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North Eastern Coal Fields Vs. Union of India (Uoi) and ors.

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Court : Guwahati

Decided On : Jun-25-2004

Judge : Ranjan Gogoi, J.

Acts : Companies Act, 1956; Mines and Minerals (Development and Regulation) Act - Sections 9(a); Mines and Minerals (Development and Regulation), 1987; Mineral Concession Rules - Rule 64A

Appeal No. : WP(C) No. 2421 of 2000

Appellant : North Eastern Coal Fields

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : P. Roy, GA

Advocate for Pet/Ap. : A.K. Bhattacharjee, M.Z. Ahmed and B. Dutta, Advs.

Disposition : Petition allowed

Judgement :

Ranjan Gogoi, J.

1. The writ petitioner is a Unit of Coal India Limited, which is a Govt. Company incorporated under the provisions of the Companies Act, 1956. Though the petitioner has described itself as the owner of the several Coal Fields as

mentioned in the writ application, such description in the context of the provisions of the Mines and Minerals (Development and Regulation), 1987 (hereinafter referred to as the Act) must be understood to be in respect of a mining lease held by the petitioner for the coal Fields/Collieries in question. The petitioner is engaged in the business of mining, production and sale of coal and in the normal course thereof, the petitioner sells the coal produced to different buyers of coal.

2. Under the provisions of Section 9(a) of the Act, the holder of a mining lease is required to pay royalty at the rate specified. Such royalty is required to be paid on removal and consumption of the mineral. Under Rule 64A of the Mineral Concession Rules framed under the Act and Government Notification dated 22.7.1988, royalty is required to be paid by the 10th day of each calendar month in respect of minerals produced during the preceding month. Under the provisions of the aforesaid Rule 64A and the Notification dated 22.7.1988 lessees have been made liable to pay simple interest @ 24% (earlier 15%) on unpaid royalty with effect from 60th day of the expiry of the date fixed for payment.

3. By a Government Notification dated 25.3.1994, royalty payable in respect of coal was enhanced to the extent specified in the said Notification. Several purchasers/traders in coal including one M/s Best Coal supplies instituted writ proceedings before this Court challenging the validity of the Government Notification dated 25.3.1994. In the proceeding instituted by the aforesaid M/s. Best Coal Suppliers, which was registered as Civil Rule No. 1954/94, the following interim order dated 26.5.1994 was passed by this Court :

'Taking into account the entire facts and circumstances of the case including the above order, we are of the opinion that until further orders of this Court the demand under the impugned notification shall remain stayed subject to the following conditions :-

(i) That the petitioner goes on depositing twenty five percent of the aforesaid demand under the impugned notification by the due dates. In case the writ petition succeeds, the respondents, will return the amount along with fifteen percent interest.

(ii) In so far as the remaining seventy five percent demand under the impugned notification, the same shall remain stayed subject to the condition that the petitioner furnishes adequate security to the satisfaction of respondent No. 3 within a period of one month from the date of levying of the demand. In case the writ petition filed by the petitioner fails, the respondents will be entitled to realise the remaining seventy five percent of the demand along with fifteen percent interest from the petitioner.

In case of default of any of the aforesaid conditions laid down in this order, the stay order granted by this Court shall stand automatically vacated.'

In the aforesaid writ petitions, Coal India Limited and N.E. Coal Fields were specifically impleaded as respondents.

4. Notwithstanding the institution of the writ proceedings before this Court as noticed above and the interim order dated 26.5.1994 passed, the State Government by its letter dated 3.5.1995 made it clear to the writ petitioner/Coal India Limited that the writ petitions instituted and the interim orders passed therein does not in any way affect the liability of the lessee to pay royalty and therefore, the writ petitioner was advised to pay royalty in terms of the Notification dated 25.3.1994 failing which it was made clear that consequential liabilities as per law will follow.

5. The writ petitions filed before this Court were disposed of by this Court on 24.11.1995 by dismissing the same following the decision of the Apex Court in the case of State of M.P. v. Mahalaxmi Fabric Mills Limited (1995) Suppl. 1 SCC 642. During this period, as it appears from the records of the case, there was several rounds of discussion between the Government of Assam and Coal India Limited as to the liability of the Coal India to pay 75% of the royalty, which was stayed by this Court at the instance of the writ petitioner as noted above. Thereafter, it appears that the aforesaid portion of the royalty for the months of April 1994 to July 1995, which fell into arrears, was paid by Coal India Limited and the entire of the royalty due was cleared by Coal India Limited sometime in the month of March 1996. However, a delay in deposit/payment of royalty had occurred on account of which the State Government had invoked its power under Section 64A of the

Rules and had demanded an amount of Rs. 1,24,23,041/- on account of interest on delayed payment of royalty. The aforesaid demand, as available from the record, is contained in a letter dated 23.2.1996, which has been further reiterated in a subsequent letter dated 6.1.1998. Aggrieved, the instant writ petition has been filed essentially praying for interference with the orders imposing interest on the writ petitioner.

6. Mr. A.K. Bhattacharyya, learned senior counsel for the writ petitioner has sought to support the challenge made by contending that failure on the part of the lessee to deposit the royalty within the time stipulated does not automatically attract levy of interest. According to the learned counsel, the crucial words in Rule 64A of the Rules are, 'may ..... charge simple interest'. According to the learned counsel, Rule 64A of the Rules merely enables the State Government to levy interest. There is no compulsive operation of Rule 64A on a default occurring on the part of the lessee to deposit the royalty in time. Learned counsel has further argued that Rule 64A must be construed as conferring a discretion on the State Government to decide whether interest is required to be levied or not. It is incumbent on the part of the concerned authority to decide the said question by having regard to the all the facts and circumstances in which the default had taken place.

Arguing further, Mr. Bhattacharyya, learned senior counsel for the petitioner has contended that on account of the Court cases filed by the purchaser/traders of coal and because of the interim orders passed therein, the petitioner did not receive payment of the royalty on coal sold. Though the statutory liability to pay royalty is on the petitioner as the producer of coal holding a mining lease, yet in terms of the prevailing practice such royalty was to be realised from the purchasers and then deposited into the Government account. Because of the interim orders passed, the purchasers had not deposited 75% of the royalty with Coal India Limited on account of which the payments made against the aforesaid 75% of the royalty due were from the coffers of Coal India Limited. The royalty as due has been fully paid though with some delay. Having regard to the reasons for which such delay has occurred, the State, it is contended, ought to have exercised its discretion to waive the interest. Learned counsel has further submitted that in any case the entire of the royalty has been paid by the Coal India Limited out of its

own funds and the writ petitioners at whose instance the interim orders were passed by this Court and who were obliged to make the necessary payment consequent to the disposal of the writ petitions have since disappeared. In such a situation, it would not be fair and correct to burden the writ petitioner with the additional responsibility of interest which, unless this Court intervenes, will have to be paid from the funds earmarked against other projects. Mr. Bhattacharyya, learned senior counsel for the petitioner, has also taken the Court through the various documents enclosed to the additional affidavit filed on behalf of the writ petitioner to contend that even the Officers of the State Government, at different levels, have accepted the fact that the reasons on account of which delay of deposit of royalty had occurred are genuine and bonafide.

7. The arguments made on behalf of the writ petitioner have been resisted by Mr. P. Roy, learned Govt. Advocate, Assam. According to Mr. Roy, the stand of the State Government that the writ petitioner is under an obligation to pay the royalty at the enhanced rate notwithstanding the interim orders passed by this Court, was made known to the writ petitioner all along. The interim orders passed by this Court did not envisage the non-payment of royalty by the Coal India Limited, which liability has been cast on Coal India Limited by the Statute. Learned Govt. Advocate, Assam has further argued that in the present case, the petitioner has admitted the delay in the matter of payment of royalty and, therefore, there is no reason as to why the levy of interest should receive any interference of this Court. The power to levy interest has been rightly exercised and the records produced show ample consideration of the case of the petitioner in the light of all relevant facts and circumstances, prior to the decision to impose/levy the interest in question.

8. The moot question that arises for determination in the present case, on the arguments advanced, is whether levy of interest on delayed payment of royalty by the petitioner is an automatic consequence by operation of law or whether such levy of interest is to be by a separate action by the State acting under the previsions of Rule 64A of the Rules.

9. There can be no manner of doubt that royalty is a compulsory exaction of money by a public authority and is not a payment received for services rendered. Royalty, therefore, would pertake the character of a tax as held by the Apex Court in the case of District Council of the Jowai Autonomous Distt. Jowai and Ors. v. Dwet Singh Rymbai, etc., reported in (1986) 4 SCC 38, albeit, in a different context. Situations where levy of interest on delayed payment of tax is automatic and interest payable is an accretion to the tax liveable are not unknown but the above consequences will follow depending on the terms and the language of the Statute in question. In a given case, if the Statute contemplates levy of interest automatically on the default of an assessee to pay the tax due within the time stipulated, interest must be held to be an accretion to the tax and no separate order for levy of such interest would be called for. The levy of interest in such cases would be automatic and by operation of law. In order to determine whether the above situation would be applicable insofar as levy of interest under Rule 64A is concerned, a careful scrutiny of Rule 64A and the conjoint provisions of the rules would be called for. Under the provisions of the Act, a statutory obligation is cast on the holder of a mining lessee to pay royalty within a specified time. The consequence of non-payment of royalty within the stipulated time would attract the provisions of Rule 27(5) which may result in determination of the lease and forfeiture of the security deposit. Alternatively under Rule 64A levy of interest is visualised. Both the possible courses of actions are without prejudice to each other and the language of Rule 27(5) and Rule 64A appears to be suggestive of the fact that the actions contemplated and the consequences intended are left to the discretion of the authority. No obligation is cast by the Statue on a leaseholder to pay interest on his failure to deposit royalty within time. Rather, though the royalty is to be paid by the 10th day of the succeeding month, levy of interest is contemplated only upon expiry of 60 days of the date fixed for payment of royalty. That apart, the language of Rule 64A would seem to indicate that what has been conferred is an enabling power on the State Government to levy interest at the rate specified in the event of a default in the matter of payment of royalty by a lease holder. No compulsive obligation to pay interest on a default occurring is discernible in Rule 64A. On the contrary, the said provision of the Rules had vested in the State Government a power to levy interest. This Court, therefore,

understands that it would be right to hold that under the provisions of the Rules, levy of interest is not automatic consequent to a default occurring on the part of the leaseholder. Rule 64A must, therefore, be held to have conferred a power and discretion in the authority to levy interest on delayed payment of royalty and the natural concomitant to such power would be to waive its exercise in a appropriate case, if the facts so justify.

10. Adverting to the facts of the present case, what this Court has noticed is that royalty to the full extent though deposited by the petitioner, a delay in such deposit has occurred which according to the petitioner was on account of pendency of the Court cases filed by the purchasers of coal and the interim orders passed by the Court in this regard. Several correspondences indicating the views of different authorities of the State that the delay on the part of the petitioners to deposit the royalty was on account of genuine and bonafide reasons have also been placed before the Court. The hardship that will be caused to the petitioner in the event it is saddled with the liability to pay interest has also been pointed out. Notwithstanding the above facts placed before the Court, this Court is not inclined to consider the relevance or the weight of the materials placed, in order to determine the liability of the petitioner to pay interest, inasmuch as the power to levy or not to levy interest, has been held to have been vested by the Statute in the State Government. It is, therefore, for the State Government to exercise the power in a manner that may be considered appropriate and the role of the Court is only to scrutinise the fairness and reasonableness of the State's action in this regard.

Whether the action of the State in the present case in holding the petitioner to be liable to pay interest is the result of a fair and judicious approach on the part of the State authority and whether the said decision had been arrived at after a due and proper consideration of all relevant facts is something that is not disclosed by the materials on record. No affidavit has been filed by the State placing before the Court the materials, which had been considered prior to the decision taken. The record produced also do not reveal a very satisfactory picture. At one point of time, it is revealed, the opinion of the Legal Remembrance was sought in the matter. The said opinion of the Legal Remembrance is not available in the records produced. Whether the subsequent actions of the authority were guided by the

opinion of the Legal Remembrance is also not disclosed. In such a situation, on the materials available, this Court, therefore, is inclined to hold that the decision making process does not appear to be substantiated by an adequate consideration of all relevant materials that would be necessary to confer legitimacy to the decision taken. In such a situation, the only logical course of action that would be left open to the Court is to interfere with the decisions contained in the communications dated 23.2.1996 and 6.1.1998 by setting aside the same and by requiring the State authority to take a frees/de nova decision in the matter of the liability of the petitioner to pay interest under Rule 64A of the Mineral Concession Rules for the delay on its part in making payment of royalty for the period from April 1994 to July 1995. The State will be free to decide the matter in any manner as may be considered appropriate having regard to the totality of the facts of the case and within such time frame as may be considered suitable.

11. Consequently and in view of the discussions above, the writ petition shall stand allowed to the extent indicated.

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