

(1980) 04 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 253 of 1977

Jeypore Sugar Company Limited

APPELLANT

Vs

Mining Officer and Another

RESPONDENT

Date of Decision : 29-04-1980

Acts Referred:

Mineral Concession Rules, 1960 — Rule 27(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9A
Mines and Minerals (Regulation and Development) (Amendment) Act, 1972 — Section 9A

Citation : (1980) 50 CLT 165

Hon'ble Judges : R.N. Misra, J;J.K. Mohanty, J

Bench : Division Bench

Advocate : Y.S.N. Murty, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—Petitioner is a Company registered under the Indian Companies Act and has its registered office at Rayagada in the district of Koraput with in the jurisdiction of this Court.

Petitioner holds three manganese leases under the provisions of the Mines and Minerals (Regulation and Development) Act, 67 of 1957 (hereinafter referred to as the "Act") and the Rules made thereunder. These leases were granted to it between 1960 and 1962. Rule 27(1)(c) of the Mineral Concession Rules (hereinafter referred to as the "Rules") authorises collection of dead rent and Schedule IV prescribes the limit of such dead rent. The Central Government modified the Schedule by notification dated 30th of March, 1968 by substituting the existing Schedule IV and prescribed higher limits of dead rent. By Central Act 56 of 1972 operative from 12-9-1972, Section 9-A was inserted in the Central Act 67 of 1957 which provided:

(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development)

Amendment Act, 1972, shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided....

The Mining Officer (opposite party No. 1) raised demands at the revised rate from 1-4-1968 as per Annexures 6, 7 and 9. This demand is assailed in the present writ application on two grounds namely:

(i) Even if Petitioner has liability to pay at the revised rate, with effect from 1.4.1968 as per the modified Schedule, the scheme contemplated of periodical escalation and the Schedule should be made operative by treating the lease to be effective from 1-4-1968. Reliance for such an interpretation is placed upon Central Government's letter to the State Government explaining the manner of implementation.

(ii) At any rate, prior to the commencement of Section 9-A of the Act incorporated by amendment in 1972, there could be no liability merely on account of the modified schedule.

2. In the counter affidavit, the Mining Officer's demand has been supported and reliance has been placed on a letter of the Central Government supporting on broad principle the demand.

3. Admittedly in the lease deeds in favour of the Petitioner, the rate at which the dead rent would be payable had been provided. Schedule IV of the Mineral Concession Rules had prescribed the maximum rate and Rule 27(1)(c) provided:

(1) Every mining lease shall be subject to the following conditions and such conditions shall be incorporated in every mining lease-

....

(c) the lessee shall pay, for every year, except the first year of the lease, such yearly dead rent within the limits specified in Schedule IV as may be fixed from time to time by the State Government....

Schedule IV is, therefore, indicative of the maxima or the upper limit. Liberty has been given to the State Government to prescribe the rate within that limit. Liability to pay dead rent would depend upon the condition incorporated in the particular lease deed and mere existence of Schedule IV would not give rise to liability for dead rent. Admittedly, the existing leases of the Petitioner had not been modified and, therefore, in the absence of incorporation of higher liability, the incidence of dead rent could not be enhanced merely because Schedule IV was modified and a highest maxima was provided. The demand of dead rent at higher rate from 1-4-1968, therefore, seems to be unwarranted.

The position, however, becomes different once by amendment Parliament introduced Section 9-A into the Act. The escalated rates prescribed in Schedule IV were made statutory under the Amending Act as per Schedule III and whether incorporated in the lease deed or not, dead rent at the rate prescribed in the third schedule became payable. The present demand of dead rent is at the rates prescribed in Schedule-III of the Amending Act. Therefore, in terms of Section 9-A of the Amending Act, Petitioner's liability from the date of commencement of the Amending Act is not open to attack.

4. The writ application succeeds in part. The demand by the Mining Officer at the enhanced rate should be operative from 12.9.1972 when Section 9-A came into force. The demand for higher rates for any previous periods is not legal and has to be quashed. The writ application is accordingly allowed in part. Parties are directed to bear their own costs.

J.K. Mohanty, J.

5. I agree.