(2006) 07 BOM CK 0056

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No. 1129 of 1998

Associated Cement Companies Ltd.		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: July 20, 2006

Acts Referred:

- Mineral Concession Rules, 1960 - Rule 64A

Citation: (2007) 1 BomCR 223 : (2006) 5 MhLj 717

Hon'ble Judges: R.C. Chavan, J; D.D. Sinha, J

Bench: Division Bench

Advocate: S.V. Sohoni, for the Appellant; S.C. Mehadia and Ahirkar, Assistant Government Pleader, for the Respondent

Judgement

D.D. Sinha, J.
Heard Shri Sohoni, learned Counsel for the petitioner, Shri Mehadia, learned Counsel for the respondent No. 2, and Shri Ahirkar, learned Assistant Government Pleader for the respondent No. 3.

2. Shri Sohoni, learned Counsel for the petitioner, submitted that the petitioner-Company is questioning legality and propriety of the communication dated 16/18-4-1996 claiming interest at the rate of 24% per annum on the ground that the petitioner has defaulted to pay royalty on coal in accordance with Rule 64-A of the Mineral Concession Rules, 1960. It was contended that though validity of the said Rule was also challenged in the present petition, however, during pendency of the petition, the Apex Court declared the said Rule constitutionally valid and, therefore, challenge to validity of the said Rule no more survives.

3. Learned Counsel Shri Sohoni submitted that though respondents under Rule 64-A of the Mineral Concession Rules, 1960 are entitled to impose interest at the rate of 24% per annum in respect of delayed payment of royalty, however, that is the upper limit of interest leviable on the delayed payment of royalty and it is not that in all cases, the respondents should impose maximum interest at the rate of 24% per annum on the delayed payment of royalty and in a given case, the respondents can impose interest less than 24% per annum. In order to support the contention, reliance was placed on the judgment of the Apex Court in South Eastern Coalfields Ltd. Vs. State of M.P. and Others, .

4. It was also contended by learned Counsel Shri Sohoni that the Apex Court in para (28) of the judgment in South Eastern Coalfields Ltd.''s case (cited supra), upheld the finding recorded by the High Court that entitlement to payment of interest at the rate of 24% per annum would be excessive and ends of justice will be met if the rate of interest is reduced from 24% per annum to 12% per annum. It was submitted that in the present case, same benefit in rate of interest may be extended to the petitioner-Company and the demand of interest made by the respondents at the rate of 24% per annum on the delayed payment of royalty may be reduced to 12% per annum.

5. On the other hand, Shri Mehadia, learned Counsel for the respondent No. 2, supported the impugned communication and contended that facts and circumstances involved in the present petition are entirely different and distinct than the one involved in the proceedings before the Madhya Pradesh High Court wherein Madhya Pradesh High Court reduced rate of interest from 24% per annum to 12% per annum. It was submitted that in para (28) of the judgment in the case of South Eastern Coalfields Limited (cited supra), the Supreme Court has specifically observed that though Supreme Court has not interfered with the view expressed by the Madhya Pradesh High Court, however, the said concession was confined to the facts of that case and shall not be construed as a precedent for overriding Rule 64-A of the Mineral Concession Rules, 1960. It was, therefore, submitted that the petitioner is not entitled to get the said benefit in the rate of interest in the'' present case.

6. Shri Ahirkar, learned Assistant Government Pleader for the respondent No. 3 more or less adopted the arguments canvassed by Shri Mehadia, learned Counsel for the respondent No. 2, and contended that the petitioner is not entitled to get benefit in the rate of interest in view of provisions of Rule 64-A of the Mineral Concession Rules, 1960.

7. We have considered the various contentions canvassed by the respective Counsel and perused provisions of Rule 64-A of the Mineral Concession Rules, 1960 as well as decision of the Apex Court cited and relied by the learned Counsel for the petitioner. In the instant case, it is not in dispute that Rule 64-A of the Mineral Concession Rules, 1960 has been declared constitutionally valid by the Apex Court and, therefore, it is evident that the respondents are entitled to charge interest at the rate of 24% per annum on the delayed payment of royalty. In para (8) of the judgment in the case of South Eastern

Coalfields Limited (cited supra), the Apex Court has considered the procedure prescribed for payment of liability of interest by the Coalfields to the State Government as well as by the consumers/purchasers to the Coalfields and observed thus:

(8) The questions arising for decision in this batch of appeals may, for facilitating discussion, be grouped into two, as under:

(i) The liability of Coalfields to pay interest to the State Government, and

(ii) The liability of the consumers/purchasers to pay interest to the Coalfields.

The observations of the Apex Court in para (15) of the judgment are also relevant, which read thus:

In sum, we are of the opinion that the Coalfields, i.e. The mining leases are bound to pay interest as per the terms of mining leases incorporating the clause for payment of interest consistently with Rule 64A of the Mineral Concession Rules, 1960.

The Apex Court in para (22) of the judgment has observed thus:

We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty, which is a constituent part of the price of the mineral for the period for which it remained unpaid. The justification for award of interest stands fortified by the weighty factor that the Coalfields themselves are obliged to pay interest to the State on such amount. It will be a travesty of justice to hold that though the Coalfields must pay the amount of interest to the State, but the consumers/purchasers in whose hands the money was actually withheld be exonerated from liability to pay the interest.

The above referred observations made by the Apex Court make it implicitly clear that the Coalfields are required to pay interest to the State in terms of Rule 64-A of the Mineral Concession Rules, 1960 and, therefore, there is no propriety in reducing rate of interest on delayed payment of royalty by the consumers. Hence, the demand made by the respondents asking the petitioner-Company to pay the interest at the rate of 24% per annum on the delayed payment of royalty is sustainable in law in view of Rule 64-A of the 1960 Rules.

8. So far as case of South Eastern Coalfields Limited (cited supra) is concerned, in para (28) itself the Apex Court has specifically observed that upholding decision of the Madhya Pradesh High Court whereby rate of interest was reduced to 12% per annum from 24% per annum on the delayed payment of royalty does not amount to laying down a judicial precedent or general principle of law vis-a-vis Rule 64-A of the Mineral Concession Rules, 1960 since decision of the Madhya Pradesh High Court was rendered in a peculiar

facts and circumstances of the case. Hence, these observations do not support the claim of the petitioner.

9. The petition suffers from lack of merit and hence, the same is dismissed. No order as to costs.