot bear the extra 20% of price as the said 20% extra price was made by appellants for making profit out of sale of coal to non-core sector like petitioners. It is also submitted that the spirit of the *Ashoka Smokeless Judgment (supra)* is not applicable in the present facts and circumstances. This is because in the said judgment the system of e-auction was declared ultra vires because e-auction is not a case of fixed price. The system of "e-auction was struck down by the Hon"ble Apex Court on the ground that auctioning of coal amounts to profiteering. It is submitted that *Ashoka Smokeless (supra)* case was decided on the basis that the coal was essential commodity but coal ceased to be an essential commodity on and from 26th December, 2006. It is further submitted that dual pricing of coal charging non-core sector 20% over and above the notified price was upheld by Hon"ble Apex Court in case of *Pallavi Refractories (supra)*. Hon"ble Apex Court took note of the dual pricing in *Pallavi Refractories (supra)* case as permissible.

5. It is further submitted by learned Counsel of the appellants, Coal India Limited that the scope of judicial review in this case is very limited and Hon"ble Single Judge has gone beyond the limited scope. It is also submitted that the respondents did not disclose any document to establish that if they are to pay 20% extra above the notified price, the cost of production of smokeless will be higher than the selling price of such product and no document has been placed by them to show that the price fixed by interim coal sale policy is unreasonable and unfair. It is submitted that fixation of price by the interim coal policy is neither discriminatory nor violative of Article 14 as held by Hon"ble Apex Court in *Pallavi Refractories and Others Vs. Singareni Collieries Co. Ltd. Etc. Etc.*, . It is further submitted that Court cannot decide what should be the reasonable price of commodity. By declaring that fixation of price of coal at the rate of 20% extra over and above the notified price as invalid the Hon"ble Single Bench has really fixed the price of coal for non-core sector as notified price applicable to core sector. This is against the spirit of judgment of Hon"ble Apex Court of *Pallavi Refractories (supra)* which upheld charging on non-core sector 20% more than

core sector. There is no complaint on record to show that the customers are unable to buy smokeless fuel after implementation of the interim coal sale policy of 20% extra. It is submitted that unless there is gross violation of any statute or violation of Article 14, discretion of judicial review cannot travel beyond the limited scope. Therefore, learned Counsel for the appellants has summarized the submission to the effect that the fixation of price of non-core sector at 20% over and above the notified price is upheld by Hon''ble Apex Court in *Pallavi Refractories and Others Vs. Singareni Collieries Co. Ltd. Etc. Etc.*, which has also been noted by Apex Court in *Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others*, . Further case of the appellant is that fixation price at the rate of 20% extra over the notified price is justified in view of the increase of wages of workmen, diesel price and mineral oil. Having total increase impact of 23.84%, by increase of 20% over the notified price will not result a considerable increase in the cost of product manufactured by the respondents. So, ratio of the judgment of Hon''ble Apex Court in *Ashoka Smokeless* (supra) is not applicable in the instant case of interim coal sale policy. It is further submitted that even if impugned notification is struck down, the respondents are not entitled to get refund because if price burden has been passed on to the buyers of the product, it seems, it would amount to unjust enrichment. The respondents are to prove that they have not passed burden to the buyers of the product. Since they have not proved the same, they are not entitled to refund of 20% extra amount paid even if the impugned notification is set aside. They have not disclosed the selling price of the smokeless fuel after interim coal sale policy. Moreover, there is no prayer in the writ petition for refund of the price. It is submitted that the judgment of this Division Bench in *Tetulia* case dated 4th October, 2010 has no application in the present case and an unreported judgment of the Hon''ble High Court at Patna was not considered in *Pallavi Refractories* (supra) case.

6. It is further submitted that on the point of unjust enrichment no such ground is taken in the matter of *Tetulia* case (*Eastern Coalfields Limited vs. M/s. Tetulia Coke Plant (P) Ltd. and Ors.*). In the present case the ground of unjust enrichment resulting from the direction of order of refund has clearly been taken in the memorandum of appeal. Therefore, learned Counsel for the appellants has prayed for setting aside of the judgment and order passed by Hon''ble Single Judge.

7. On the other hand, it is submitted on behalf of the respondents/petitioners/*Rahul Industries and Ors.* that the appellants/*Coal India Limited* enjoys virtual monopoly over the mining and selling of coal. The respondents produce smokeless fuel. This is a popular product considerable for cooking. It was projected to be pollution free and a viable alternative to wood fuel in rural and semi urban areas. *Coal India Limited* published advertisement attracting manufacturers to set-up units by assuring them of supply of coal as well as technology. The purpose was to share the burden of the coal companies to supply soft coke to the small consumers. The respondents are manufacturers of

special smokeless fuel or of the soft coke. They are classified as non-core linked sector. The price used to be charged is notified price on the basis of administered price i.e. price determined by the public sector supplier (CIL and its subsidiaries) and notified by CIL. Thereafter, policy of e-auction was challenged and Hon''ble Apex Court vide its judgment dated 1st December, 2006 set aside the e-auction scheme. Hon''ble Apex Court while disposing of the said civil appeal directed the constitution of a committee to evolve a viable policy for the fixation of coal price. Therefore, e-auction was not permissible till the framing of policy by a committee constituted in accordance with the direction of the Hon''ble Supreme Court. Hon''ble Apex Court, however, did not make any express pronouncement regarding the charging of the price between the date of its judgment and the framing of a policy for fixing of price by the Committee but this non-expression regarding the price in the interim period denotes that notified price mechanism is to be effected until there is a valid mechanism adopted by the committee on the principle laid down in Ashoka Smokeless (supra) case. But the appellant CIL without any clarification or approval of the Hon''ble Supreme Court issued an interim coal sale policy relating to non-core linked sector consumer. The sum and substance of the said interim coal sale policy is that appellants would charge 20% over and above notified price. It is submitted that it would be wholly unreasonable in terms of basic principle laid down in Ashoka Smokeless fuels to issue interim coal sale policy without obtaining any clarification from the Hon''ble Apex Court. It is submitted by learned Counsel for the respondents that Hon''ble Apex Court in Ashoka Smokeless (supra) issued direction for formation of a committee to evolve a viable policy. In the context of the above direction, the appellants/CIL framed an interim coal sale policy which is wholly unreasonable. The logical conclusion of the Hon''ble Apex Court declaring e-auction as ultra vires is that the fixation of price prevailing before the initiation of e-auction scheme would continue. The explanation of the appellants/CIL that the main purpose of the interim coal sale policy by loading 20% above the notified price is to recoup the increase cost input only to the extent of 1.2% of the increase cost by 23.84% denotes unjustified exercise of power which is unreasonable and arbitrary and this is also discriminatory and violative of Article 14 of the Constitution. It is further submitted that in the final policy evolved as per direction of Hon''ble Supreme Court in Ashoka Smokeless (supra) the decision was taken to revert back to the notified price for 75% of the requirements of the non-core linked units and the balance 25% is to be sourced from e-auction and this denotes unreasonableness of the fixation made in the interim coal sale policy. It is also submitted that the ratio of decision in Pallavi Refractories (supra) cannot be made applicable in the present case. In the said case the only point argued was to the dual pricing i.e. core sector consumers could not be charged more but less than what the coal company was charging from the non-core sector/linked sector customers. The non-core sector consumers are to pay 20% extra above the notified price and Hon''ble Apex Court upheld the dual pricing fixation and justified the differential treatment.

8. It is submitted that the respondents do not dispute the principle of dual pricing but dual pricing is not issue in the present case. There only point is that charging of 20% over the notified price from non-core linked sector consumers under the interim coal sale policy is without any justification and is, therefore, arbitrary and unreasonable. The justification for interim coal sale policy given by the appellants is incorrect and misleading. It is further submitted that the interim coal sale policy has been framed in violation of direction of Hon''ble Apex Court in Ashoka Smokeless case. It is also submitted that the judgment of Ashoka Smokeless (supra), was delivered on 01.12.2006, interim sales policy was issued on 15.12.2006 and it was effected on 09.12.2006. The coal as Essential Commodity Act was deleted with effect from 24.12.2006. Therefore, the instant case is covered by Ashoka Smokeless (supra) and also Essential Commodity Act. The intention of interim coal sale policy is profiteering and for replenishing the fund which has to be refunded due to cancellation of e-auction. Learned Counsel for the respondents relied upon the decision of this High Court in Tetulia case as well as on the decision of this Patna High Court in case of M/s. Maa Mundesshwari Carbon Pvt. Ltd. vs. Central Coalfields Ltd. and Ors. in CWJC No. 6530 of 2009 dated 27.04.2010 and also decision of jharkhand High Court in Contempt Case (C) No. 247 of 2010 in M/s. Domco Smokeless Fuels Pvt. Ltd., Ranchi vs. BCCL and Ors., passed on 29.05.2010. In the circumstances, learned Counsel for the respondents has submitted that the appeal should be dismissed and the order of Hon''ble Single Judge should be affirmed.

9. We have carefully perused the notes of argument and heard the submission of learned Counsel for the appellants and learned Counsel appearing for the respondents. Hon''ble Single Judge held that by charging of 20% over and above notified price, the appellants/CIL acted unreasonably or unfairly and discriminated against the petitioners. Learned Court also held that appellants/CIL charged 20% over and above notified price only for protecting its financial interest and for avoiding loss suffered by them on account of refund of the excess amount above notified amount in accordance with the direction of the Hon''ble Supreme Court in Ashoka Smokeless (supra). Hon''ble Supreme Court in Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, held that in terms of the constitutional scheme adumbrated under Article 39(b) and Article 14 of the Constitutional coal companies have a duty to fix the price of essential commodities in such a manner so as to subserve the common good. It is further held that fixation of price of coal is of utmost necessity as it is a mineral of grave national importance. The coal companies exercising monopolistic power, are required to distribute coal equitably and at a fair price. The coal companies are bound to keep in mind the social and economic aspect of the matter. They cannot take any step which would defeat the constitutional goal. The coal companies in taking recourse to e-auction, did not fix the price. According to Hon''ble Apex Court the object of e-auction was to obtain maximum possible price of the coal so as to earn profit. This constitutional obligations were not kept in view. Hence, Hon''ble Supreme Court in the said judgment held that

by virtue of e-auction the price of coal is not fixed. The system of e-auction, is unfair and unreasonable. It is only more to obtain maximum price. Methodology for allocation of coal to bidder of e-auction was held to be inequitable, irrational and fortuitous. Finally, Hon''ble Supreme Court directed the formation of a committee to evolve a viable policy. The relevant portion is quoted herein below:

With a view to evolve a viable policy, a committee should be constituted by the Union of India with the Secretary of Coal being the Chairman. In such a committee, a technical expert in coal should also be associated as most of the projects involve consumers of coal, particularly manufacturers of hard coke and smokeless fuel. It may not be difficult to find out, having regard to the technologies used therein as regards the ratio of the input vis-a-vis the output, with a balance and 10% margin. On the basis of such finding alone, apart from the requirements of five years, supply should be on the basis of MPQ. However, the Central Government in collaboration with the coal companies would be at liberty to evolve a policy which would meet the requirements of public interest vis-a-vis the interest of consumers of coal. They would be entitled to lay down such norms as may be found fit and proper. They would be entitled to fix appropriate norms therefor. In the event, any industrial unit is found to violate the norms, it should be stringently dealt with.

10. Thus, Hon''ble Supreme Court declared the system of e-auction as ultra vires and invalid mainly on the ground that e-auction scheme is primarily concerned to make profit and it was done at the cost of ultimate consumers who are in large number rural people. There is no whisper throughout the judgment of Hon''ble Supreme Court in Ashoka Smokeless (supra) as to whether the appellants are empowered to formulate interim sales policy till a viable policy is evolved by formation of a committee. But appellants unilaterally framed interim sales policy in 15th December, 2006, while the decision of Ashoka Smokeless was pronounced in 1st December, 2006. One of the valuable observations of Hon''ble Supreme Court is that smokeless coal operators set-up their units at the behest of the Coal India Limited and those who have set-up their units in the State of Bihar and West Bengal did so at the behest of the company who encouraged them. It was done to share the burden of the coal companies to supply soft coals to the small consumers and the doctrine of promissory estoppel will, therefore, be applicable. It was also observed that the coal companies having regard to the provisions of Nationalisation Act are not profit earning concerns but an extended arm of a welfare State. The coal companies have a duty to fix the price of coal in such a manner so as to subserve the common good.

11. Prior to the initiation of e-auction system, Government of India, Ministry of Coal was notifying the price of coal from time to time and the coal companies had been charging price for those coals for various consumers on the basis of notified price. After the decision of Ashoka Smokeless (supra) the coal companies had been charging price of coal at the notified price. It is the submission of the learned Counsel for the respondents that the interim coal sale price of charging

20% extra is not on rational and legal basis. Therefore, the action of the appellant is discriminatory and violative of Article 14 of the Constitution of India because only linked consumers are charged 20% extra price over and above the notified price. According to the respondents, the object and the purpose of charge 20% extra from the linked sector consumer is for the purpose of securing their interest and for recoupment of the loss/compensation for the refund as per direction of the Hon'ble Supreme Court. The object of the nationalisation of coal companies is not for earning profit but for expanding the object of welfare State. On the other hand, it is the submission of the learned Counsel for the appellants that the justification for charging 20% extra is due to the increase of wages of workmen, diesel price and mineral oil to the extent of 23.84% and by charging 20% extra above the notified price the recoupment of only 1.2% is to be made. The advancement of such justification has not been established by filing any document. Moreover, the appellants have not pleaded anywhere that they have suffered loss. Therefore, the main object of charging 20% extra is only to protect the interest and thereby to make profit which the coal companies' nationalisation cannot do so by overlooking the object of welfare State. It is submitted that coal was deleted from essential commodity with effect from 24th December, 2006. Judgment on Ashoka Smokeless (supra) was delivered on 1st December, 2006. The interim coal policy was passed on 15th December, 2006. Therefore, the interim coal policy was passed when coal was an essential commodity. Moreover, it cannot be disputed that coal is an essential mineral necessary for all kinds of consumer including small and big.

12. The true spirit of the judgment of Ashoka Smokeless (supra) is that e-auction was declared invalid and unconstitutional because its object was to earn profit. Coal companies cannot be allowed to earn profit because of the fact that Coal India Limited is one of the instrumentalities of the State and is an extended arm of welfare State.

13. The justification advanced by the appellants with regards to the charging 20% extra over and above the notified price finds no reasonable basis although Hon'ble Apex Court in the Ashoka Smokeless (supra) has not made any expression as to what should be the rate to be charged upon the respondents/non-core linked sector consumer. After the declaration of e-auction as unconstitutional by Hon'ble Apex Court, it is quite apparent that the chargeable rate must be the rate which was prevailing prior to e-auction. In other words chargeable rate must be notified price until a viable policy evolved by way of formation of committee as directed by Hon'ble Supreme Court. It is submitted on behalf of the appellants that the ratio of the decision in Pallavi Refractories (supra) is quite applicable in the present facts and circumstances. It appears that Hon'ble Supreme Court in Pallavi Refractories and Ors. vs. Singareni Collieries Co. Ltd. and Ors., reported in Pallavi Refractories and Others Vs. Singareni Collieries Co. Ltd. Etc. Etc., has upheld the dual price fixation. In the said case Clause 10 of Price Notification No. 3/96-97 dated 14.03.1997 issued by M/s. Singareni Collieries Co. Ltd. was challenged. Hon'ble Apex Court upheld the said

notification. It has been observed by Hon''ble Apex Court that the requirement of coal in the core sector is on the higher side for manufacturing operation and any substantial increase in the price of coal in core sector shall have a substantial effect on the cost of finished products of vital importance and the cost of services to the public. Any increase in the price of coal supplied to the core industries would result in the increase of cost of essential commodities such as electricity, cement and steel. The consumption of coal is quite high and is a major input of these industries. In case of non-linked industries the coal consumption is minimal and the increase in the price will not result in any appreciable increase in the cost of products manufactured by non-linked sector industries. Hon''ble Apex Court further observed that in view of the importance of the core sector consumers and their importance in the nation-building activities and the extent of consumption of coal either for captive power generation or for use in manufacturing operations legitimately calls for a special treatment as far as this industry is concerned. Hon''ble Apex Court also observed that for charging lesser prices or evolving a dual price policy it cannot be said that equals are treated unequally or that the classification does not rest on rational basis. The object of dual pricing policy is to ensure that core sector industries or customers are not unduly burdened with price increase while at the same time the respondents get adequate return for products so as to cover the financial deficit. Therefore, dual fixing of price must be based on reasonable classification from different types of customers. Therefore, charging lesser price to the core sector industries having vital role in nation-building activities and thereby introducing dual pricing system is based upon reasonable classification.

14. In *Ashoka Smokeless* (supra) this dual pricing is held to be permissible but at the same time Hon''ble Apex Court observed in *Ashoka Smokeless* (supra) that coal companies must not be allowed to make profiteering for which e-auction system was disapproved and declared unconstitutional. This dual pricing system upheld in *Pallavi Refractories* (supra) which also finds support in *Ashoka Smokeless* (supra) also has no application in case of present appellants. Although dual pricing was upheld by Hon''ble Apex Court in *Pallavi Refractories* (supra), the fact and principle has no application in the present case. Charging of extra 20% over and above the notified price upon the non-core sector community as essential commodity being used by small number of consumers including rural people by the appellants does not find any support from the spirit/ratio of the decision in *Pallavi Refractories* (supra).

15. In *Ashoka Smokeless* (supra) Hon''ble Supreme Court, after declaring e-auction unconstitutional directed that a viable policy should be evolved by formation of a committee. But within 15 days of the said judgment, the appellant framed interim sales policy by charging 20% extra over the notified price. This action on the part of the appellants does not find any support from the ratio of decision from *Ashoka Smokeless* (supra) as well as *Pallavi Refractories* (supra). In the name of dual pricing system appellants cannot protect its financial interest only at the cost of overburdening the respondents. The charging of 20% over

and above the notified price is not only unreasonable and unjustifiable but also an act of arbitrariness. In the face of the judgment of Ashoka Smokeless (supra) which forbade profiteering and directed for evolution of a viable policy by formation of a committee, the action of the appellants does not form any part of the direction/compliance of Ashoka Smokeless (supra). The submission advanced on behalf of the respondents that charging of 20% extra is for the purpose of compensating the coal companies for refund as per direction of Hon''ble Supreme Court has sufficient merit. Further case of the appellant is that judicial review cannot be extended on present policy for which decision reported in Duncan Industries Ltd. and Another Vs. Union of India (UOI), and Kerala State Electricity Board Vs. N. Sukesen and others, have been cited. But these decisions do not at all whisper that judicial review cannot be extended in pricing policy where present policy is found to be without any basis or justification. In the instant case, interim coal sales policy does not reflect any reasonable basis and justification in so far as ratio and the spirit of the decision in Ashoka Smokeless (supra) is concerned.

16. In a judgment by Hon''ble High Court at Patna by learned Single Judge dated 27.04.2010 in case of M/s. Maa Mundeshwari Carbon Pvt. Ltd. vs. Centred Coalfields Ltd. and Ors., similar delivery of judgment was made with regards to the charging of 20% over and above the notified price by interim sales policy. The said interim sales policy was declared as arbitrary and discriminatory. In the said case it was urged on behalf of the petitioners that Hon''ble Apex Court had no point of time in the decision of Ashoka Smokeless (supra) authorised the Coal India for charging 20% extra price over and above the notified price and that to from linked consumer. In the absence of any observation or authorisation by Apex Court the action of the coal companies in realising excess price only from the linked consumer is creating a class amongst class which is not permissible. Finally, Hon''ble Court held that it is an innovation on the part of the Coal India Limited to illegally compensate themselves for the outlay which they had to make by refunding 33.3% of the price which was deposited by the linked consumers at the behest of the Hon''ble Apex Court. Since they were compelled to refund the money to the litigants only after Hon''ble Supreme Court took a harsh view, this innovation of replenishing the fund seems to have been worked out by the company at their own level by charging 20% extra over and above the notified price from the linked consumer alone. Therefore, Hon''ble Court in the said decision declared the charging extra 20% over and above the notified price is violative of Article 14 of the Constitution on the face of the declaration made by Hon''ble Supreme Court in case of Ashoka Smokeless (supra). Therefore, respondents were directed to refund the 20% extra charge over and above the notified price or adjust the same in the future supply to the petitioners.

17. Hon''ble Jharkhand High Court in Contempt case (C) No. 247 of 2010 in M/s. Domco Smokeless Fuels Pvt. Ltd., Ranchiv. BCCL and Ors. in its order dated 29.05.2010 felt that coal company is liable to refund the amount in excess of notified price. Judgment of the Hon''ble Patna High Court in case of M/s. Maa

Mundeshwari Carbon Pvt. Ltd. v. Central Coalfields Ltd. and Ors. was also relied upon. Hon''ble Jharkhand High Court, therefore, held that the respondent-Bharat Cooking Coal Ltd. and Ors. are bound to refund excess amount of 20% over and above the notified price by coal company to the petitioners. As against this order dated 29th May, 2010 by Jharkhand High Court SLP was preferred in the Hon''ble Apex Court and the said petition was dismissed. It is, therefore, evident that interim coal sale policy was challenged before Hon''ble Patna High Court as well as before Hon''ble Jharkhand High Court and SLP was preferred against the order of Jharkhand High Court which was dismissed. In Both the cases Hon''ble Court held that charging of extra 20% over and above the notified price is illegal and must be refunded to the parties.

18. In addition to that, the Division Bench of this Court while disposing of the appeal in W.P. No. 1279 of 2005 in Eastern Coalfields Limited vs. M/s. Tetulia Coke Plant (P) Ltd. and Ors. dated 4th October, 2010 upheld the order of Hon''ble Single Bench in the matter of refund of excess amount of 20% extra. Against the said order an appeal was preferred before Hon''ble Supreme Court in Civil Appeal No. 6888 of 2011 (Eastern Coalfields Limited vs. M/s. Tetulia Coke Plant (P) Ltd. and Ors.). Hon''ble Supreme Court upheld the order of refund of extra 20% over and above the notified price.

19. The present case is also covered by the aforesaid decision of Hon''ble High Court of Patna, Jharkhand including this High Court which is affirmed by the Hon''ble Supreme Court.

20. With regards to the plea of unjust enrichment raised by the appellants it is apparent that appellants collected the amount of extra 20% over and above the notified price illegally without any reason and justification as well as against the spirit of the decision in Ashoka Smokeless (supra). The plea of unjust enrichment was not taken in the affidavit of opposition in the writ petition. For the first time in the appeal this plea has been taken. But this has not been substantiated by the appellants in any way. No materials is forthcoming to hold that the respondents have been benefited illegally so as to cover the doctrine of unjust enrichment.

21. Moreover, Hon''ble Supreme Court by disposing of the Civil Appeal No. 6888 of 2011 in (Eastern Coalfields Limited vs. M/s. Tetulia Coke Plant (P) Ltd. and Ors.) upheld the order of refund of excess amount without going into the plea of unjust enrichment.

22. The burden lies upon the appellants to prove that respondents have been benefited by the doctrine of unjust enrichment by establishing that the price burden was passed to the buyer of the product of the respondents. Moreover, the Division Bench of this Court in Tetulia case has clearly held that in case of refund of illegal collection of extra 20% amount over and above the notified amount the Mafatlal case is not applicable. The decision of Tetulia case was affirmed by Hon''ble Apex Court as stated earlier. We find that Mafatlal case cannot help the

appellants. On the other hand, we find that the appellants collected excess amount from the respondents on the basis of interim coal sale policy on the face of Hon"ble Apex Court's declaration that the e-auction is unconstitutional. From the facts and circumstances and decisions of law elucidated above we find that the appellants Coal India Limited had no authority or jurisdiction to collect excess amount of 20% over and above the notified price by framing interim coal sale policy immediately after the pronouncement of Hon"ble Supreme Court's judgment in Ashoka Smokeless (supra).

23. After considering the facts and the decisions of law cited above we find no illegality or irregularity in the order so passed by Hon"ble Single Judge. Therefore, we find no reason to interfere with the order passed by Hon"ble Single Judge. Hence, the appeal fails and, therefore, stands dismissed. No order as to costs.

Photostat certified copy of the judgment and order, if applied for, be made over to the parties on usual terms.

Later:

Prayer for stay as asked for is considered and rejected.

P.C. Ghose, J.

I agree.