

(1974) 01 PAT CK 0010

In the Patna High Court

Case No : A.F.O.O. No's. 177, 180, 182, 183 and 184 of 1964

The Union of India (UOI)

APPELLANT

Vs

Borrea Coal Co. Ltd. and Others

RESPONDENT

Date of Decision : 15-01-1974

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 13(1), 13(2), 13(4), 13(5), 14(2)

Citation : AIR 1974 Patna 233

Hon'ble Judges : Shambhu Prasad Singh, J; S. Anwar Ahmed, J

Bench : Division Bench

Advocate : K.D. Chatterjee and Bindabashani Prasad Sinha, in M.A. Nos. 177 and 180 of 1964 and Umesh Prasad Singh, in M.A. Nos. 182, 183 and 184 of 1964, for the Appellant; K.D. Chatterjee and Bindabashani Prasad Sinha, in M.A. Nos. 177 and 180 of 1964 and Umesh Prasad Singh in M.A. Nos. 177 and 180 of 1964, for the Respondent

Judgement

Shambhu Prasad Singh, J.—All these five appeals have been heard together and are being disposed of by this common judgment. They are appeals u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 -- hereinafter referred to as "the Act" against awards of the Tribunal constituted u/s 14(2) of the said Act. Miscellaneous Appeal Nos. 177, 183 and 184 of 1964 are against the award made in Reference Case No. 1 of 1960 and Miscellaneous Appeal Nos. 180 and 182 of 1964, are against the award made in Reference Case No. 1 of 1961. Miscellaneous Appeal Nos. 177 and 180 of 1964 are by the Union of India through the National Coal Development Corporation Limited. Miscellaneous Appeal Nos. 182 and 184 of 1964 are by M/s. Karanpura Development Company Limited, (hereinafter referred to as the "Karanpura Company"). Miscellaneous Appeal No. 183 of 1964 is by M/s. Borrea Coal Company Limited (hereinafter referred to as the Borrea Company). The Borrea Company is a sub-lessee from the Karanpura Company.

2. Facts relevant for the disposal of these appeals, which are not in dispute, may

briefly be stated on 26th of March, 1915, the proprietor of the Ramgarh Estate, acting through the Court of Wards, granted a prospecting licence of coal mining rights in respect of the areas in dispute in favour of M/s. Bird and Company with option to the said company to acquire mining lease from the proprietor. The terms of the license were modified by another deed dated 23rd of November, 1917. In May, 1921, M/s. Bird and Company assigned their said right to the Karanpura Company. There was a litigation between Karanpura Company and the proprietor of Ramgarh Estate, Pending the said litigation, on the 17 of June, 1948, the proprietor of the said estate granted a lease of mining rights in 3,228 bighas of land in village Bachra to the Karanpura Company for a term of 999 years effective from 5th of September, 1945. The Karanpura Company in their turn granted a sub-lease of mining rights in respect of the said property in favour of the Borrea Company on the 29th of April, 1948, for the said period of 999 years less two days effective from 20th of December, 1946. On 25th of September, 1950, the Bihar Land Reforms Act (Bihar Act 30 of 1950) came into force and in consequence of a notification u/s 3 of that Act, the intermediary interest of the proprietor of Ramgarh Estate including his interest in all sub-soil together with rights in Mines and minerals, whether discovered or undiscovered or whether being worked or not with such rights of a lessee of mines and minerals, vested in the State of Bihar free from all encumbrances. By a Notification No. SRO 20 dated 8th of February, 1958, published by the Central Government u/s 9(1) of the Act, mining rights in the aforesaid 3,228 bighas of land were acquired. Determination of the amount of compensation for this acquisition was and is the subject-matter of Reference Case No. 1 of 1960 and of Miscellaneous Appeal Nos. 177, 183 and 184 of 1964.

3. By an earlier notification D/- 15th of January, 1958, No. SRO 252 published by the Central Government u/s 9(1) of the Act. mining rights in 987.74 bighas of land in village Saunda and other lands of the said village and villages Giddi and Karkatta were acquired. Determination of the amount of compensation payable under the Act in respect of acquisition of 987.74 bighas of lands in village Saunda was and is subject-matter of Reference No. 1 of 1961 and of Miscellaneous Appeal Nos. 180 and 182 of 1964. The 987.74 bighas of land was part of 1147 bighas of land in village Saunda, mining rights wherein were granted to the Karanpura Company by the proprietor of the Ramgarh Estate during the pendency of the litigation already referred to, by another lease dated the 17th of June, 1948.

4. In Reference Case No. 1 of 1960, the Karanpura Company had claimed a sum of Rs. 8,89,619.00 from the Central Government by way of compensation. The Borrea Company had claimed Rs. 7,32,217.27 P. as compensation. The Union of India admitted the claim to the extent of Rs. 6,90,609.34 P. in favour of the Borrea Company and deposited the said amount before the Tribunal. It disputed the claim of the Karanpura Company to receive any compensation. In its written statement before the Tribunal, the Karanpura Company first claimed a compensation of Rs. 8,71,708.17 P. and by subsequent amendment got it raised

to Rupees 9,29,510.11 P. In its written statement before the Tribunal, the Borrea Company enhanced its claim. According to it it was entitled to compensation of Rs. 11,67,939.48 P.

5. In Reference Case No. 1 of 1961, the Karanpura Company had claimed a sum of Rs. 2,70,827.00 P. as compensation. It was subsequently revised, and the claim was reduced to Rs. 2,68,700.14 P. The Union of India admitted the claim to the extent of Rs. 1,28,982.91 P. and deposited the said amount before the Tribunal. By a subsequent petition of amendment, which was allowed by the Tribunal, the Karanpura Company again raised its claim to Rupees 2.94.204.48 P. In reply, the Union of India admitted the claim to the extent of Rupees 1,37.430.78 P.

6. In Reference No. 1 of 1960 the Tribunal held that the claimants were entitled to a compensation of Rs. 46,694.50 P. over and above the amount deposited by the Union of India. Out of this, only a sum of Rupees 4.04 P. was payable to the Karanpura Company and the remaining amount was payable to the Borrea Company. The amount payable to the Borrea Company also included interest u/s 16 of the Act on the excess amount from 8-2-1958 to 30-4-1964 the date of the award at the rate of 5 per cent. per annum.

7. In reference Case No. 1 of 1961, the Tribunal has awarded a sum of Rs. 77,875.17 P. to the Karanpura company over and above the sum of Rs. 1,374,30.78 P. deposited by the Union of India. This includes interest u/s 16 of the Act on the excess amount from 15-1-1958 to 30-4-1964 at the rate of 5 per cent per annum.

8. When the appeals were first placed for hearing before us, we formulated the following two questions. In miscellaneous appeal Nos. 177 and 184 of 1964 and referred them to a larger Bench:

(i) Whether the rights of a sub-lessee in mines and minerals vest in the State under the Bihar Land Reforms Act and a statutory new sub-lease is created in his favour by Section 10 of the said Act.

(ii) Whether holders of a lease and a sub-lease in mines and minerals from before the vesting of the estate in which their leasehold is situate any or both of them are entitled to compensation u/s 13 of the Act, with reference to expenses incurred by them before the lease or sub-lease was granted to them, in prospecting or after the grant of the lease together with salami, if any, paid by them for obtaining that lease or sub-lease before the vesting.

The Full Bench answered the first question in the affirmative. Misra, C. J., who gave a separate judgment concurring in the judgment of G. N. Prasad, J., elaborated the answer as follows:

"(1) In view of the decision of the Supreme Court in the Bihar Mines Ltd. Vs. Union of India (UOI), , it must be held that the rights of the sub-lessee in mines and minerals vest in the State of Bihar under the Bihar Land Reforms Act and a

statutory lease is created in his favour by Section 10 of the said Act. The point for consideration in that case was whether the lease granted in 1928 could be regarded as existing lease on the 25th of October, 1949, the terms of which could be modified by the Controller as he could do if the lease would be deemed to have been executed prior to the 25th of October, 1949. The estate vested in the State of Bihar under Sections 3 and 3-A of the Bihar Land Reforms Act. The observation stands thus:

"We are therefore of opinion that the statutory lease now held by the head lessee from the State Government is a new lease granted after October 25, 1949. It follows that the Controller had no jurisdiction to modify the terms of the lease which is granted by the State Government to the head lessee in view of Sub-section (1) of Section 10." G. N. Prasad, J., answered the second question as follows: "The lessee not being the holder of the mining rights on the date of the acquisition made by the Central Government is not entitled to compensation u/s 13 of the Act of 1957. The compensation payable to the sub-lessee has to be determined with reference to all the relevant items of reasonable and bona fide expenditure actually incurred by it under the various heads indicated in Sub-section (2) of Section 13 with reference to its subsisting sub-lease which was replaced by the statutory sub-lease under the Bihar Land Reforms Act, 1950. The sub-lessee, however, will not be entitled to any compensation in respect of any item of expenditure which had been incurred by the lessee before the grant of the sub-lease."

Misra, C. J., elaborated the answer to this question as follows:

"(2) So far as question No. 2 is concerned, the sub-lessee actually in possession of and working the mine is alone entitled to compensation u/s 13(2) of the Act, but the lessee whose interest has been terminated by the Bihar Land Reforms Act is not entitled to any compensation at all under that section. As to the amount of compensation payable to the sub-lessee, he can only claim compensation under the various clauses of Sub-section (2) of Section 13. But all these expenditures must have been incurred by the person interested who is deprived of his right to possess the mine and minerals, in the present case the sub-lessee. If any prospecting was done by the lessee in possession, the sub-lessee cannot claim any compensation for it independently, for, it is likely that this amount was included in the expenditure incurred in paying the salami to his lessor under Clause (i). In any view, any amount spent by the sub-lessee itself in conformity with all these four clauses alone can be recovered by it by way of compensation from the Union of India and no other. It cannot tack on to it any expenditure incurred by the lessee whose interest is no longer subsisting on account of the Bihar Land Reforms Act."

My learned Brother, Anwar Ahmad, J., another Member constituting the Full Bench, agreed with them. G. N. Prasad, J., who gave the main Judgment and discussed the matter in detail expressly held that the Karanpura Company was not entitled to any further compensation than that allowed by the Tribunal and

the Borrea Company too was not entitled to the compensation of Rupees 1,23,004.00 claimed under Clause (i) of Section 13(2) of the Act. The decisions and findings arrived at by the Full Bench are binding upon us. They are also relevant for the decision of Miscellaneous Appeal No. 183 of 1964 arising out of Reference Case No. 1 of 1960 and the two Miscellaneous Appeal Nos. 180 and 182 of 1964 arising" out of Reference Case No. 1 of 1961.

9. Learned counsel for the appellants in all the appeals have challenged the decision and the findings of the Full Bench before us and they have requested us to make a note of this fact so that they may take up these grounds before the Supreme Court if they appeal against our judgment and award. Mr. K. D. Chatterjee appearing in Miscellaneous Appeal Nos. 177 and 180 of 1964 on behalf of the Union of India has further challenged the award of the Tribunal on the ground that the amounts of compensation allowed by the Tribunal under the head minimum royalty are arbitrary, against the provisions of the Act and based on no evidence. Elaborating this contention he has submitted that u/s 13(2)(iii) of the Act, the expenditure if any, incurred by way of payment of minimum royalty could be allowed as compensation only for the year or years when there was no production of coal and there was no evidence that there was no production of coal during the years in respect whereof compensation on account of payment of minimum royalty was claimed by the Karanpura company and the Borrea company. According to him, these two companies are not entitled to any compensation under the head minimum royalty, even to what was admitted by the Union of India before the Tribunal. In Miscellaneous Appeal No. 180 of 1964 he has advanced a further argument that there was no evidence of prospecting done and, therefore, the Karanpura Company was not entitled to any compensation u/s 13(2)(i) of the Act.

10. Learned counsel for the Borrea Company in Miscellaneous Appeal No. 183 of 1964 has made the following submissions;

(i) The Tribunal ought to have allowed the company additional compensation u/s 13(4) of the Act.

(ii) It ought to have allowed more interest to the company u/s 13(2)(iv) of the Act.

(iii) The interest awarded u/s 16 of the Act has not been correctly calculated by the Tribunal in the award and the company is entitled to more interest.

(iv) The Tribunal ought to have allowed costs u/s 15 of the Act to the company to the extent of its success.

11. Learned counsel for the Karanpura company, in Miscellaneous Appeal No. 182 of 1964 has advanced the same arguments which have been advanced on behalf of the Borrea Company in Miscellaneous Appeal No. 183 of 1964. He has further advanced the following arguments:

(i) The Tribunal ought to have allowed expenses of litigation to the Karanpura

Company u/s 13(2)(ii) of the Act.

(ii) The award ought to have allowed more costs of prospecting to Karanpura Company.

(iii) The Tribunal should have also allowed compensation in respect of 159.26 bighas u/s 13(5)(c) or (d) of the Act.

12. For the reasons already recorded by the Full Bench in its judgment dated 25th of March, 1969, the Karanpura Company, the appellant in Miscellaneous Appeal No. 384 of 1964, arising out of Reference Case No. 1 of 1960, is not entitled to an amount of compensation more than that awarded to it by the Tribunal. Miscellaneous Appeal No. 184 of 1964 must, therefore, fail.

13. I next take up for consideration Miscellaneous Appeal No. 177 of 1964. As observed earlier, learned Counsel for the appellant in this appeal has urged that the compensation awarded by the Tribunal to the Borrea Company under the head minimum royalty is arbitrary, against the provisions of the Act and based on no evidence. The Tribunal in its judgment has said that the claim of the Borrea Company as to the amount of royalty paid by them up to the date of the vesting was Rs. 1,80,016.30 paise and the Central Government (the appellant) admitted the claim to the extent of Rs. 1,50,124.14 P. As stated by the Tribunal, the difference between the Borrea Company and the Central Government was that while the Borrea Company claimed that it was also entitled to the amount of minimum royalty paid from April, 1956, when the notification u/s 4 of the Land Acquisition Act was made till the date of notification u/s 9 of the Act, according to the Central Government, the Borrea Company was not entitled to any compensation on account of payment of minimum royalty after the date of the notification u/s 4 of the Land Acquisition Act which under the provision of Section 28 of the Act was to be deemed to be a notification u/s 4 of the Act. The Tribunal has overruled the contention of the Central Government on the ground that it had to make a notification u/s 9 of the Act for acquiring the mining rights. No doubt, Section 28(1) of the Act shows that every notification issued before the commencement of the Act whether by the Central Government or by a State Government u/s 4 of the Land Acquisition Act in which lands were stated to be needed for prospecting of coal seams for the development of collieries to be worked by the Union of India shall be deemed to have been issued by the Central Government u/s 4 of this Act as if this Act had been in force on the date of the notification, Section 4 of the Act provides only for a preliminary notification giving notices of the intention of the Central Government to prospect for coal in any area. Section 5 of the Act lays down effect of a notification u/s 4 on prospecting the license and mining leases existing from before. Any prospecting license authorising any person to prospect for coal or any other mineral shall cease to have effect on the issue of a notification u/s 4 and any mining lease in so far as it authorises the lessee or any person claiming through him to undertake any operation in the land shall also cease to have effect for so long as the notification u/s 4 is in force. It is important to note that a mining lease is not

completely extinguished on the issue of a notification u/s 4. It ceases to have effect only temporarily so long the notification is in force. Section 6 provides for payment of compensation for damages to the person who suffers on account of any action of the nature described in Sub-section (3) of Section 4 of the Act. Learned Counsel for the appellant was not able to place any evidence before us showing that any compensation of the nature described in Sub-section (3) of Section 4 of the Act was in fact paid or tendered u/s 6. Section 7(1) of the Act confers on the Central Government power to issue a notification of its intention to acquire land or right in and over land notified u/s 4. Section 7(2) says that if no notice to acquire land or any rights in or over such land is given under Sub-section (1) within the period allowed thereunder, i.e. three years, the notification issued u/s 4 shall cease to have effect. Section 8 lays down that objections may be filed by any person interested in any land in respect of which notification u/s 7 is issued. Then comes Section 9 which authorises the Central Government to issue declaration of acquisition. The declaration can be issued only after any objection u/s 8 has been considered. According to Section 10, the land or the rights in or over the land, as the case may be shall vest absolutely in the Central Government only on the publication in the official Gazette of the declaration u/s 9. Possession can be taken u/s 12 of the Act only after the acquisition. Section 13(2) of the Act provides for payment of compensation where rights under mining lease are acquired under this Act. Under Clause (iii) of Sub-section (2) of Section 13, the person interested is entitled as compensation the expenditure incurred by way of payment as minimum royalty during any year or years when there was no production of coal. Sub-section (4) of Section 13 says that where a mining lease ceased to have effect for any period under Clause (b) of Section 5, there shall be paid as compensation for the period during which the lease so ceased to have effect, a sum equivalent to five per centum of any such expenditure as is referred to in Clauses (i) and (iii) of Sub-section (2) for each year during which the lease remained suspended.

14. Mr. Chatterjee, learned Counsel for the appellant, has urged that the Borra Company was entitled, if at all, as compensation to only 5 per centum of minimum royalty paid by it for the period between the date of the issue of the notification u/s 4 and the publication in the official gazette of the declaration u/s 9 of the Act. On the other hand, according to learned Counsel for the Borra Company, the compensation under Sub-section (4) of Section 13 was an additional compensation to be paid over and above the compensation under Clause (iii) of Sub-section (2) of Section 13. The question has been considered in two Bench decisions of this Court (1) Union of India v. Karanpura Development Co. Ltd., 1971 BLJR 335 and (ii) East India Coal Co. Ltd. Vs. The Union of India (UOI), . In both these cases it has been held that while Section 13(2) of the Act provides for compensation where an acquisition is made u/s 9, Section 13(4) provides for compensation in such cases where no such acquisition is made and the notification u/s 4 ceases to have any effect in accordance with the provisions of Section 7 of the Act. It has further been held in these cases that Section 13(4)

does not provide for an additional compensation over and above the compensation payable u/s 13(2) of the Act. In view of the rule laid down in these decisions, contentions of learned counsel for the appellant as well the Borrea Company as to interpretation of Section 13(4) have to be rejected. The Borrea Company, therefore, is entitled to compensation u/s 13(2)(iii) of the Act in respect of minimum royalty paid by it. u/s 13(2) compensation is to be paid with reference to the notification of the declaration u/s 9 of the Act. Thus the Tribunal, though it has not discussed the question in detail, has rightly held that compensation on the basis of payment of minimum royalty was to be allowed for the entire period up to the date of the notification of the declaration u/s 9 of the Act.

15. In support of his contention that there was no evidence of the payment of minimum royalty by the Borrea Company. Mr. K. D. Chatterjee, learned Counsel for the appellant has drawn our attention to a passage in the evidence of claimant's witness No. 1 which runs as follows:

"The minimum royalty not paid for the subsequent years up to 31-12-1957 is entered in the ledgers as liability. The liability has not been discharged for the period 1-1-1949 to 4-5-1953,"

This statement by the witness is not with reference to payment of minimum royalty by the Borrea Company but by the Karanpura company. It is clear from the very next sentence in the evidence of the witness where he has said that for the period 5-5-1953 to 14-2-1958 the royalty payable was discharged by depositing the amount in Calcutta High Court in inter-pleader case filed by the Karanpura Company. So far the Borrea company is concerned, its claim that it had paid minimum royalty up to the date of the issue of the notification u/s 4 of the Act was not challenged by the Central Government; rather, it was expressly admitted and the amount claimed on that account was deposited before the Tribunal. In the circumstances, it was not necessary at all for the Borrea Company to lead any evidence that it had actually paid minimum royalty up to the 9th of April, 1956 when the notification u/s 4 was issued. For the subsequent period in respect of which the claim was challenged by the Central Government, Claimant's witness No. 1 has stated:

"Borrea paid royalty to K. D. also for the period 9th April, 1956 to 14th February, 1958."

The witness has also referred to various folios etc., in support of the aforesaid statement. Thus, there is evidence in support of the payment of minimum royalty by the Borrea Company to its lessor the Karanpura Company for the period in between the notification u/s 4 of the Act and the notification of declaration u/s 9 of the Act in respect of which its claim was challenged by the Central Government.

16. There is also no substance in the contention of learned Counsel for the appellant that no compensation at all on account of payment of minimum royalty

could be allowed as there was no evidence as to absence of production of coal. No doubt, u/s 13(2)(iii) of the Act, expenditure, if any, incurred by way of payment of minimum royalty can be allowed only for the year or years during which there was no production of coal, but in this case it is not open to the Central Government to say that there was production of coal up to the date of the issue of the notification u/s 4 of the Act. It admitted before the Tribunal the claim of the Borrea Company for compensation on the basis of payment of minimum royalty up to that date. Thus it also admitted absence of production of coal up to that date. Mr. K. D. Chatterjee has urged that u/s 14 of the Act, the Tribunal is entitled to refuse compensation even what is admitted by the Central Government. I am not inclined to accept this contention. Sub-section (1) of Section 14 says that where the amount of any compensation payable under this Act can be fixed, by agreement it shall be paid in accordance with such agreement. Sub-section (2) of that section, lays down that where no such agreement can be reached, the Central Government shall constitute a Tribunal for the purpose of determining the amount. Sub-section (4) states that at the commencement of the proceeding before the Tribunal the Central Government and the person interested shall state what in their respective opinion is the fair amount of compensation and then Sub-section (5) provides that the Tribunal shall after hearing the dispute make an award determining the amount of compensation which appears to be just. "The dispute" under Sub-section (5) means the difference between the fair amount of compensation stated by the Central Government and the person or persons interested in the compensation. It is not open either to the Central Government or to the person or persons interested in compensation to resile from the fair amount of compensation stated by them unless they make a prayer for amendment in respect thereof and that is allowed by the Tribunal. In the circumstances, it was not necessary for the Borrea Company to lead any evidence as to absence of production of coal up to the date of notification u/s 4 of the Act. So far the period after the issue of the notification u/s 4 of the Act is concerned, u/s 5(2) of the Act, which has already been referred to earlier, the mining lease of the Borrea company ceased to have effect from that date. The Central Government also could not raise coal from the mine: it could do only prospecting. Obviously, therefore, it can safely be presumed that there was no production of coal during that period. If there was really any production of coal during that period it was for the Central Government to allege that fact before the Tribunal and lead evidence in support of that allegation. The appellant having not made such allegation before the Tribunal and having led no evidence on the question before it, cannot be allowed to raise this point for the first time before this Court. Thus, there is no substance in any of the contentions of Mr. Chatterjee. Miscellaneous Appeal No. 177 of 1964 must, therefore, also fail.

17. In Miscellaneous Appeal No. 183 of 1964 one of the points raised by learned Counsel for the petitioner is that the Borrea Company is entitled to compensation regarding costs incurred in prospecting u/s 13(1) of the Act. That contention has

already been overruled by the judgment of the Full Bench and need not be examined any further. One of his other contentions for additional compensation u/s 13(4) of the Act has also been discussed earlier while dealing with Miscellaneous Appeal No. 177 of 1964. In view of the two Bench decisions of this Court, referred to earlier, that argument is also not tenable and it has to be held that the Borrea Company is not entitled to any additional compensation u/s 13(4) of the Act.

18. The contentions of learned counsel for the Borrea Company as to interest u/s 13(2)(iv) and Section 16 of the Act so far this Miscellaneous Appeal No. 183 of 1964 is concerned, may conveniently be taken up together. The amount of compensation claimed by the Borrea Company as interest u/s 13(2)(iv) of the Act was Rs. 3,70,069.92 paise. Earlier in its claim submitted to the Central Government the Borrea company had claimed Rs. 2,10,151.03 "paise under this head. The Central Government admitted the claim under this head to the extent of Rs. 2,04,269.95 paise. The Tribunal while disposing of this claim has observed:--

"The amount of interest is a matter of calculation and certainly Borrea Coal Company are entitled to interest on the amount of compensation which, they are found entitled to and allowed by the Tribunal."

The award shows as interest Rs. 2.04.269.95 paise, i.e., what was admitted by the Central Government under this head. According to learned counsel for the Borrea Company, it should have been allowed more interest. However, learned counsel has not made calculations himself, and been able to convince us on the basis of such calculations that the amount of interest u/s 13(2)(iv) shown in the award was less than what it ought to have been according to the judgment of the Tribunal. Learned counsel for the Central Government has also not been able to show us that this amount of interest was correctly calculated. Clause (iv) of Sub-section (2) of Section 13 lays down method according to which the interest is to be calculated. But in the circumstances of the case, it does not appear desirable to make the necessary calculations here for that may lead to wastage of public time. It is accordingly directed that office while preparing the award will make the necessary calculations as to interest u/s 13(2)(iv) of the Act. If the Borrea Company is entitled to an interest u/s 13(2)(iv) of the Act more than what has been shown in the award of the Tribunal, the award prepared by the office of the Court should show the higher amount of interest, if any, to which the Borrea Company is found entitled under this head. However, the calculations made by the office should be brought to the notice of learned counsel for the parties so that they may make any objection if they so desire to the calculations made by the office. After objections made, if any, are considered and decided by the Deputy Registrar and if parties do not agree with his decisions, then by us, the award should be signed by the Deputy Registrar,

19. While dealing with the question of interest u/s 16 of the Act, the learned Tribunal has observed as follows:--

"The Central Government has deposited Rs. 6,90,609.34 np. with the Tribunal u/s 17(2) of the Act. But if the Borrea Coal Company is found entitled to an amount of compensation on calculation of interest etc. higher than the amount of Rs. 6,90,609.34 NP. already deposited by the Central Government then in that case u/s 16 of the Act the Borrea Coal Company can be awarded interest on the amount in excess of the sum which the Central Government had already deposited, that is, in excess of the sum of Rs. 6,90,609.34 NP. at the rate of 5 per cent. per annum from the time the compensation became due till the excess amount, if any, is deposited by the Central Government. Under the provision of Section 16 of the Act I direct that the Central Government shall pay interest to the Borrea Coal Company at the rate of 5% per annum on the excess of the amount which the Borrea Coal Co. are found entitled to on calculation after setting off Rs. 6,90,609.34 NP. towards the total sum of compensation."

The award of the Tribunal sbows that a sum of Rs. 10,967.65 only has been allowed as interest u/s 16 of the Act. On this point also there is no error in the judgment of the Tribunal. But learned Counsel for the Borrea Company has submitted that this amount too has not been correctly calculated and the company is entitled to more interest under this head. Here also learned Counsel for the Borrea Company has not been able to convince us with reference to figures and calculations based thereon that there was any mistake in calculation of interest u/s 16 in the award. Learned Counsel for the Central Government has also not been able to show us that this interest was correctly calculated. Therefore, the observations made with regard to interest u/s 13(2)(iv) of the Act with regard to calculation thereof by the office of this Court shall mutatis mutandis apply to the interest u/s 16 of the Act as well.

20. The last point urged by learned Counsel for the Borrea Company in this appeal is with regard to costs which is awarded u/s 15 of the Act. The Tribunal though it has increased the amount of compensation than what was admitted by the Central Government as fair compensation, has not awarded any cost to any of the claimants including the Borrea Company, Learned Counsel for the company has urged that costs must follow the event and the tribunal ought to have allowed costs to the Borrea Company. In both the Bench decisions referred to earlier while dealing with the claim of additional compensation u/s 13(4) of the Act, Section 15 of the Act also came up for consideration and it has been held in both of them that award of costs u/s 15 of the Act is a matter of discretion of the Tribunal. In the circumstances of the case, I do not think that this Court can interfere with the discretion exercised by the Tribunal in ordering the claimants to bear their own costs. Thus Miscellaneous Appeal No. 133 of 1964 must also fail except with regard to interest u/s 13(2)(iv) and Section 16 of the Act which may be found due to the Borrea Company over and above the interest under these heads allowed in the award on calculations to be made by the office of this Court in accordance with the observations made in this judgment.

21. I now take up for consideration Miscellaneous Appeal No. 180 of 1964. Mr. K. D. Chatterjee in this appeal has also urged the same points with regard to minimum royalty which he has urged in Miscellaneous Appeal No. 177 of 1964. The claim of the Karanpura Company for compensation as expenditure on payment of minimum royalty u/s 13(2)(iii) of the Act was Rs. 54,677.50 P. The Central Government, i.e., the appellant of this appeal, admitted the claim to the extent of Rs. 45,368.39 paise. In this case also the Central Government disputed the claim for the period between the date of notification u/s 4 and the date of notification of declaration u/s 9 of the Act. For the reasons already stated while dealing with Miscellaneous Appeal No. 177 of 1964, the Central Government is liable to pay compensation u/s 13(2)(iii) of the Act till the date of the notification of the declaration u/s 9 of the Act. Evidence was also led on behalf of the Karanpura Company to show the payment. The only witness examined in the case on behalf of the said company has stated about the payments orally and has also proved the necessary documents. He has said:--

"The minimum royalty payable in respect of village Saunda from January 1949 upto the date of acquisition has been deposited in the Calcutta High Court along with the royalty dues in respect of other properties under the orders of the Calcutta High Court in the inter-pleader suit. The salami and minimum royalty payment in respect of Saunda property relate to 1147 Bighas."

This shows that the Karanpura company has not only paid the minimum royalty for the aforesaid period, but it was also not voluntary payment. It had to be paid under the orders of the Court. It is, therefore, entitled to get that amount as compensation. The observations made while dealing with Miscellaneous Appeal No. 177 of 1964 with regard to the arguments of Mr. Chatterjee as to the want of evidence to prove absence of production of coal also apply with equal force to his arguments in this appeal and in absence of any allegation or evidence before the Tribunal on behalf of the Central Government that there was production of coal during the relevant period, the point cannot be allowed to be raised for the first time before this Court.

22. Mr. Chatterjee has further argued in this appeal that there was no evidence of any prospecting done by the Karanpura Company and, therefore, the Tribunal has wrongly awarded compensation u/s 13(2)(i) of the Act. Mr. Chatterjee is not correct in his submission that there is no evidence that the Karanpura Company did any prospecting. In paragraph 3 of his evidence, Prabhat Kumar Banerjee, the witness examined on behalf of the Karanpura Company, has said that the lease for mining in village Saunda was obtained after the prospecting operations were carried on the strength of the prospecting license. The actual expenses were also proved by documents. Therefore, there is no substance in this contention of Mr. Chatterjee either. Mr. Chatterjee has not challenged the judgment and award of the Tribunal on grounds other than as discussed above. Miscellaneous Appeal No. 180 of 1964 must also, therefore, fail.

23. I lastly take up for consideration Miscellaneous Appeal No. 182 of 1964. In

this appeal also learned Counsel for the Karanpura Company, as stated earlier, has contended that the company was entitled to additional compensation u/s 13(4) of the Act and to costs. Similar arguments advanced on behalf of the Borrea Company in other appeals have already been discussed and not accepted. For the same reasons, which need not be repeated over again, it has to be held that the Karanpura Company is not entitled to any additional compensation u/s 13(4) of the Act, and the discretion exercised by the Tribunal in not awarding costs u/s 15 of the Act need not be interfered with.

24. Learned counsel for the Karanpura Company has advanced similar arguments for interest u/s 13(2)(iv) and Section 16 of the Act as have been advanced on behalf of the Borrea Company in Miscellaneous Appeal No. 183 of 1964. The Karappara company claimed a sum of Rs. 92,240.21 P. as interest u/s 13(2)(iv) of the Act. The Central Government admitted the claim only to the extent of Rs. 35,109.87 P. In the Reference from which this appeal arises the Tribunal has similarly disposed of this question as follows-

"The amount of interest is a matter of calculation and certainly Karanpura Development is entitled to interest on the amount of compensation which is it found entitled to and allowed by the Tribunal."

The award shows that the interest allowed u/s 13(2)(iv) is Rs. 35,109.87 P. only, the amount admitted by the Central Government. In this case learned Counsel for the Karanpura Company made certain calculations which are given below according to which the amount of interest comes to Rs. 1,08,501.02 P.:-

Interest

(i)

Proportionate cost of assignment 30.5.21

Rs. 28,841.65 Rs. 43,603.52

(ii)

Proportionate cost of stamp duty on the assignment

268.41

(iii) Proportionate cost of registration 29.44

(iv)

Proportionate cost of amount paid to Solicitor 30.5.31

563.09

860.94 1,283.85

860.94

(v)

Proportionate cost of prospecting and analysing over 36 years (from 1922 to 1956)

Rs. 32,179.00 24,141.15

(vi)

Proportionate amount of Salami 27.12.45....

Rs. 39,510.00 Rs. 21,735.00

(vii)

Proportionate amount on stamp duty 17-6.48...

4,779,44

(viii) Proportionate registration charges. 341.01

(ix)

Proportionate cost of preparation of the lease. ...

373.72

5,494.17 Rs. 5,494.17 Rs. 2,252.50

(x)

Proportionate minimum royalty" 1946 to 1958.....

Rs. 54,677.50 15,485.00

Rs. 1,08,501.02

Learned Counsel, however, admitted that the company was entitled to only half of the total amount of compensation allowed under Clauses (i), (ii) and (iii) under Sub-section (2) of Section 13, as interest permissible u/s 13(2)(iv) of the Act. These figures were supplied to us and learned Counsel for the Central Government at the stage of reply, therefore, was not able to check up these figures and in the circumstances we also did not check them up. Prima facie, it appears that the Karanpura Company may be entitled to some more interest. In the circumstances this argument is disposed of with similar directions as have been given in Miscellaneous Appeal No. 183 of 1964.

25. The claim of the Karanpura company with regard to interest u/s 16 of the Act has also been disposed of by the Tribunal in the way as it has disposed of similar claim of Borrea Company in the other reference. The award shows that an amount of Rs. 18,632.92 has been allowed as interest u/s 16 of the Act. Arguments advanced by learned Counsel for the Karanpura Company and the Central Government in this appeal on this question were similar to those advanced by learned Counsel for the Borrea Company and the Central Government in Miscellaneous Appeal No. 183 of 1964. This matter is, therefore,

also disposed of with the same directions as have been given in the aforesaid appeal on the question of interest u/s 16 of the Act.

26. As noticed earlier, three further arguments were advanced by learned Counsel for the Karanpura Company in this appeal. One of these arguments is that the Tribunal ought to have allowed expenses of litigation to the Karanpura Company u/s 13(2)(ii) of the Act. The claim of the Karanpura Company under this head was Rupees 17.606.00 paise only. This claim has been rejected by the Tribunal on the ground that there is no provision under the Act for payment of such items of expenditure. Section 13(2)(ii) of the Act on which learned Counsel for the Karanpura Company has placed reliance is as follows:--

"Any reasonable and bona fide expenditure of the nature referred to in Clauses (i), (ii) and (iii) of Sub-section (1) actually incurred in relation to the lease, together with the salami, if any, paid for obtaining the lease."

Clauses (i), (ii) and (iii) of Sub-section (1) Section 13 read as follows:--

"(i) the expenditure incurred in obtaining the licence:

(ii) the expenditure, if any, incurred in respect of the preparation of maps, charts and other documents relating to the land, the collection from the land of cores or other mineral samples and the due analysis thereof and the preparation of any other relevant records or material;

(iii) the expenditure, if any, incurred in respect of the construction of roads or other essential works, on the land, if such roads or works are in existence and in a usable condition."

27. Obviously the expenses of litigation cannot be allowed as compensation under Clauses (ii) and (iii) of Sub-section (1) of Section 13 read with Section 13(2)(ii) of the Act. Arguments were advanced, however, before us on the question whether it can be allowed as compensation u/s 13(2)(ii) read with Clause (i) of Section 13(1) of the Act. According to learned Counsel for the Central Government, this was not an expenditure incurred in obtaining the licence within the meaning of Section 13(1)(i) of the Act and, therefore cannot be allowed as compensation u/s 13(2)(ii) of the Act. On the other hand, it has been contended by learned Counsel of the Karanpura Company that the expenditure incurred in obtaining the licence is to be allowed as compensation u/s 13(2)(i) of the Act when the mining right under a lease is acquired and, therefore, for the purposes of Section 13(2)(ii) of the Act, the word "licence" u/s 13(1)(i) of the Act has to be read as lease and any expenditure incurred in relation to a lease has to be allowed as compensation over and above the salami paid in obtaining the lease. In my opinion, there is substance in this contention of learned Counsel of the Karanpura Company. The expenditure incurred in obtaining the licence has to be allowed as compensation u/s 13(2)(i) of the Act. Reference to Clause (i) of Sub-section (1) of Section 13 over again in Clause (ii) of Sub-section (2) of that section manifestly shows that the compensation to be

allowed u/s 13(2)(ii) read with Section 13(1)(i) must be different from the expenditure actually incurred in obtaining the licence. The expressions "of the nature referred to" and "in relation to the lease" in Clause (ii) of Sub-section (2) are of significance. These expressions make the import of Clause (ii) of Sub-section (2) wider and if any licensee is forced to a litigation for obtaining a lease which should have been granted to him, he is entitled as compensation to expenditure actually incurred by him in that litigation as a reasonable and bona fide expenditure of the nature referred to in Clause (i) of Sub-section (1) of Section 13 in relation to the lease as provided in Clause (ii) of Sub-section (2) of that section. The Tribunal, therefore, was not correct in observing that there was no provision under the Act for payment of such items as expenditure.

28. The litigation between the Karanpura Company and the proprietor of Ramgarh Estate started in 1940. The Subordinate Judge gave his decision in favour of the company on 30th of April, 1943. The High Court reversed the decision of the Subordinate Judge on 27th of October, 1949. The Supreme Court reversed the judgment of the High Court on 10th of April, 1956. The lease in favour of the Karanpura Company was executed by the proprietor of Ramgarh on 17th of June, 1948, during the pendency of his appeal before the High Court. The lease shows that it was granted under protest and but for the success of the company before the trial Court the proprietor of Ramgarh Estate would not have granted that lease to the Karanpura Company. The oral evidence of the only witness examined on behalf of the Karanpura Company on this question is as follows:--

"The litigation expenses had to be incurred because the Raja Bahadur had challenged the validity of the prospecting licence and had refused to grant any lease in pursuance of the prospecting licence. The Karanpura Dev Co. had to contest the suit of Raja Bahadur and in order to obtain leases on the basis of the prospecting licence, the Co., had to file suit. Both the suits were contested up to the Supreme Court.

In respect of village Saunda, the cost of obtaining licence, the expenses over prospecting operation, the expenses over litigation have been claimed on proportionate basis. The basis has been "that the total expenses over each of these heads have been divided by 49072 because 49072 bigbas are the total area of mining leasehold interest obtained under several leases by Karanpura Dev. Company on the strength of that prospecting licence. The result represents the cost per bigba. The rate of expenses per bigha has been multiplied by 987.74 which is the area in bigha acquired by the Central Govt. under this present Reference Case No. 1 of 1961."

It may be stated here that for the sake of convenience the exhibits filed in Reference Case No. 1 of 1960 were treated as exhibits in this Reference Case No. 1 of 1961 as well and not marked separately by the Tribunal. Those exhibits prove the amount actually incurred as expenditure in the said litigation. The witness examined on behalf of the Karanpura Company was cross-examined with reference to those exhibits but it does not appear that any serious attempt was

made on behalf of the Central Government to show that the amount of Rs. 17,606.00 claimed under this head was not correct. In my opinion, therefore, the Karanpura Company is entitled to aforesaid sum as compensation u/s 13(2)(ii) of the Act.

29. I next take up for consideration the argument of learned counsel for the Karanpura company that the award ought to have allowed more cost of prospecting to the Karanpura company. It appears that in the written statement as originally filed on behalf of the Karanpura company only Rs. 32,179.00 was claimed as proportionate cost for prospecting and analysing samples of coal. The company got the written statement amended and raised the claim under this head to Rs. 37,526.00. This is apparent from paragraph 23 of the judgment of the Tribunal. The following portion of paragraph 23 of the judgment of the Tribunal shows that it allowed the full claim of Rs. 37,526.00:--

"Similarly Rs. 37,526.00 np. has been claimed by the Karanpura Development as the proportionate cost of prospecting and analysing the sample of coal. In support of this amount also both oral and documentary evidence had been adduced by the Karanpura Development Company. The amount afore said has been claimed on the basis of the entries made in the Books of Account of the company. In my opinion, there is nothing to doubt regarding the amount of claim made by the Karanpura Development Company in view of the Books of Account and the oral evidence of the witnesses. In my opinion, the Karanpura Development Company is entitled to this amount also u/s 13(2)(i) of the Act. I therefore, allow the claim in respect of this amount also."

But the award, however, mentions only Rupees 32,179.00 as compensation on the " basis of proportionate cost of prospecting and analysing samples of coal. This appears to be a clerical mistake and has to be corrected. I accordingly direct that the award should be corrected by raising the amount of compensation as proportionate cost of prospecting and analysing samples of coal to Rs. 37,526.00. Interest u/s 13(2)(v) of the Act as well as u/s 16 of the Act should also be recalculated in accordance with the award prepared by this Court.

30. Another contention which has been advanced by learned Counsel for the Karanpura Company is that the Tribunal should have also allowed compensation in respect of 159.26 bighas u/s 13(5) (c) or (d) of the Act. It appears that on 25th of January, 1962, the Karanpura Company filed an additional written statement making a claim of Rs. 45,272.85 P. in respect of 159.26 bighas of land on the ground that the company had obtained on the 17th of June, 1948, mining lease in respect of 1147 bighas of land in one block but the acquisition was in respect of 987.74 bighas only out of it and as a result of the said acquisition, the remaining 159.26 bighas of land have been rendered useless. Learned Counsel for the Karanpura Company has contended that the Tribunal ought to have allowed compensation to it in respect of 159.26 bighas of land under Sub-section 5(c) or (d) of Section 13 of the Act. Relevant portion of Sub-section (5) on which learned Counsel for the company has placed reliance reads as follows:--

"Where any land is acquired u/s 9, there shall be paid compensation to the person interested the amount of which shall be determined after taking into consideration-- "(c) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of severing such land from other land;

(d) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any other manner, or his earnings."

There is no substance in the contention of learned Counsel for the Karanpura Company for the compensation which has been awarded by the Tribunal is in respect of the acquisition of mining rights. The reference itself was in respect of acquisition of mining rights. Learned Counsel for the Karanpura Company has not placed sufficient materials before us to show that land was also acquired. Even if land was acquired, in absence of a reference to it, the Tribunal could not award any compensation in respect of the land. Sub-section (5) of Section 13 deals with the acquisition of land. It is Sub-section (2) of Section 13 which deals with the acquisition of rights under a mining lease and there are no provisions in it similar to Clauses (c) and (d) of Sub-section (5). The Tribunal, therefore, could not have, and rightly has not allowed any compensation in respect of 159.26 bighas of land under Clauses (b) or (c) (sic) of Sub-section (5) of Section 13 of the Act. Really the point was not pressed before it.

31. There still remains a small point raised by learned Counsel for the Borrea Company and the Karanpura Company in Miscellaneous Appeals Nos. 183 and 182 of 1964. Though the Tribunal has awarded interest u/s 16 of the Act in the award, the interest under that Section has been calculated only upto the date of the judgment and there is no direction for future interest u/s 16 till the date of its deposit or realisation. This also appears to be a case of clerical omission in the awards. The awards should be corrected by inserting directions therein that the Borrea Company and the Karanpura Company shall be paid interest at the rate of 5% per annum on the amount of compensation awarded, excluding the amount of interest u/s 16 of the Act, till the date of the judgment of the Tribunal, up to the date of the deposit of the excess amount by the Central Government and in case of non-deposit, till the date of its realisation through court.

32. In the result, Miscellaneous Appeals Nos. 177, 180 and 184 of 1964 are dismissed. Miscellaneous Appeal No. 183 of 1964 is allowed in part on the question of interest u/s 13(2)(v) and Section 16 of the Act in the light of the observations made. Miscellaneous Appeal No. 182 of 1964 is also allowed in part in respect of proportionate litigation expenses u/s 13(2)(ii) of the Act to the extent of Rs. 17,606.00 and further proportionate cost of prospecting and analysing samples of coal to the extent of Rs. 5,347.00. It is also allowed on the question of interest u/s 13(2)(v) and Section 16 of the Act in the light of the observations made. The appellants of Miscellaneous Appeals Nos. 183 and 182 of 1964 shall also get costs so far this court is concerned in proportion to their

success in the appeals. In the circumstances of the cases, there will be no order for costs in the other three appeals, namely, Miscellaneous Appeals Nos. 177, 180 and 184 of 1964.

Anwar Ahmed, J.

33. I agree.