
(1984) 09 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 2720 of 81 and Civil Writ Appeal No. 2719 of 81, 213 of 82 and 1134 and 1825 of 83

The Associated Cement Companies Ltd. and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-09-1984

Acts Referred:

Citation : (1985) ILR Delhi 1

Hon'ble Judges : Prakash Narain, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : G.L. Sanghvi, J.R. Gagrati, H.N. Salve, P.B. Agarwal, M.C. Bhandare and P.P. Khurana, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this, and the connected writ petitions, filed under Article 226 of the Constitution of India by some of the cement manufacturers in India is to the decision of the Government to allow a uniform revision, by way of escalation in retention prices, to cement factories by applying a common criterion for coal consumption to all factories, irrespective of the nature of the manufacturing process adopted by such factories.

(2) In order to decide the point in issue it is sufficient To refer to the facts in the petition filed by the Associated Cement Companies Limited. The decision in this case will also govern the petitions filed by the other manufacturers.

(3) According to the petitioners there are at present 56 units manufacturing cement in India. Of these, majority have wet process and the rest use dry or some-dry process in the manufacture of cement. These factories, owned by different companies, are situated at diverse places in India.

(4) The Central Government, in exercise of its powers conferred by Section 18(g) and Section 25 of the Industries (Development and Regulation) Act, 1951 issued

the Cement Control Order, 1967 which came into effect from 1st January, 1968. Under Clause 7 of the Order it was provided that ex factory prices available to the producers for different varieties of cement would be as specified in the Schedule thereto. Clause 8 of the said Order stipulated the prices at which producers have to sell cement. It is not disputed that the price at which the cement is required to be sold to the consumers in India are uniform prices which are fixed by the Government in respect of different type of cement produced irrespective of the place where the consumer may be. Clause 9 of the Order requires the producers to make payment to the; Controller of the amount by which the F.O.R. price of cement exceeds the amounts mentioned therein. The amounts so paid are credited, under clause 11 of the Order, to the Cement Regulation Account. The money so credited is utilised for the purpose and the manner stated therein. The last relevant clause "s clause 12 of the Order. The said clause empowers the Central Government to vary the prices and to alter the schedule. The same leads as under :

"12. Power to vary the prices and to alter the schedule. The Central Government may, having regard to and change in any of the factors relevant for the determination of price of cement, such as increase or decrease in the cost of production or distribution. by notification in the official gazette, vary the price fixed in this Order or alter the Schedule to this Order as appear to it to be necessary."

(5) By a Resolution dated, 14th April, 1978 the Central Government appointed a high level committee (also known as Loveraj Committee) to undertake a comprehensive review of the cement industry in all its aspects including costs and prices. In December, 1978 the said Committee submitted its report to the Central Government. It is contended by the petitioner- that the said report was not made public. However, the Government announced its decision on the recommendations of the high level committee in the form of a Resolution dated 3rd May, 1979 wherein certain recommendations of the Committee were accepted. Annexed to the said Resolution was the summary of the recommendations of the report of the high level committee on the cement industry. The Committee made an important recommendation which, inter alia, provided for the factories to be placed in 3 tiers for the purpose of price fixation. The relevant part of the report, as contained in the aforesaid summary, is as follows :

"THE fixation of one uniform ex-factory price leads to a number of serious anomalies such as imposing Union of India and another large penalties on certain factories whose costs may be high but those may not appear to be so unfavorable if the costs of transportation to consumption centre is taken into account. Therefore, the Committee considers that this basis of fixing a standard ex-factory price should be discarded.

Most anomalies can be removed by arranging factories in tiers. The Committee recommends three price tiers as follows, based on a post tax return of 12 per

cent on net worth (or equivalent return on capital employed in the new cases where net worth has been so eroded that it falls below the equity shareholding). One member of the Committee desired that the provision for annual bonus should be higher. Rs. 185 per tonne. Rs. 205 per tonne. Rs. 220 per tonne.

The Committee has placed all the cement factories in these three tiers. Factories located in remote and hilly areas should continue to enjoy the mating in accordance with the present policy, based on the differential freight on cement.

In the said summary, reference was also made to the escalations which were recommended to the ex-factory price in the following words :

"THE ex-factory prices recommended in the report should be adjusted for changes in salaries and wages (including dearness allowance), the freight and price of coal, the price of power and the cost of stores and spares. To start with this adjust- meat should be worked out every quarter and if experience shows that adjustments in such a short period are very small than such adjustments can be effected once in six months."

(6) Neither the Resolution nor the summary of the Report gave any indication as to whether the Committee had made any other recommendation with regard to escalation. It is, however. evident that the industry did come to know that the said Committee had recommended an adjustment in the ex- factory price for escalations in costs including changes in price of coal. Notwithstanding the fact the factories had been placed in three different tiers because of different percentage of coal which was used by them in the manufacturing process, the said Committee is stated to have adopted a uniform consumption norm of coal at 19 per cent for the purposes of working cut the escalation. It may here be stated that in fixing the afore- said prices the High Level Committee had adopted a consumption norm of coal, for escalation purposes, at 18.5 per cent per tonne with regard to manufacture by dry process, 19 per cent per tonne with regard to manufacture by semi-dry process and 28.5 per cent per tonne with regard to manufacture of cement by wet process.

(7) On 31st July, 1979 the Cement Manufacturers" Association, Therefore, made a representation to the Government against the said proposal. No reply having been received, the Association made another representation on 24th October, 1979. This was followed by a further representation dated 23rd February, 1980. According io the petitioners no replies were received to the said representations.

(8) The Government, on 29th September, 1980, announced a uniform increase of Rs. 13.65 per M. tonne in respect of the three-tier retention prices. This increase was allowed with effect from 3rd May, 1980. In order to give effect to this increase, the Cement Control Order was amended on 20th November, 1980. It is not disputed that this increase in prices was due to the increase in the price of coal and while working out this increase the Government adhered to the uniform consumption norm of 19 per cent.

(9) It appears that there was further escalation in prices of coal and consistent with the policy which was being followed by the Government, vide their telegram dated 23rd July, 1981, the Cement Controller informed the Cement Manufacturers' Association about a further increase in the retention price of cement by Rs. 34.74 per tonne with effect from 3rd May, 1981.

(10) On 13th August, 1981 representation was made by the Cement Manufacturers' Association to the Ministry of Industry alleging that the industry was suffering loss as a result of adoption of unrealistic norm of coal consumption. Request was made for an increase in the escalation. This representation was followed by a letter dated 26th October, 1981 sent by the petitioners to the respondents demanding justice.

(11) The petitioners having failed to receive any redress from the Government, then filed the present writ petitions on 23rd November, 1981. Along with the petition, a statement was also filed showing the shortfall in the escalation for the period 3rd May, 1981 to 31st July, 1981. It was alleged that the shortfall in escalation would amount to 8.70 per tonne from 3rd May, 1980 and Rs. 7.68 per tonne from 3rd May, 1981. According to the petitioners, in respect of any further increase in the price of coal the escalation at all times should be 28.5 per cent of the actual increase in the price of coal consumed by the petitioners. Along with the petition, an application for stay was also filed. It was, inter alia, prayed in the application that the petitioners should be permitted to retain from any amount due by them under the Cement Regulation Account, an amount equivalent to shortfall in the escalation increase denied to them, high amount of shortfall was indicated in the aforesaid statement which was filed.

(12) The aforesaid writ petition was admitted and interim orders were passed determining the petitioners to retain the shortfall in the escalation alleged to have been denied to them subject to the petitioners furnishing bank guarantee to the extent of the said amount. It was also directed that if the petition failed then the amount so retained will have to be refunded with interest at the rate of 15 per cent.

(13) On an application for vacation of injunction having been filed, this Court on 13th July, 1983 made it clear that the interim orders passed earlier did not permit the petitioners to retain any amount for deliveries made subsequent to July, 1981.

(14) After the writ petition was admitted, the Government issued a Press Note dated 27th February, 1982. By this Press Note it announced a scheme of partial de-control of cement. The scheme, inter alia, provided that the existing cement units shall be required to give 66.6 per cent of their installed capacity as levy cement at a control price, while the new units which started commercial production after 1st January, 1982 and units which were designated as sick units would be required to give 50 per cent of their installed capacity as levy cement. The balance of the cement which was manufactured could be sold by the

manufacturers without any respond and in the free market. It was hoped that in this way the losses, if any, which may have been suffered by the Cement Industry on account of sale of cement at levy prices would, to a very large extent, if not wholly, be set off.

(15) On behalf of the respondents, a detailed affidavit in reply to the writ petition was filed in the case of Shree Digvijay Cement Co. Ltd. Vs. Union of India, Civil Writ No. 213 of 1982. The said reply was adopted by the Government in the other cases also. The main contentions which have been raised by the respondents in their return were that the uniform escalation was given on the basis of the Loveraj Committee recommendations. It was also contended that there was Government's intention to induce the existing wet process factories to adopt dry process technology even if this may result in certain disincentive to the wet process units in the short run. The Government, it was contended, considered this to be in overall national interest, and it was with this end in view that the escalation in retention price was allowed at the rate of 19 paise per tonne of increase in price of coal with reference to dry process technology, which was claimed to be the most optimum process of manufacture of cement.

(16) Though in the writ petition a number of contentions have been raised but, at the time of arguments, before us the learned counsel for the petitioners made it clear that the petitioners were only praying for the escalation to be made on the three-tier basis for the period 3rd May, 1980 to 27th February, 1982. In other words, the dispute, which has narrowed down in the present case, is only as to whether for the period 3rd May, 1980, with effect from which date escalation was first allowed of Rs. 13.65 per M. tonne, till 27th February, 1982, when there was rationalisation of price and distribution policy, the increase should be at a uniform rate or whether the increase should be on the basis of the coal which is actually consumed by the different types of factories.

(17) It was submitted by the learned counsel for the petitioners that the uniform increase in the escalation on account of the variation in the price of coal had not been suggested by the Loveraj Committee. In the alternative, it was contended that the Government did not accept such a recommendation, as the said recommendation was not mentioned in the summary to the resolution dated 3rd May, 1979 and nor was there any mention of the uniform increase in the said resolution itself.

(18) For the view that we are taking, we need not go into the question whether the Committee did or did not recommend uniform increase. From the pleadings of the parties, and from the representations which had been made by the Cement Manufacturers' Association to the Government, it is clear that both the manufacturers as well as the Government understood the recommendations to mean that uniform increase had been suggested by the said Committee. In the representation dated 31st July, 1979 the Cement Manufacturers' Association had, inter alia, stated that the recommendation of the Committee that the consumption norm of 19 per cent of coal per tonne of cement adopted by the

Committee was based on the optimum consumption factor in the most economical dry process while many of the existing" units have wet or semi-dry plant and, Therefore, the said consumption norm was unrealistic. In I he writ petition it is alleged that "the petitioner say that the High Level Committee adopted an unrealistic consumption norm of coal at 19 per cent for escalation purposes. This was on the basis of all optimum consumption factor in the most economical dry plant". It is evident, Therefore, that the Cement Manufacturers understood the report of the Committee to contain a recommendation for uniform escalation. This being so, it is not open to the petitioners to contend that the High Level Committee did not make any such recommendation. The Government also understood the said report in the like manner.

(19) At the time of arguments Mr. Bhandare, the learned counsel for the respondents, placed before Us a note dated 26th April, 1979 which was prepared for the Cabinet. This note indicated the main recommendations of the High Level Committee. In the said note it was stated that the High Level Committee had recommended that the retention prices recommended by it, both in respect of existing units as well as new units, should be subject to escalations on account of different factors. The escalation which was suggested on account of increase in price of coal was to the effect that there should be an increase or decrease of 19 paise for every variation of rupee one per tonne in price of coal for a lead distance of 1060 Kms. The said Note further observed that the Committee had recommended that price adjustment on account of cost escalation should be worked out every quarter. The Note, however, recommended to the Cabinet that the modification on account of escalation should be allowed on half yearly basis and not every quarter, as recommended by the Committee. In the letter dated 1st May, 1979 written by the Joint Secretary to the Cabinet to the Joint Secretary, Department of Industrial Development, it was stated that the Cabinet in its meeting held on 31st April, 1979 had considered the report of the High Level Committee and its main recommendations and it accepted the same, except that the Cabinet was of the view that the impact on prices of the elements mentioned in the report should be reviewed once a year. The effect of this, Therefore, was that the Government approved the recommendations of the High Level Committee to the effect that there should be a uniform rate of coal consumption which should be applied and the review of the prices should take place once a year, and not once a quarter as had been recommended by the Committee.

(20) From the aforesaid, it is very clear, and as observed by us earlier, that all the parties understood the report of the High Level Committee to contain a recommendation for uniform increase. It is on that basis that the Government allowed the increase with effect from 3rd May, 1980 and with effect from 3rd May, 1981. At no time did the petitioners ever protest to the Government that the Loveraj Committee had not made any such recommendation. On the contrary, as seen by us earlier, the Manufacturers themselves assumed, and possibly rightly, that the recommendation of the Committee was for a uniform

increase. From the note dated 26th April, 1979 which was placed before the Cabinet, and the aforesaid letter of Shri Mahadevan, there is also no doubt left that the Government had accepted the said recommendations of the High Level Committee. We are, Therefore, unable to accept the contention of the learned counsel for the petitioners that the Government had not accepted the recommendations of the Loveraj Committee. Merely because in the government resolution dated 3rd May, 1979 there was no mention of this escalation clause does not mean that the Government had not accepted it. The government resolution was only a summary which sought to convey the decision of the Cabinet. The Cabinet papers which had been placed before us clearly show that the summary which was annexed to the resolution dated 3rd May, 1979 was not exhaustive enough. The Cabinet did consider the recommendation regarding escalation which had been made by the Loveraj Committee and the said recommendation had been accepted by the Cabinet with the modification that instead of reviewing the prices every quarter there would be an annual revision.

(21) Even though the Government action is bona fide and its decision is based on the report of the High Level Committee, but it is still open to the petitioners to contend that the decision of the Government is contrary to clause 12 of the Cement Control Order and/or is violative of article 14 of the Constitution as being discriminatory and/or arbitrary.

(22) Clause 12 of the Cement Control Order gives the Central Government power to vary the prices fixed. The price variation is to take place, inter alia, on account of increase or decrease in the cost of production or distribution. The price of coal is one of the factors which is taken into consideration while determining the retention price which is fixed. As we have already noted, the retention price is fixed after taking into consideration the quantum of coal consumed by different types of factories. In view of the fact that in the factories employing the dry process the quantity of coal consumed in manufacture was less that is why lesser retention price was fixed in respect of such factories. When there is an increase or decrease in the price of coal then clause 12 empowers the Government to vary the retention price which is fixed. It appears to us that if the cost of the coal has to be taken into consideration while fixing the retention price then implicit in clause 12 is the requirement that, when the Government chooses to vary the price, the actual increase in cost of coal in the different types of factories ought to be taken into consideration. Whenever there is, like in the present case, increase in the price of coal then it is evident that the manufacturers who manufacture cement by wet process have to pay larger amount by way of price of coal than the manufacturers who employ dry process. It may be that, depending upon various factors including the desirability to hold the price line, the Government may decide not to compensate the manufacturers of cement by the full amount of increase in the price of coal which is utilised. The Government may, if it so desires, after taking all the facts and circumstances into consideration, decide that the industry may be compensated up to only, say 80 per cent of the increase in coal price which takes place. Having taken the

decision to vary the price, thereafter clause 12 would require that the variation in the retention price should take place after taking into consideration the different percentage of coal which is consumed in manufacturing per tonne of cement by the different types of factories which reason led to the adoption of the three tier system.

(23) Even if it be assumed that, on a correct interpretation of clause 12 of the Order, the Government is not bound under that provision to adopt the pattern of three tier in granting escalation, and that the said clause merely enables the Government to escalate or de-escalate the retention price fixed, we are nevertheless of the opinion that it will be unreasonable for the Government to ignore the three tier system.

(24) The High Level Committee has itself stated that, in view of the higher quantity of coal consumed by some types of factories as compared to the others, it is reasonable to have a three tier pattern in fixing the retention price. Coal is an important raw-material and different factories use different quantities of coal to produce a tonne of cement. Keeping this in view the Committee, felt, and on which basis the retention prices were fixed, that the manufacturing units which consumed more coal should be given higher retention price. If this was considered to be reasonable it obviously meant that giving of uniform retention price was unreasonable. The increase in cost due to price rise would also vary. The cost of coal of the units which consumed more coal would obviously be higher than the manufacturers who employ the dry process. Just as it is reasonable to take into consideration the coal consumed while working out the retention price, on the same principle it must follow that the actual quantity of coal consumed by the different categories of manufacturing units must be taken into consideration while allowing escalation.

(25) Article 14 of the Constitution requires that similar persons must not be treated dissimilarly and, conversely, dissimilar persons should not be treated similarly. Admittedly the factories put in different tiers are not similar to each other. That is why three tier prices were fixed. If this be so, it would be violative of Article 14 if, for purposes of escalation, the dissimilar are treated similarly and escalation in prices are allowed by taking a uniform rate of consumption of coal at 19 per cent, knowing fully well that the percentage of consumption of coal per tonne is much higher in the case of factories, like the petitioners, using the wet process.

(26) Mr. Bhandare, the learned counsel for the respondents, however, contended that if there was no price control there was every likelihood of the commodity being made available only at unconscionable price thereby depriving the common man the use of the commodity. There can be no quarrel with this submission. The Government is not bound to increase the retention price whenever there is an increase in the cost of manufacture. The point in issue is slightly different. The submission of the petitioners is that, whenever the Government does decide to increase the retention price then the three-tier pattern should be followed in

working out the escalation. Clause 12 does not give a right to the manufacturers to insist on increase in the retention price. Therefore, in order to ensure that cement is made available to the common man at a reasonable price, it may be, though we need not express any final opinion in this case, that the manufacturers may not be able to insist on escalation of the retention price. But that question does not arise in this case.

(27) It was then submitted by the learned counsel for the respondents that prior to 1979 there was a uniform retention price which was fixed for all factories. After 28th February, 1982, when partial decontrol was announced, then again in respect of levy cement the same retention price was fixed for all the factories. He thereby contends that it is permissible for the Government to put all the factories in one class and it would not be discriminatory if the escalation was allowed at a uniform rate. We are unable to agree with this submission.

While it is true that, prior to 1979, there was one retention price which was fixed for all the factories but we cannot shut our eyes to the fact that the High Level Committee itself realised the injustice in such price fixation and it, Therefore, recommended fixation of retention price in three-tiers. This recommendation was accepted by the Government. During the period when this three tier price was in operation, it meant that factories falling in the three different tiers were not similarly retained and that is why they were allowed dissimilar retention prices. During this period, Therefore, the escalation in price had also to be dissimilar. The position after 28th February, 1982 is altogether different. The three tier system of payment of retention price has been given a go-bye. As from that day the cement factories are compelled to sell only a certain percentage of the cement manufactured by them as levy cement and the balance quantity manufactured by them can be sold as free sale and without any restriction. With the pricing pattern having changed after 28th February, 1982, the question of there being a dissimilar escalation on account of increase in the cost of production does not arise for then just as the retention price was to be paid at a uniform rate similarly the escalation also could be at a uniform rate. Where, however, between 3rd May, 1980 and 27th February, 1982 the uniform retention price was not payable, the escalation of price also could not be on a uniform rate.

(28) The matter can be looked from another point of view. While fixing the retention price the Government takes into consideration the actual quantity of coal consumed by different types of factories. Having regard to the increased quantity of coal which is consumed by the factories which use the wet process a higher retention price was fixed for them. It would be unreasonable, in our opinion, for the Government to ignore the fact that higher percentage of coal is used by such factories while working out the escalation and it will be unreasonable and arbitrary to apply a uniform norm of 19 per cent even in respect of those units which admittedly consume 28.5 percentage of coal per tonne of the cement manufactured.

(29) Our attention was invited by Mr. Bhandare to the decision of the Supreme

Court in the case of Prag Ice and Oil Mills and Another Vs. Union of India (UOI), . The learned counsel placed reliance on the observations of the Supreme Court to the effect that the Parliament having entrusted the fixation of prices to the expert judgment of the Government, it would be wrong for the Court to examine each and every minute detail pertaining to the Government decision, In our opinion, this decision is of little assistance to the respondents. The Supreme Court in the above mentioned case itself at page 1318 quoted with approval the decision in the case of Permian Basin Area Rate Cases (1968) 20 Law Ed 312 and the Supreme Court observed as follows :

"THE Government, as was said in Permian Basin Area Rate Cases (1968) 20 Law Ed. 312 is entitled to make pragmatic adjustments which may be called for by particular circumstances and the price control can be declared unconstitutional only if it is patently arbitrary, discriminatory or demonstrably irrelevant to the policy which the legislature is free to adopt."

The reading of the aforesaid observations make it clear that if the Court comes to the conclusion that the action of the Government in fixing a particular price has been arbitrary or discriminatory then the price so fixed can be successfully challenged. In our opinion, the fixation of a uniform norm of 19 per cent was discriminatory as well as arbitrary. This being so, the Court can and should quash a decision of the government which on the face of it is violative of Article 14 of the Constitution. The setting-aside of the decision on this ground would not amount to this Court examining the fixation of price. What price is to be fixed is for the Government to decide but it is open to the Court to see whether in arriving at this decision the Government has acted fairly or arbitrarily.

(30) We have already noticed that the respondents have alleged in the return that the decision to have a uniform rate of escalation was taken with a view to persuade the manufacturers to adopt dry process technology instead of wet process. In our opinion, there is no material which has been placed on record to satisfy us that the decision to adopt a uniform rate was taken with a view to encourage the Industry to switch over to dry process. The perusal of the note which was placed before the Cabinet does not substantiate the averment of the respondents. From the aforesaid note it is clear that the decision of the Government was to accept the recommendation of the High Level Committee which had recommended a uniform rate of escalation. The High Level Committee itself had not suggested a uniform rate with a view to encourage the change over to dry process technology. The petitioners in their rejoinders had categorically denied any such policy decision having been taken by the Government. Though at the time of hearing both the sides placed a number of documents before but the respondents did not bring to our notice any document or decision which would substantiate this averment that the decision to have a uniform rate of escalation was promoted by a desire to see that dry process technology adopted and that this was considered to be in overall national interest.

(31) For the aforesaid reasons, the respondents should have granted an

escalation by taking into consideration the price of coal by applying the norm with regard to the consumption of coal which norm had been applied by them while fixing the retention prices. The norm which was applied by them at that time was of 28.5 per cent in the case of the petitioners.

(32) It was lastly contended by Mr. Bhandare that, in any case, the petitioners are guilty of laches. He submitted that if the writ petitioners are now allowed the result would be that the respondents would not be in a position to increase the retention price with retrospective effect and to recover the price difference from the consumers. The effect of this would naturally be that the Government will have to pay the additional amount from its own pocket. He submitted that the petitioners came to know about the recommendation of the High Level Committee at least in July, 1979, for it was at that time that the Industry made a representation against the escalation clause. The manufacturers knew that the recommendation of the High Level Committee in this regard had been accepted by the Government and, Therefore, if the petitioners had felt aggrieved they should have approached the Court at that time. In the alternative, it was submitted by the learned counsel that; in any case when on 29th September, 1980 the Government announced the retention of the retention price by giving a uniform escalation of Rs. 13.65 per metric tonne, the manufacturers knew that their earlier representation against uniform escalation had not been accepted. The manufacturers should Therefore, have approached the Court soon thereafter.

(33) As regards the first limb of the arguments of Mr. Bhandare, in our opinion the petitioners could not have filed the writ petitions soon after the recommendations of the High Level Committee had been accepted by the Government. Before approaching a writ Court the petitioners had to demand justice and they could come to the Court only if the same had been denied. The petitioners rightly made a representation on 31st July, 1979 against the proposal of the High Level Committee. At that time no escalation had been granted. It was open to the Government, who possibly did consider the representation to vary its decision. As it happened, the Government did not choose to do so. Even though no reply to the representation was sent, it is clear that the Government was not acceding to the request of the manufacturers because on 29th September, 1980 it announced a uniform escalation of price with effect from 3rd May, 1980.

(34) There is, however, considerable force in the submission of the learned counsel for the respondents that after 29th September, 1980 there is no reason why there should be an undue delay on the part of the petitioners in filing the writ petitions.

(35) It is true that the period of limitation for filing a suit, which is a yardstick which is normally adopted in deciding whether the Court should entertain a writ petition or not, had not expired at the time when the writ petition was filed. Nevertheless even though the period of limitation for the purpose of filing a suit may not have expired, a writ court may still, in appropriate cases, decline to grant relief if the petitioner is guilty of laches. The question as to whether a

petitioner is guilty of laches or not must necessarily depend on the facts and circumstances of each case. It may be that in a particular case the filing of a writ petition, say after six months of the cause of action arising, may be fatal. On the other hand, in an appropriate case the writ court will even allow and entertain a writ petition which has been filed even after the period of limitation for filing the suit has expired. The main reason why relief is not granted, on the ground of laches, is that the party against whom the relief is granted should not be made to suffer unnecessarily because of the delay on the part of the petitioner to approach the Court. As already noted, the submission of Mr. Bhandare is that the result of the writ petition being allowed will be that the Government will have to pay the additional amount from its own pocket without its being able to realise the same from the consumers. If this is the result then certainly relief cannot be granted to the petitioners

(36) It is, however, submitted by the learned counsel for the petitioners that by virtue of the interim orders, additional amount claimed by them has been recovered for some time. The claim of M/s. Associated Cement Companies is only with regard to the balance period up to 27th February, 1982. It is contended that the additional amount which has been retained by the petitioners has obviously not come from the coffers of the Government and, Therefore, allowing the writ petition will not prejudice the respondents. It is further submitted by the learned counsel that the petitioners and the other manufacturers have been making huge contribution to the Cement Regulation Account and even after meeting the expenses and other outgoings there is a large amount of money which is credited in the Cement Regulation Account. If the petitions are allowed the Government could, it was submitted, be directed to pay the money out of the Cement Regulation Account.

(37) In our opinion it cannot be said that there has been such gross or undue delay that no relief at all should be granted to the petitioners. It is evident from the facts noted above that the petitioners and the other manufacturers have been representing to the Government, time and again, seeking redress. In our opinion it is possible to mould the relief in such a way that no serious prejudice is caused to the respondents.

(38) We have already held that the respondents should have allowed escalation by applying the norm of coal consumption which had been applied at the time when the retention prices were fixed. The petitioners by applying this norm of 28.5 per cent have calculated the additional amount due to them and by virtue of the interim orders that amount has been realised. This amount has obviously not gone out of the coffers of the Government. In our opinion, the petitioners are entitled to retain the said amount and the bank guarantees and securities which they may have given in order to secure the same are hereby discharged.

(39) With regard to the balance of the claim which they may be entitled to, it is not possible for this Court to give a finding as to whether any amount is available with the Government which it could pay out of the Cement Regulation Account or

not. During the course of arguments Mr. Bhandarc, the learned counsel for the respondents, had submitted a chart showing the net position of Cement Regulation Account as on 31st December, 1983 indicating that the Government did not have enough funds in the Cement Regulation Account so as to be able to meet the demands of the petitioners. This chart has been submitted along with an affidavit dated 18th July. 1984 of Shri K. M. Gupta, Deputy Cement Controller, New Delhi. The figures and items given in the said Chart were, however, disputed by the learned counsel for the petitioners. It is neither possible, nor desirable; for this Court to go into the correctness of the figures or the items indicated in the said Chart. In our opinion ends of justice would be met if the Government will, within three months from today, give a hearing to the petitioners and will grant pro-rata relief of the entire or part of the claim of the petitioners depending upon the funds available in the Cement Regulation Account which can be disbursed but by ensuring that such payment would not necessitate any increase in the sale price of cement to the consumer. . While giving this hearing it will not be open to the petitioners to challenge the correctness of any figures or amounts mentioned in the aforesaid Chart, which reflects the amounts of the Cement Regulation Account, but it will be open to the petitioners to challenge the correctness of any of the items mentioned in the said Chart.

(40) The writ petitions are, Therefore, allowed in the aforesaid terms. In the peculiar circumstances of this case, the parties are left to bear their own costs.