

(2003) 08 JH CK 0044

In the Jharkhand High Court

Case No : C.W.J.C. No's. 10949 of 1998 (P) and 1226, 8368 and 9504 of 1999 (P)

Eastern Coalfields Ltd.

APPELLANT

Vs

State of Bihar and Others etc.

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Mineral Concession Rules, 1960 — Rule 54

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9, 9A

Citation : (2003) 51 BLJR 1964 : (2003) 3 JCR 524

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Ajit Kumar Sinha and Mukesh Kumar Sinha, for the Appellant; AG, for the Respondent

Judgement

1. These writ petitions are by the Eastern Coalfields Limited. They seek to challenge the attempt to recover the dead-rent from it u/s 9A of the Mines and Minerals (Regulation and Development) Act, 1957. The petitioner approached this Court when certificate cases under the Bihar and Orissa Public Demands Recovery Act were initiated against the petitioner for recovery of such dead rent. On 6.3.2000.. The Patna "High Court disposed of the writ petitions observing that the petitioner had a remedy by way of revision under Rule 54 of the Mineral Concession Rules, and that this being a dispute between a Government Company and the State of Bihar, the issue had to be decided in the light of the decision of the Supreme Court in Oil and Natural Gas Commission v. The Collector of Central Excise 1998 Su 432 (2) SCC 432 . The Court declined to go into the question on the ground that the dispute could not be resolved by the Court in exercise of the writ jurisdiction. This decision of the Patna High Court was challenged before the Supreme Court. By order dated 9.4.2001, the Supreme Court set aside the decision of the Patna High Court on the ground that the High Court should have decided the writ petitions on merits and remanded the writ petitions of the High Court of Jharkhand for a decision on merits, since, by that time, the Bihar Re-

organization Act, 2000 had come into force and the State of Jharkhand had come into being and the territorial jurisdiction vested in this Court. That is how these writ petitions are now before us.

2. Learned counsel for the petitioners submitted that even though a right of appeal under the statute may be available, the plea raised was that the initiation of the proceeding itself was without jurisdiction and in view of the order of remand passed by the Supreme Court, this Court has to decide the writ petitions on merits.

3. u/s 3 of the Coal Mines Nationalisation Act, 1973 on and from the appointed day, the right, title and interest of the owners in relation to coal mines specified in the Schedule to that Act, stood transferred to and vested absolutely in the Central Government free from all encumbrances. In terms of Section 5 of that Act, the Central Government directed by an order in writing, that the right, title and interest of the owners in relation to several coal mines shall vest in the Government company, the Eastern Coalfields Limited, the petitioner herein. The order passed in terms of Section 5 of the Act is not produced before us by the petitioner. But by virtue of the vesting and the subsequent Government order, the Eastern Coalfields Limited, has obtained a right over, several coal mines.

4. Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 imposes an obligation on the holder of a mining lease to pay royalty in respect of any mineral removed or consumed by him or by his agent and so on, from the leased area, at a rate for the time being specified in the Second Schedule in respect of that mineral. Thus, the Eastern Coalfields Limited incurred an obligation to pay the royalty. Section 9A of that Act provided for payment of dead rent. Dead rent was payable as specified in the Third Schedule for all the area included in the instrument of lease. There is a proviso to Section 9A(1) of the Act. It provided that where the holder of a mining lease had become liable u/s 9 of the Act to pay royalty for any mineral removed or consumed by him. he shall be liable to pay either royalty or dead rent in respect of that area, which ever was greater. In other words, the liability to pay the dead rent arose when the royalty had not been paid in respect of any mineral removed from the leased area or the royalty payable in that behalf was less than the dead rent payable for the leased area as per the Schedule.

5. According to the Company, though the mines or areas held by it were originally held under several leases by the owners of the mines, by virtue of the vesting u/s 3 of the Nationalisation Act. The several parcels had got merged into a single lease in favour of the Union Government under the State Government. The said consolidated holding has come to vest, in the Company by virtue of the order by the Central Government u/s 5 of the Nationalisation Act. The Company had paid a substantial amount of royalty u/s 9 of the Act which far exceeded the dead rent payable for the entire lands held by it u/s 9A of the Mines and Minerals (Regulation and Development) Act, 1957 and in that situation, the State Government had no right to call upon the Company to pay the dead rent in

respect of the areas which it had not actually used for the purpose of mining. In other words, this part of the case of the Company is based on the alleged consolidation of all the leases held under several ownership, in the hands of the petitioner-Company. This contention raised on behalf of the Company is met by the State by pointing out that the royalty was payable in respect of each mine which included the leased area in respect of that mine and if in respect of a particular leasehold area, the mineral has not been exploited and the royalty not paid, the Company was liable to pay the dead rent. The stand of the Company that the entire area held by it must be taken as a consolidated whole for deciding whether the royalty was payable or dead rent was payable, was unsustainable and not warranted by anything contained in the Regulations and Development Act, 1957 or in the Nationalisation Act.

6. The Mines and Minerals (Regulations and Development) Act, 1957 came into force on 1.6.1958, Section 9 of the Act was part of the original Act. But Section 9A was introduced by the Amending Act, 1972. This was followed more or less by the takeover of the Management of the Coalmines and the nationalisation of coalmines by the Coal Mines (Nationalisation) Act with effect from 1.5.1973. Until the Nationalisation came into force, the leases of various mines had to pay royalty on the minerals removed by them or to pay dead rent in respect of his lease-hold, whichever was higher. But on Nationalisation, the right of the owners over all these parts and parcels or separate leases came to vest in the Central Government and the Central Government held it under the State Government as a leasee. Nothing was brought to our notice to show that these separate leases had lost their identities on the vesting or that they had become consolidated into a single whole. u/s 5 of the Nationalisation Act, rights were vested in the petitioner Company over certain mines. The order by which that vesting took place, is not produced before us. In the absence of any indication in that order that the lease hold had been consolidated and what is made over to the petitioner Company is a consolidated whole and not the separate parcels, it is not possible to accept the argument of the petitioner Company that after the rights had come to it, the entire area held by it should be treated as one indivisible whole and the question decided whether the royalty paid by them in respect of that unified entry, would exceed the dead rent that would be payable in respect of the unified whole in terms of Section 9A of the Act. This argument on behalf of the Company is also unacceptable in the light of the observations of the Supreme Court in Central Coalfields Limited case (Petition for Special Leave to Appeal (Civil) No. 8789 of 1984 dated 19.10.1984 wherein it is held that it is only the substitution of the Government that takes place on nationalisation and not the creation of a new lease in favour of the Government. At the same time, the argument of the learned Advocate General that in respect of each lease hold that was originally held, the question of royalty should be considered with reference to the areas utilised for mining and the question of payment of dead rent should be considered with reference to the balance area that had not been actually exploited, cannot also be accepted. It appears to us that the proper approach

would be to consider whether in respect of a particular lease-hold which had come to vest in the petitioner Company, it had paid royalty and if it had paid the royalty, whether that royalty would exceed. The dead rent payable in respect of that particular lease-hold or mine. In other words, there would be no liability, for payment of dead rent, if in respect of the mine or leased area, it had paid royalty on extraction of mineral and that payment exceeds the dead rent that might be payable in respect of that holding or lease-hold. As an illustration of this, we may refer to one application made by the petitioner Company itself for renewal of its coal mining lease. It can be seen from it that it related to seven groups of mines. The names of mines included in each group is also indicated. It is seen that there were 12 units under the re-grouped mines. The nationalised list number is also given and the area of the leasehold is also given. If we take one of the units, namely Chitra A as a re-grouped mine, we find that it consists of three different units, -- Patrika/Chitra A, Bhawanipur and Girija,-- Three different mines. According to our conclusion, it is not open to the petitioner to treat all these three units of the re-grouped mines Chitra. A as a single unit. Each unit, Patrika/ Chitra A, Bhawanipur and Girija has to be treated as individual units. If in respect of Patrika/ Chitra A which had an extent of 48 acres, if royalty had been paid in respect of the minerals extracted from it and that royalty exceeded the dead rent for the 48 acres, the Company will have no further obligation to pay dead rent in respect of those 48 acres. The Company cannot say that Patrika/Chitra A, Bhawanipur and Girija and the other nine mines should be considered as a single Unit for making this calculation. Nor can the State say that in Patrika/Chitra A, if only 8 acres are exploited for mining and 40 acres are not actually used, the Company had the obligations to pay royalty in respect of 8 acres and dead rent for 40 acres. In other words, according to us, each unit of mine or lease-hold has to be treated as a separate unit and the obligation u/s 9 or 9A of the Regulation and Development Act has to be determined in respect of the entire extent involved in that mine or that lease-hold. In a situation where the mines in a particular lease-hold are closed altogether, obviously, there will be an obligation on the petitioner Company to pay the dead rent in respect of that lease hold area or the mine.

7. In these writ petitions, the orders passed in the Certificate Cases filed for realization of the dead rent for the closed/non-working mines/leaseholds, are challenged. Before the Certificate Officer, the petitioner did not dispute the demands as such. Rather, it paid a part of the certificate dues. When orders were passed for payment of the balance dues, the petitioner raised the plea that the mines/leaseholds were amalgamated and had to be treated as one unit, and that the total royalty against such lease-holds/mines taken as one unit was more than the total liability for dead rent for such leasehold/mines taken as one unit and, therefore, the dead rent is not payable by the petitioner.

8. In view of our conclusions, as indicated above, the certificate dues are payable by the petitioner, but calculated on the basis as indicated by us. If the petitioner finds on a re-calculation on the above basis that any part of the certificate dues

is not payable by it, it will be free to raise that claim before the concerned Authority. That Authority would be bound to consider the said claim and recover, adjust or refund the dead-rent taking into account what has already been collected. Also, if the petitioner seeks protection under the Sick Industrial Companies (Special Provisions) Act, 1985, it may move the Certificate Officer or any appropriate authority in this regard who will consider that claim and take an appropriate decision thereon. The writ petitions are disposed off in the light of the findings and directions above. There will be no order as to costs.