

Central Coal Fields Ltd. Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Oct-11-2002

Reported in : [2003(1)JCR304(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 21 and 30; Mineral Concession Rules, 1960 - Rule 27; Coal Mines Nationalization Act, 1972; [Constitution of India](#) - Article 226

Appeal No. : C.W.J.C. No. 3198 of 1993(R)

Appellant : Central Coal Fields Ltd.

Respondent : State of Bihar and ors.

Advocate for Def. : R.S. Mazumdar, Adv. and; G.A.,; Atanu Banerjee, Adv.

Advocate for Pet/Ap. : M.M. Banjerjee, Adv.

Disposition : Application dismissed

Judgement :

M.Y. Eqbal, J.

1. The petitioner has challenged the legality and validity of the certificate proceeding initiated by the respondents for recovery of cess and royalty for the

minerals fire-clay extracted in course of mining activities.

2. The petitioner's case is that the Central Coal Field Limited is a Government Company and carrying on mining activities in the coal mines area having been nationalized under the Cooking Coal Mines Nationalization Act, 1972 and Coal Mines Nationalization Act, 1973. The coal mines were acquired under the aforesaid Act and all rights and obligations are governed by the said Act. It is contended that since no lease in respect of mineral fire clay was ever granted by the respondents, they have no right or jurisdiction to demand royalty and cess in respect of mineral fire clay.

3. The respondents case is that cess and royalty has been demanded on account of extraction and removal of fire-clay by the petitioner, in course of extraction of coal from different coal mines. It is contended that the petitioner-company while extracting coal also extracts fire clay which is found with coal deposits. The petitioner being the deemed lessee for extraction of coal only has no legal right to extract and remove any other mineral during the course of mining operation unless a mining lease with respect to the mineral is given by the competent authority. It has been found that huge quantity of fire clay is being extracted the thrown away into the debris along with waste materials of the mines product resulting in destruction of huge quantity of fire clay.

4. Having regard to the rival contention of the parties the question that falls for consideration is whether the respondents is empowered and entitled to recover price, rent, royalty or cess from the petitioner in respect of fire clay which is being extracted in course of extraction of coal by the petitioner.

5. There is no dispute that under the provisions of two Nationalizations Act the petitioner is a deemed lessee in respect of the mines. Section 21 of the Mines and Minerals (Regulation and Development) Act, 1957 empowers the Government to recover the price, rent and royalty from the person raising any mineral without any lawful authority. Section 21 of the Act reads as under :--

'21. Penalties.--(1) Whoever contravenes the provisions of Sub-section (1) of Section 4 shall be punished [with imprisonment for a term which may extend to

two years, and with fine which may extend to ten thousand rupees' or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year, or With fine which may extend to five thousand rupees or with both, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of Sub-section (1) of Section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorized in this behalf by that Government and the State Government or such authorized authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, without any lawful authority, any mineral from any land, and for that purpose, brings on the land any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax as the case may be, for the period during which the land was occupied by such person without any lawful authority.

6. As noticed above the petitioner is a deemed lessee in respect of the coal mines and it has full authority to extract coal from the mines. In exercise of power conferred by Section 30 of the Mines and Mineral (Regulation and Development) Act, 1957 the Central Government framed rules known as Mineral Concession Rules, 1960. Section 27 of the said rule lays down terms and conditions which shall be attached with every mining lease. The relevant provisions of Rule 27 are quoted hereinbelow :--

27. Conditions.--Every mining lease shall be subject to the following conditions,

(a) the lessee shall report to the State Government the discovery in the leased area of any mineral not specified in the lease, within sixty days of such discovery;

(b) if any mineral not specified in the lease is discovered in the leased area, the lessee shall not win and dispose of such mineral unless such mineral is included in the lease or a separate lease is obtained therefore;

(c) the lessee shall pay, for every year, except the first year of the lease such yearly dead rent [at the rates specified in the Third Schedule] [of the Act] and if the lease permits the working of more than one mineral in the same area, the State Government shall not charge separate dead rent in respect of each mineral :

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount but not both.

(d) the lessee shall also pay for the surface area used by him for the purpose of mining operations, surface rent and water rate at such rate not exceeding the land revenue, water and cesses assessable on the land, as may be specified by the State Government in the lease.'

7. From bare perusal of Rule 27 it is clear that every lessee is bound to report to the Government about the recovery of any other minerals and obtain lease before taking out that mineral from the mining area. In other words, as per provision of the aforesaid rule every lessee has to report about the discovery of any other minerals and obtain lease before taking out that mineral from their area.

8. It is not the case of the petitioner that as and when fire- clay was extracted while extracting coal they immediately informed the respondents or took any step for taking suggestion from the respondent as to the next step that would be done in respect of fire-clay. In absence of compliance of Rule 27 of the Mineral Concessions Rule by the petitioner, I am of the opinion that the claim made by the respondents for payment of royalty in respect of fire-clay extracted is justified.

9. The law has been well settled that royalty is payable on the quantity of mineral extracted. Section 9(1) of the Mines and Minerals (Regulation and Development) Act, 1957 specifically provides that the holder of mining lease shall have to pay royalty in respect of any mineral removed or consumed by him or his agent, manager, employee, contractor or Sub-lessee from the leased area. Section 9 of the Act reads as under :--

'Royalties in respect of mining leases.--(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or Sub-lessee from the leased area after such commencement, at the rate from the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed by or consumed by him or by his agent, manager, employee, contractor or Sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.'

10. In the case of State of Orissa and Ors. v. Steel Authority of India Ltd., AIR 1998 SC 3052, while interpreting Section 9 of the Act observed :

'It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the process that the mineral said to undergo before the same was removed from leased area. Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy or royalty has to be accepted. We are unable to agree with the distinction made by the High Court and conclusion that the royalty can be levied only on the quantity of mineral obtained after processing.'

11. In the instant case, the respondents have initiated proceeding for recovery of cess and royalty. In view of the law settled by the Supreme Court there is no question for recovery of any cess by the respondents. However, in the facts of the case, the respondents are entitled to royalty in respect of the fire- clay extracted by the petitioner while extracting coal during mining activities.

12. The next question that falls for consideration is as to how much the amount of royalty actually payable by the petitioner in respect of extraction of fire-clay. It is, therefore, desirable that the District Mining Officer, Hazaribagh should make a fresh assessment with regard to the amount of royalty payable by the petitioner for the fire-clay extracted by the petitioner and such calculation shall be made after giving opportunity of hearing to the petitioner. After such calculation is made, a fresh demand will be raised by the District Mining Officer, Hazaribagh and the same shall be paid by the petitioner within a period of 3 months from the date of receipt of demand.

13. In the light of the direction issued by this Court the certificate proceeding shall remain pending before the Certificate Officer so that on the failure of the petitioner to pay the demand of royalty that may be made by the respondents, later would continue the certificate proceeding by making necessary amendment in the requisition of demand.

14. With the aforesaid direction this writ application is dismissed.