
(2003) 08 JH CK 0050

In the Jharkhand High Court

Case No : CWJC No's. 8295, 8331 and 8336 of 1999 (P)

Eastern Coalfields Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 3, 5
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2003) 3 BLJR 1892 : (2003) 3 JCR 560

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

Bench : Division Bench

Advocate : Ajit Kuamr Sinha and Mukesh Kumar Sinha, for the Appellant; Anil Kumar Sinha, A.G., for the Respondent

Final Decision : Dismissed

Judgement

1. These writ petitions by the Eastern Coalfields Limited (hereinafter referred to as the "Company") challenge the certificate proceedings initiated under the Bihar & Orissa Public Demands Recovery Act for recovery of royalty allegedly payable by the Company u/s 9 of the Mines and Minerals (Regulations and Development) Act, 1957 (hereinafter referred to as the Development Act). Admittedly, the petitioner company is extracting minerals from the mines made over to it by an order u/s 5 of the Coal Mines (Nationalisation) Act on the vesting of the right of the mine owners on the Union Government u/s 3 of the Nationalisation Act. Admittedly, there is liability in the petitioner to pay royalty. The dispute is about the extent of that liability. More specifically, the dispute is whether royalty has to be paid on the quantum of mineral taken out by the Company from the mines or it is to be calculated on the mineral removed by the Company from the leased area, meaning, the actual mine and the areas adjacent to it, originally leased out as a part of the mines. Whereas the Company takes the stand that it is liable to pay royalty only on the minerals (here coal) removed by it from the leased area after segregating muck and other non-minerals from it, the State takes the stand

that royalty has to be calculated on what is removed from the mines and not on what is ultimately removed out of the leased area.

2. Learned counsel for the State submitted that the demands of royalty in question is for that part of the stock of coal which was shown less in the next financial year by the petitioner Company. There were variations in the returns submitted by the petitioner Company before the mining department of the State Government regarding the raising/stock of coal. The closing stock of coal has to be carried forward as the opening stock in the next financial year. But the stock of coal shown at the time of closing of the financial year in the month of March was much more than the opening stock shown in the next financial year i.e. in the month of April. He further submitted that the petitioner Company sought to explain the said shortage by saying that it was written off the said stock of coal from its books. This explanation was not accepted as the State Government was not bound by any such writing off of the stocks by the Company and the liability to pay royalty cannot be denied on such pleas. The amounts involved in these cases run in several crores. The petitioner Company is trying its best to avoid the payment of royalty. He further submitted that although an appeal lies against the orders impugned in these cases, the petitioner Company has chosen to file these writ petitions to avoid payment of 40% of the demand required for entertaining the appeals. He also submitted that the plea raised before the Court that the royalty is not payable on stone, muck etc. extracted while mining coal, is a flimsy ground raised for the first time before this Court only to avoid payment of the lawful dues. He further pointed out that Rule 27(a) (b)(n) and (u) of the Mineral Concession Rules, 1960 provides for such a situation where any other mineral not specified in the lease is discovered by the lessee or when non-saleable sub-grade ores or minerals are found by the lessee etc. etc. Therefore, he submitted that the conduct of the petitioner, especially when it is a Central Government Company is not fair and bona fide.

3. In reply, learned counsel for the petitioner submitted that the Hon'ble Supreme Court has remanded these matters to this Court and, therefore, this Court cannot go into the aforesaid questions raised by learned counsel for the respondents. He invited us to consider and decide his argument that royalty is payable only on the mineral removed/dispatched/sold from the leased area and not on the other minerals or non-saleable materials extracted while mining coal.

4. Learned counsel for the respondents further submitted that it is not for the first time that other mineral or non-saleable matters are removed/extracted from the mine while removing/extracting the main minerals, in these cases, "coal". Section 18(2)(k) contemplates that the Central Government is to make rules to provide for the disposal or discharge of waste slime or tailings arising from any mining operations carried out in a mine. In Rule 27(a)(b)(n) and (u) of the Mineral Concession Rules, 1960 such situations are dealt with. The lessee has to report to the State Government about the discovery in the leased area of any minerals not specified in the lease within 60 days of such recovery and unless

such mineral is included in the lease or a separate lease obtained, the lessee has not to win and dispose off such mineral. Similarly the lessee has to store properly the unutilised or non-saleable sub-grade ores or minerals for future beneficiation. If further provides that the lessee shall comply with the Mineral Conservation and Development Rules framed u/s 18 and also that the State Government on an application made in that behalf may by order, permit the lessee to dispose off such useless or non-saleable minerals in the specified manner. In view of these provisions the petitioner Company was not justified in writing off the stock of coal on its own and deny the liability to pay royalty thereon. Nor, in the circumstances of this case as noticed above, it is justified in contending that it is liable to pay royalty only on that stock of coal which it has removed/dispatched/sold from the leasehold area and not on the stock of coal which admittedly it held before writing it off.

5. On the wording of the section, it appears to us that there is some merit in the argument raised on behalf of the Company. Section 9 says that a holder of a mining lease has to pay royalty in respect of any mineral removed or consumed by his agent, manager, employee, contractor or a sub-lessee from the leased area at a rate for the time being specified in the second schedule in respect of that minerals. Literally, it appears to us that the argument that royalty has to be calculated on the minerals removed from the leased area or consumed by the Company has force. But we are not in a position, to accept this argument on behalf of the Company in view of the fact that the question is seen to be covered by the decision of the Supreme Court in the State of Orissa and Others Vs. M/s. Steel Authority of India Ltd., . In that case, the Supreme Court held that an extracted mineral subjected to a certain process to remove waste and foreign matters, underwent a, processing which amounted to consumption and hence the lessee was liable to pay royalty on the entire mineral extracted by him and not on the quantity of mineral obtained after processing. This view was also adopted in the Ramasrey and Others Vs. Dy. Director Consolidation Distt. Faizabad and Others, . What is more relevant for our purpose is that the High Court of Orissa had made a distinction between mineral removed from the mines and removed from the leased area, the position canvassed by counsel for the Company. But the Supreme Court, while reversing the judgment of the High Court, stated that their Lordships were not able to agree with the distinction made by the High Court and the conclusion that royalty can be levied only on the quantity of minerals obtained after processing. Bound as we are by the decision of the Supreme Court, we see no scope for discussing the proposition canvassed for by counsel for the Company. His submission that removal of muck or other waste materials from the minerals extracted cannot be said to be consumption, may or may not merit consideration. But it is not for us to venture into that field in the light of the binding decision brought to our notice by the learned Advocate General appearing on behalf of the respondents.

6. In view of the relevant provisions referred to earlier and the binding judgments of Supreme Court, we overrule to the contentions of the petitioner

Company.

7. Regarding the plea that the demands in question may not be enforced as the petitioner Company is entitled to protection u/s 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, the petitioner may move the appropriate authority in this regard as per law.

In the facts and circumstances indicated above, we are not in a position to grant any relief to the petitioner. The writ petitions are accordingly dismissed. No costs.