
(1998) 09 MP CK 0046
In the Madhya Pradesh High Court
Case No : L.P.A. No. 142 of 1998

Indo-unique Flame Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-09-1998

Acts Referred:

Mineral Concession Rules, 1960 — Rule 64A

Citation : (1999) 1 JLJ 32 : (1999) 2 MPLJ 17

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : A. Sapre, for the Appellant; A. Gohil, and K.P. Munshi, for the Respondent

Judgement

A.K. Mathur, C.J.

All these L.P.As. and Writ Petitions involve common question of law and, therefore, they are being disposed of by this common order.

These cases are classified into two categories; (i) L.P.As. filed by private petitioners against the order dated 21-22/9/95, Annexure-P-5 in W.P. No. 3608/96 and (ii) Writ Petitions filed by private parties and South Eastern Coalfields. In the petitions, filed by the South Eastern Coalfields, challenge is to the issue of letter by the Mining Engineer for recovery of interest on the amount of enhanced rate of royalty. Therefore, these cases are clubbed together and are disposed of by this common order.

Short history of these cases is that initially a batch of petitions was filed before this Court challenging the Notification dated 1-8-1991 whereby the Central Government enhanced the rate of royalty from Rs. 6.50 to Rs. 120.00 per metric Ton. This Court declared the aforesaid notification as ultra vires and quashed it. Aggrieved against this, the matter was taken up to the Hon. Supreme Court by the Union of India as well as by the State of M.P. and the Hon. Supreme Court, after examining the judgment of this Court, came to the conclusion that the

Notification dated 1-8-1991 is valid and upheld its validity and reversed the decision given by this Court State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, . It may be relevant to mention here that when the matter was pending before this Court, an interim order was passed restraining the recovery of royalty at the enhanced rate. Thereby the South Eastern Coalfields Ltd. were prevented from recovering the royalty at the enhanced rate. Likewise when the matter was taken up before Hon. Supreme Court, there also Bank Guarantee was taken from the private petitioners. After the matter came to close as a result of the decision given by the Supreme Court in case of State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, , notice was issued by the respondent State for recovery of interest at the rate of 24% from the South Eastern Coalfields and Western Coalfields. Notices were also issued to the private petitioners for payment of interest at the enhanced rate of 24% by S.E.C.L. and W.C.L. This action came to be challenged by the private petitioners and their petition was dismissed. Therefore, these appeals arise from that order. Some of the Writ Petitions which were pending, were also clubbed together. Likewise, the order passed by the State Government was also challenged by filing two Writ Petitions by the South Eastern Coalfields challenging their liability to pay interest on the difference of the amount of royalty. This is how the question has come up before us.

The simple question for consideration before us is that when the private petitioners who have filed the Writ Petitions and obtained stay orders from this Court and when the matter has been decided against them and validity of the Notification dated 1-8-1991 has been upheld by the Apex Court, whether the State Government is entitled to recover interest at the rate of 24% on the difference of the amount from these private petitioners or not.

In this connection, learned counsel for the petitioners has strenuously urged before us that the enhanced rate of royalty could not be paid because of the stay orders passed by this Court as well as by the Apex Court and it was not a frivolous litigation. It is submitted that the contention of the private petitioners succeeded before this Court, though it was reversed by the Apex Court, but nonetheless, the petitioners were bonafide pursuing their remedy and they should not be saddled with levy of heavy interest at the rate of 24% per annum. Learned counsel for the State and the respondents has submitted that as per Rule 64(a) of the Mineral Concession Rules, 1960, the State Government is empowered to recover and charge simple interest at 24% per annum. Therefore, the State Government was well within their right to recover the interest on the difference of the amount. The learned Single Judge upheld the contention and dismissed the Writ Petitions. Aggrieved against this, some of the appeals have been filed. However, the learned Judge has also directed that for the dispute relating to calculation of interest, the Collector may be approached and he will decide the dispute within 15 days.

There is no two opinion in the matter that the Court's orders shall not cause prejudice to any party as enshrined in the celebrated maxim *actus curiae*

neminem gravabit, i.e. no act of the Court should cause prejudice to any party. Since the validity of the aforesaid Notification has been already upheld by their Lordships of the Supreme Court, all these petitioners and appellants have an obligation to pay royalty on coal at the enhanced rate. Simply because there were various interim orders passed by this Court as well as by the Apex Court, that should not prejudice the right of the State Government to recover and charge interest on the aforesaid amount as that amount has been withheld by the private petitioners. When validity of the law has been upheld, it is the obligation of the petitioners to pay royalty at the enhanced rate from the date of the Notification. This principle has been very clearly enunciated by their Lordships of the Supreme Court in case of Calcutta Jute Manufacturing Co. and another Vs. Commercial Tax Officer and others, . The observations are as under :

"The contention that as the courts granted injunction restraining the State from recovering the tax amount as per Section 6-B would raise a presumption that the court was then satisfied of the bona fides of the contention is too fragile for depriving the State of the Statutory right of interest incorporated in Section 10-A of the Act. Interim orders are passed by the High Court on a variety of considerations, one among them being the strained financial position of the person approaching the court. Merely because the court granted interim orders, it cannot be inferred that the court was then satisfied of a strong prima facie case for the appellants. On the contrary, it is well nigh settled that there is always a presumption in favour of constitutionality of a legislative act. The presumption cannot be the other way round."

Similarly in case of P. Mytheenkannu Vs. State of Kerala, and India Carbon Ltd. etc. Vs. State of Assam, , their Lordships applied the same principle. However, it has been further qualified that there should be substantive provision in the enactment. In the instant case, Rule 64(A) of the Mineral Concession Rules, 1960, lays down that interest @ 25% can be charged. Therefore, there is no difficulty in holding that the State Government is entitled to recover interest on the difference of the amount of tax. Rule 64A reads as under:

"64-A. The State Government may, without prejudice to the provisions contained in the Act or any other rule in these rules, charge simple interest at the rate of (twenty four) per cent per annum or any rent, royalty or fee other than fee payable under sub-rule (1) of Rule 54 or other sum due to that Government under the Act or these rules or under the terms and conditions of any prospecting licence or mining lease from the sixtieth day of the expiry of the date fixed by that Government for payment of such royalty, rent, fee or other sum and until payment of such royalty, rent, fee or other sum is made."

In this view of the matter when Courts permitted the State from utilising the amount which they could have utilised, but for the stay orders passed by this Court, the State Government is entitled to be adequately compensated by paying interest under Rule 64A of the Mineral Concession Rules, 1960. Shri Shrivastava and Shri Sapre, learned counsel for the petitioners strenuously urged that since

it was a bona fide litigation as it would appear that the contention of the petitioners did find favour with this Court, though it was reversed by the Apex Court, the order that the State Government should demand interest at the rate of 24% per annum is too harsh, it would amount to punishing bona fide litigant to pursue his legitimate cause before Court.

In this connection, learned counsel has invited our attention to the decision in case of Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, . There also the matter was agitated before the High Court and the Apex Court and the parties lost at the Apex Court. The question arose whether the New Delhi Municipal Committee should charge interest at the rate of 15% or not. It was observed that the litigation continued for 12 years and interest on the arrears of the amount at the rate of 15% per annum would be very harsh. In that case, the dispute arose with regard to the licensees of the Palika Bazar and New Delhi Municipal Committee in the year 1976. By Resolution dated 29-11-1977, the New Delhi Municipal Committee decided to allot 98 shops to the shopkeepers of Panchkuian Road because the Panchkuian Road was required to be widened. On 27-5-1978, the Delhi Administration directed the New Delhi Municipal Committee to allot shops to the 98 stall holders on the Panchkuian Road on conditions agreed. A plan of the said marketing complex was prepared and published showing 98 shops which had been reserved for the shopkeepers of Panchkuian Road on preferential basis. Tenders were invited for allotment of 177 shops and divided into 4 zones and further classified in 7 groups for proper identification. Then arose a dispute with regard to zone planning and some of the shopkeepers started trades of their own choice. Writ Petition was filed before the High Court and the High Court found it discriminatory. The matter was taken up by the New Delhi Municipal Committee before Hon. Supreme Court. In that context, the question arose before Hon. Supreme Court with regard to payment of interest. Their Lordships observed that because of the interim orders, payment could not be made and they reduced the rate of interest at varying rates. In that context, their Lordships observed as under :

"In view of the legal maxim "actus curiae neminem gravabit" which means that an act of Court shall prejudice no man, NDMC is justified in making a claim for interest over the arrears which have remained unpaid for more than 12 years because of the interim orders passed by the Court. This aspect of the matter has been examined by this Court in the case of Raj Kumar Dey and Others Vs. Tarapada Dey and Others, . Although in the interim orders, it has not been stated that in event of dismissal of the appeals and the writ petition, the appellants and the writ petitioner shall be liable to pay interest over the arrears of the licence fee, but that shall not debar this Court from passing any order in respect of payment of reasonable interest over the said amount."

"Taking all facts and circumstances into consideration including the lapse of more than 12 years since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct:

The allottees will pay licence fee at the agreed rate subject to revisions as per the terms of the licence deed.

If the agreed rate has not been paid either due to interim order passed by any Court or otherwise and payment has been made on the basis of reserved rate, then for the period when the interim order was operative so far the allottees who have deviated from trade zone shall be liable to pay simple interest over the arrears for that period at the rate of 12 per cent per annum and at the rate of 15 per cent simple interest for the remaining period.

Allottees who have not deviated from the trade zone and have paid at the agreed rate throughout except the period when interim orders of the Court were operative, shall pay the balance amount of the arrears of the agreed rate with simple interest at the rate of 6 per cent..."

It is true that the State is entitled to charge maximum interest at the rate of 24% per annum as per Rule 64A of the Rules. But the fact remains that the matter having been litigated before this Court and the Apex Court for long time, it would be in the interest of justice if rate of interest is reduced from 24% per annum to 12% as was held by the Apex Court in case of Gurcharansingh (supra). However, the petitioners and the appellants shall deposit the interest @ 12% on difference of amount of royalty within a month failing which the State will be entitled to charge interest at the rate of 24% per annum.

Now coming to the petitions filed by the South Eastern Coalfields, they have challenged the charge of interest by State. As a matter of fact, as per the terms of the agreement, the South Eastern Coalfields are under obligation to recover the royalty from the consumers, i.e. the petitioners. As such, the liability is on the South Eastern Coalfields, because there is no direct privity of contract between the private petitioners and the State. Therefore, the responsibility for recovery of interest is also on the South Eastern Coalfields. As held above, the private petitioners shall deposit the interest at the rate of 12% on difference of royalty within a month with the South Eastern Coalfields and if they fail to do so, it will be open for the State to charge interest at 24% per annum. Therefore, the responsibility of the South Eastern Coalfields cannot be absolved. It is the responsibility of the South Eastern Coalfields to recover interest from the private parties and the State will recover the amount from the South Eastern Coalfields. It will be open for the South Eastern Coalfields to recover the amount of interest from the private petitioners either by stopping their supply or by filing a suit, as the case may be.

The petitions are accordingly disposed of.