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**(2012) 06 JH CK 0051**

**In the Jharkhand High Court**

**Case No : Writ Petition (C) No. 2570 of 2006**

M/s Bharat Coking Coal Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision : 22-06-2012**

**Acts Referred:**

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9, 9(1), 9(2A)

**Citation :** (2012) 4 JCR 298 : (2012) 3 JLJR 309

**Hon'ble Judges :** Aparesh Kumar Singh, J

**Bench :** Single Bench

**Advocate :** Anoop Kumar Mehta, for the Appellant; M.S. Akhtar and Arvind Kr. Mehta, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner as well as learned counsel for the Respondent-State. The petitioner-BCCL has sought for quashing of the letter of the Respondent No. 2, Secretary, Department of Mines & Geology, Govt. of Jharkhand as contained in Memo No. 235 dated 24.2.2006 (Annexure-4), whereby the respective District Mining Officers have been directed to raise demand of royalty in respect of the coal consumed by the workmen engaged in a colliery. The petitioner has also sought for quashing of consequential demands contained in Annexure-5 dated 13.3.2006, Annexure-6 dated 18.3.2006, Annexures-8 and 9 dated 21.3.2006 and 25.3.2006 respectively. The grounds for assailing the impugned order are:

(i) u/s 9(2-A) inserted by the amendment of 1972 in the Mines and Mineral (Regulation and Development) Act, 1957 (MMDR Act), the holder of the mining lease, whether granted before or after the commencement of Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workmen engaged in a colliery provided that such consumption of the workmen does not exceed one third of a tonne per month.

(ii) That the judgment dated 24, 9.2003 delivered by the Hon''ble Supreme Court of India in Civil Appeal No. 8395 of 2001 in the case of M/s C.C.L. vs. State of Jharkhand was not applicable to the facts of the present case as the relevant provision of Section 9(2-A) of Act of 1957 as amended in 1972 was not in question rather the issue relating to payment of royalty as per the expression "removable" was being interpreted by the Hon''ble Supreme Court of India in the said case.

2. It is a case of the petitioner that by the impugned direction and the consequent notices of demand, the respondent-authorities of the State have chosen to raise royalty in respect of coal consumed by workmen in question employed under the petitioner-BCCL.

3. The Respondent-State has appeared and filed their counter affidavit inter alia justifying their raising of demand of royalty upon the petitioner-BCCL for the coal consumed by its workmen primarily on the basis of the judgment delivered by the Hon''ble Supreme Court of India dated 24.9.2003 in Civil Appeal No. 8395 of 2001. They have also stated that CCL is paying royalty for the coal consumed by its workmen and, in support thereof, the payment made by the "Churi" area of CCL in 2005-06 is annexed to the counter affidavit as Annexure-A.

4. For the determination of the issues raised hereinabove, it is appropriate to quote Section 9(2-A) of the MMDR Act, 1957:--

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 not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

5. From the perusal of the order contained in Annexure-1 to the writ petition in the case of Ramasrey and Others Vs. Dy. Director Consolidation Distt. Faizabad and Others, delivered on 5.12.1991, reference of which has been made by learned counsel for the petitioner, it appears that while interpreting Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 as it existed prior to 1972, Hon''ble Supreme Court of India upheld the judgment and order of the High Court of Orissa dated 22.1.1977 holding that the appellant-company is liable to pay royalty for the coal supplied to its workman for consumption prior to the amendment of Section 9. The relevant para-2 of the said judgment is quoted herein below:-

After hearing learned counsel for the parties, we find no merit in the appeal as we find no error in the High Court's interpretation of Section 9 of the Mines and Minerals (Regulation and Development) Act, 1957 as it existed prior to its amendment in 1972. The appellant is, therefore, liable to pay royalty for the coal supplied to its workmen for consumption prior to the amendment of Section 9.

6. In another Judgment delivered by the Hon''ble Supreme Court as contained in

Annexure-2 to the writ petition in the case of State of Orissa and Others Vs. M/s. Steel Authority of India Ltd., relating to the issue of meaning of the expression "removal" as used in Section 9(1) of the Act of 1957, the judgment in the case of National Coal Development (supra) was referred to in para 12 thereof, which is quoted hereinbelow:--

Another Division Bench of the Orissa High Court in National Coal Development Corporation case while considering the question whether the coal extracted by the workmen for their own domestic consumption is exigible to levy of royalty, accepting the contention of the Revenue, held "that removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty". This view of the High Court found approval by this court in National Coal Case and this court held that the lessee in that case was liable to pay royalty for the coal supplied to its workmen for consumption.

7. Learned counsel for the petitioner submitted that in the judgment relied by the respondent-State authorities i.e. Civil Appeal No. 8395 of 2001, which has been annexed as Annexure-3, the relevant part of the judgment in the case of State of Orissa vs. S.A.I.L. (supra) has been quoted which is also quoted hereinabove.

8. It has been submitted by the counsel for the petitioner that the aforesaid judgment quoted in Civil Appeal No. 8395 of 2001 has been taken out of context by the respondents as the same was quoted by the Hon'ble Supreme Court for interpretation of the term "removal" as used in Section 9(1) of the Act, 1957 which is as follows:--

Another Division Bench of the Orissa High Court in National Coal Development Corporation case while considering the question whether the coal extracted by the workmen for their own domestic consumption is exigible to levy of royalty, accepting the contention of the Revenue, held "that removal from the seam in the mine and extracting the same through the pit's mouth to the surface satisfy the requirement of Section 9 in order to give rise to liability for royalty. This view of the High Court found approval by this court in National Coal Case (C.A. No. 807 of 1976 decided on 5.12.1991) and this court held that the lessee in that case was liable to pay royalty for the coal supplied to its workmen for consumption.

9. The reference to Civil Appeal No. 807 of 1976 decided on 5th December, 1991, in the above quoted extract is taken from the same judgment annexed as Annexure-1 in the case of National Coal Development Corporation vs. State of Orissa, wherein the liability of the coal company to pay royalty of coal consumed by its workmen prior to the amendment of Section 9 in the year 1972 was in question.

10. From the aforesaid submissions, learned counsel for the petitioner vehemently argued that after coming into force the provision of Section 9(2-A),

quoted hereinabove, the petitioner-mining lessee in a coal company is not liable to pay any royalty in respect of any coal consumed by the workmen engaged in colliery provided that such consumption of the workmen does not exceed one third of a tonne per month. It has further been submitted that the respondent-authority have wrongly relied upon the judgment delivered in Civil Appeal No. 8395 of 2001 (Annexure-3 to the writ petition) and read it out of the context.

11. From the discussion made hereinabove, it is clear that the Respondent-authorities have not taken into account the provision of Section 9(2-A) of the M.M.D.R. Act wherein the mining lessee is not liable to pay any royalty in respect of the coal consumed by the workmen engaged in the colliery provided that such consumption does not exceed one third of a tonne per month. Moreover, the respondent-authorities have relied upon the judgment delivered in Civil Appeal No. 8395 of 2001 out of context as clearly the reference made in the said judgment of the Hon'ble Supreme Court to Civil Appeal No. 807 of 1976 in the case of National Coal Development Corporation deals with the matter prior to the amendment of Section 9. Learned counsel for the petitioner, while answering to the contention of the Respondent that the other coal company, CCL is paying royalty, submitted that when the prescription of law is very clear and the respondents have relied upon the judgment totally out of context which does not apply to the facts of the present case of the petitioner, any payment made by another company erroneously cannot bind the petitioner. It is also contended by learned counsel for the petitioner that even after 2006, perhaps respondents have realized the mistake and, therefore, not raised notices of demand of such royalty in respect of the coal consumed by the workmen engaged in the colliery.

12. In view of the aforesaid discussion made above, I find substance in the argument and contention of the counsel for the petitioner and accordingly the impugned order contained in Annexure-4 as well as consequent notices of demand contained as Annexures-5, 6, 8 and 9 cannot be sustained in law and are accordingly, quashed. This writ petition is allowed.