In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No.502 of 2019

Mahabali Techno Engineers
Vs.
Eastern Coalfields Limited and others

With

WPO No.503 of 2019

Maheshwari Fuels & Allied Industries
Vs.
Eastern Coalfields Limited and others

For the petitioner	:	Mr. Subrata Dey, Mr. Subrata Mukherjee
For the respondents	:	Mr. Saptansu Basu, Senior Advocate
Hearing concluded on	:	07.01.2021
Judgment on	:	12.01.2021

The Court:

1. The two writ petitions are taken up for hearing, since the respective challenges pertain to the same action on the part of the respondents and are governed by the same judgments of the Supreme Court.

2. The respective petitioners contend that the Supreme Court, in *Ashoka Smokeless Coal India (P) Ltd. and others vs. Union of India and others,* reported at *(2007) 2 SCC 640*, had declared the scheme of e-auction introduced by the Coal India Limited, governing its subsidiaries including the Eastern Coalfields Limited (respondent no.1) as well, was scrapped as *ultra vires* Article 14 of the Constitution of India.

3. Subsequently, by its judgment in *Eastern Coalfields Limited vs. Tetulia Coke Plant Private Limited and others,* reported at *(2011) 14 SCC 624*, the Supreme Court, based on the judgment in *Ashoka Smokeless (supra)*, had affirmed the order of a Division Bench of this court, confirming an order of a Single Judge directing refund of the excess amount, received by the respondent no.1 pursuant to auction sale under the e-auction scheme, to the bidder.

4. It is argued that, since the e-auction scheme itself was struck down as *ultra vires* the Constitution, the sales made thereunder were rendered illegal and thus, refund of the excess amount over the notified amount to the participants in the tender had to follow as a necessary corollary. In the present cases, such refund was not given to the petitioners by respondent no.1, leading to the present writ petitions.

5. Learned senior counsel appearing for the respondent-authorities argues that the present petitioners were not parties to the proceedings before the Supreme Court in either of the cases, as referred to above, and/or before this court in the previous proceeding. Thus, the petitioners are not entitled to derive benefit under the said judgments.

6. It is contended that the refund of such excess amount to the petitioners would lead to unjust enrichment, since the petitioners had already shifted the price burden to the petitioners' buyers and ultimate users.

7. That apart, it is argued, the present claims are hit by limitation, since there was inordinate delay in filing the writ petitions even after the e-auction scheme was declared *ultra vires.*

8. Learned senior counsel appearing for the respondent-authorities further submits that the present petitioners never quantified their claim of refund. Such claim, having been made for the first time in the writ petitions, ought not to be allowed.

9. *Ashoka Smokeless (supra)* dealt with validity and/or legality of a scheme framed by Coal India Limited for sale of coal by electronic auction (e-auction). It was held in paragraph no. 161 thereof that the effect of discrimination between the two categories of consumers was differential treatment without rational classification and stood *ultra vires.* The Supreme Court held that, whereas consumers of coal/coke in the core sector would not only be entitled to allotment of coal at a price fixed by the coal companies but would also be entitled to take part in e-auction, the non-core sector consumers, although as linked consumers formed a separate and distinct class vis-à-vis the traders, would not be entitled to the benefit of obtaining coal at a fixed price, thus, creating a discrimination between the two categories of consumers. On such premise, the e-auction was set aside.

10. The effect of such *ultra vires* declaration was discussed in *Eastern Coalfields Limited (supra)*, wherein the Supreme Court held, by relying on *Ashoka Smokeless (supra),* that any action taken pursuant to the said scheme, which had been declared *ultra vires,* is also illegal and null and void. Since the entire scheme was set at naught by the Supreme Court, whatever action was taken following the said e-auction by the coal company had also been declared to be illegal and, therefore, the coal company had become liable to refund the entire money which was collected in excess of the notified price. This, it was held by the Supreme Court, was the consequence of quashing of the scheme.

11. In *Eastern Coalfield (supra),* the Supreme Court turned down the contention that the effect of the decision of *Ashoka Smokeless (supra)* would be restricted only to those cases which were before the court and not for all cases which were pending in different High Courts at that stage.

12. Although the present writ petitions were not pending before any High Court at that stage, the principle embodied in *Eastern Coalfields (supra)* is applicable to the present cases as well, in view of the basic premise of the reported judgments, that any action taken following the e-auction which had been set at naught were also illegal, making the coal company liable to refund the entire money collected in excess of the notified price. Thus, the argument that the petitioners were not parties to the previous matters before the Supreme Court and this court and that the present writ petitions were not filed at that stage, cannot be a deterrent in granting similar relief to the petitioners as granted by the Supreme Court previously.

13. In *Eastern Coalfields Limited (supra),* although one of the grounds on which the Supreme Court refused the argument of unjust enrichment was that such a plea had not been taken before any of the courts in those matters, it was not the sole ground for directing refund. Even apart from the ground of lack of pleadings, the Supreme Court proceeded on the premise that refund of the excess amount was a necessary consequence of the e-auction scheme itself being declared *ultra vires* and set aside. It is well-settled that a party cannot taken undue advantage of its own wrong or be seen to reap the benefits of an illegal action. Thus, the argument of unjust enrichment is not a sufficient defence against the liability of the respondent no.1 to refund the excess amount collected by the illegal e-auction.

14. As regards limitation, the refunds-in-question are not a mere money claim of the petitioners but the statutory liability of the respondent no.1. Article 141 of the Constitution of India specifically stipulates that the law declared by the Supreme Court shall be binding on all courts within the periphery of India. Thus, the declaration of *ultra vires* in *Ashoka Smokeless (supra)* binds the respondent no.1 with legal liability to refund the amounts elicited through e-auction process, the process itself having been declared illegal. Hence, such liability flows from the receipt of the excess amount of the respondent no.1 pursuant to the e-auction and continues, till it is refunded, *de die in* diem, furnishing a continuing cause of action to the petitioners. The Limitation Act is not applicable, since the claim of refund of excess amount is not a mere money claim arising from an individual transaction between the parties but stands on a much higher footing, being the unconstitutionality of the e-auction process as declared by the Supreme Court. Respondent no.1, thus, cannot shirk the liability to refund on the ground of limitation or delay on the part of the petitioners. The right to claim refund, in fact, arises under the Constitutional mandate of Articles 14 and 141 of the Constitution and are unfettered by the statute of limitation.

15. As regards the pleading of unjust enrichment, in the present cases, respondent no.1 has relied on the fact that the present petitioners were not parties to the proceedings in which the reported judgments were passed. However, the Supreme Court sufficiently clarified in *Eastern Coalfields Limited (supra)* that such argument could not be accepted. In the said case, where respondent no.1 was the appellant, it was categorically held that the effect of the decision of *Ashoka Smokelss (supra)* would not be restricted only to those cases which were before the Supreme Court but would be applicable to all cases which were pending in different High Courts at that stage. Carrying such observation to its logical conclusion, the principle cannot be restricted even to the matters pending before the High Courts at that stage, since those matters were also not decided individually in *Eastern Coalfields Limited* or *Ashoka Smokeless (supra).* If the principle extends to the then pending matters in several High Courts which were not decided by the Supreme Court in the writ petitions, there is no plausible reason why the same ratio cannot be applied to cases where no writ petition had been filed at that point of time. The unconstitutionality of the e-auction rendered all consequent action, including receipts of sale proceeds by the respondent no.1, unlawful. Thus, the prior filing of a writ petition was not a pre-requisite of the applicability of the principle to parties who equally suffered due to such illegal e-auction.

16. The other aspect of the argument of unjust enrichment, as advanced by the respondent no.1 in the present writ petitions, is that the price burden was shifted by the petitioners to their consumers. 'Unjust enrichment' is a benefit derived by an entity without having a legal right to do so at the expense or loss of some other party. In the present cases, the component 'unjust' is absent as far as the petitioners' claim of refund is concerned, at least vis-à-vis respondent no.1. The argument of shifting of price burden, if it gave rise to unjust enrichment at all, would be between the petitioners and their consumers. It might lie in the mouth of the consumers that the petitioners got unjustly enriched at the consumers' expense. However, such proposition is not attracted *inter se* the petitioners and respondent no.1, since the latter, if anyone, was unjustly enriched due to the e-auction. Thus, the principle of unjust enrichment is not available as a defence to the claims of the present petitioners.

17. Accordingly, WPO No.502 of 2019 and WPO No.503 of 2019 are allowed, thereby directing the respondents to refund the excess amount of e-auction sale proceeds over the notified price, derived from the respective e-auctions, to the respective petitioners. The petitioners shall furnish to respondent no. 1 the details of such excess payments, along with requisite supporting documents, at the earliest. Respondent no.1 shall scrutinize such documents and disburse the actual amount of excess of e-auction sales proceeds over the notified price to the petitioners within one month of submission of such documents and claims.

18. It is, however, made clear that this judgment will not preclude the petitioners' consumers during the relevant period from raising money claims against the petitioners on the ground of unjust enrichment, for the payments of excess price, if any, by such consumers to the extent such excess payments commensurate with the amount refunded to the petitioners by respondent no.1. If such claims are made, the concerned court/forum receiving such claims shall adjudicate on the claims on their own merits in accordance with law.

19. There will be no order as to costs.

20. Urgent certified website copies of this order shall be provided to the parties upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)