

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(ORIGINAL SIDE)

(Through Video Conference)

Reserved on: 11.02.2022
Pronounced on: 30.03.2022

APOT 36 of 2021
With
WPO 502 of 2019
I.A. No. GA 2 of 2021

Eastern Coalfields Limited

...Appellant

-Vs-

Mahabali Techno Engineers and Ors.

...Respondents

AND

APOT 37 of 2021
With
WPO 503 of 2019
I.A. No. GA 2 of 2021

Eastern Coalfields Limited

...Appellant

-Vs-

Maheshwari Fuels and Allied Industries and Ors.

...Respondents

Present:-

Mr. Manik Das,
Mr. Tanushree Dasgupta, Advocate
... for the Appellant in APOT 36 of 2021
and APOT 37 of 2021

Mr. Srijib Chakraborty,
Mr. Sunny Nandy,
Mr. Aditya Mondal, Advocates
... for the Respondents in APOT 36 of 2021
and APOT 37 of 2021

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. This order will govern the disposal of APOT No. 36 of 2021 and APOT No. 37 of 2021 as in both these appeals, the respondents in the writ petitions have challenged the common order passed by the learned Single Judge on 12th January, 2021 in WPO 502 of 2019 and WPO 503 of 2019. Learned Single Judge has allowed the writ petitions and has directed the appellants to refund the respondent writ petitioner's excess amount of e-auction sale proceeds over the notified price derived from the respective e-auction.

2. The facts in nutshell are that the Union of India had enacted a scheme in the year 2004-05 for sale of coal by electronic auction (e-auction) inter alia providing the manner and the mode relating to sale, distribution and pricing of various grades of coal. Various writ petitions were filed in different High Courts challenging the validity of the scheme and finally the matter reached to the Hon'ble Supreme Court in the case of **Ashoka Smokeless Coal Industries (P) Ltd. and Others vs. Union of India and Others** wherein on 12th December, 2005, a common interim order was passed directing the writ petitioners to go on paying the price in addition to the notified price of coal at 33 1/3 % of the enhanced price, each time they claim supply of coal and to furnish security for the balance 66 2/3 % of the enhanced price of coal fixed in the scheme. By the judgment dated 1st December, 2006, the Hon'ble Supreme Court decided the matter in the case of **Ashoka Smokeless Coal India (P) Ltd. and Others vs. Union of**

India and Others reported in (2007) 2 SCC640 and allowed the writ petitions holding that the e-auction scheme was violative of Article 14 of the Constitution and declaring the same as ultra vires. Subsequently, by order dated 30th October, 2007 in the matter of **Somal Pipes Private Limited vs. Coal India Limited and Others** reported in (2009) 16 SCC 721 in Transfer Petitions/Contempt Petitions, the Hon'ble Supreme Court directed refund of excess amount to the writ petitioners for which the sureties/bank guarantees were furnished. Based upon the judgment of the Hon'ble Supreme Court in the case of **Ashoka Smokeless Coal India (P) Ltd. (Supra)** several writ petitions were filed in various High Courts and the matter again reached to the Hon'ble Supreme Court in the matter of **Eastern Coalfields Limited vs. Tetulia Coke Plant Private Limited and Others** reported in (2011) 14 SCC 624, wherein the Hon'ble Supreme Court took the view that once the scheme is set at nought, the consequential action following the said e-auction by the coal company has also been declared illegal and therefore, coal companies became liable to refund the entire money which was collected in excess of notified price and that the effect of the decision in **Ashoka Smokeless Coal India (P) Ltd. (Supra)** would not be restricted only to those cases before the Hon'ble Supreme Court but to all those cases which were pending in different High Courts at that Stage. Based upon the above judgment and subsequent judgment in the case of **S.J. Coke Industries Private Limited vs. Central Coalfields Limited and Others** reported in (2015) 8 SCC 72, the respondents (writ petitioners) had filed the petitions claiming refund which were allowed by the learned Single Judge by the order under challenge in these appeals.

3. Submission of learned Counsel for the appellant is that the writ petitioners had approached the Court for the first time in the year 2019,

therefore, their petition should be dismissed on the ground of delay and latches whereas, submission of learned Counsel for the respondent (writ petitioners) is that the judgment of the Hon'ble Supreme Court in the matter of **Ashoka Smokeless Coal India (P) Ltd. (Supra)** is a judgment *in rem* and in terms of the judgment of the Hon'ble Supreme Court in the matter of **Eastern Coalfields Limited (Supra)**, the appellants have no option but to refund the excess amount and the writ petition cannot be dismissed on the ground of delay. He has submitted that the view taken by the learned Single Judge does not suffer from any error. Learned Counsel for both the parties have placed reliance upon several judgments in support of their respective plea.

4. We have heard the learned Counsel for the parties and perused the record. The e-auction scheme was struck down as ultra vires by the judgment of the Hon'ble Supreme Court in the case of **Ashoka Smokeless Coal India (P) Ltd. (Supra)**. Thereafter, the Hon'ble Supreme Court by the order in the case of **Somal Pipes Private Limited (Supra)** had recorded the submission of the learned Solicitor General that the amount paid by the petitioners therein in excess of the notified price will be refunded to them upon verification of the documents and had accordingly issued certain directions in that record. The judgment of the Hon'ble Supreme Court in the matter of **Eastern Coalfields Limited (Supra)** had held the coal companies liable to refund the entire money which was collected in excess of the notified prices and held that the effect of the decision of **Ashoka Smokeless Coal India (P) Ltd. (Supra)** would not be restricted to those cases which were before the Court but applicable to all cases which were pending in different High Courts at that stage and

further held that the coal company was bound to return the money to the parties from whom excess amount was realized.

5. Subsequently, a claim for refund of the excess money was rejected by the Patna High Court, hence, the matter again reached to the Hon'ble Supreme Court in the case of **S.J. Coke Industries Private Limited (Supra)** wherein, it was held that the judgment of the Hon'ble Supreme Court in the case of **Eastern Coalfields Limited (Supra)** was binding under Article 141 of the Constitution and that the benefit of the decision rendered in the case of **Ashoka Smokeless Coal India (P) Ltd. (Supra)** was not confined to those who were parties to those cases but it would be granted to all regardless of the fact that whether they were party to the case or not.

6. The Hon'ble Supreme Court took note of the conclusion in the earlier judgment in the case of **Eastern Coalfields Limited (Supra)** that the coal companies are bound to return the money to the parties from whom excess amount was realized and held that on the ground of parity, the writ petitioners were entitled to the same relief. The Hon'ble Supreme Court in the case of **S.J. Coke Industries Private Limited (Supra)** held as under:

“25. In our considered view, all the issues arising in these cases including the submissions urged by the learned counsel for the parties as mentioned above were already decided by this Court in Eastern Coalfields Ltd. and hence the writ petitions and the appeals arising therefrom should have been decided by the writ court and the appellate court (Division Bench) in the light of the law laid down in the said decision.

26. It is really unfortunate that though the decision of this Court in Eastern Coalfields Ltd. was holding the field having been rendered during the pendency of the writ petition on 10-8-2011 yet neither the Single Judge who decided the writ petition on 2-4-2012 and nor the Division Bench who decided the appeal on 14-12-2012

took note of the decision much less referred to it in their respective judgments. We cannot, therefore, countenance the approach of the two courts below in deciding the issue though it was of reversal.

27. Article 141 of the Constitution provides that the law declared by this Court shall be binding on all courts within the territory of India. Therefore, once this Court decided the issue in Eastern Coalfields Ltd. on 10-8-2011 by passing a reasoned order, a fortiori, the ratio decidendi declared in the said decision was binding on all the courts in the country for giving effect to it while deciding the lis of the same nature. Both the courts below were, therefore, under legal obligation to have taken note of the said decision and then should have decided the writ petition/appeal in conformity with the law laid down therein. It was more so because controversy involved in both the cases was similar in nature. As observed supra, both the courts failed to do so thereby rendering the impugned decision bad in law.

28. When we peruse the decision of Eastern Coalfields Ltd., we find no factual distinction between the facts of the case in hand and the one involved in Eastern Coalfields Ltd. It is apposite to quote paras 9, 10 and 11 of the judgment in Eastern Coalfields which will show the similarity in these two cases: (SCC pp. 627-28)

“9. There is no dispute with regard to the fact that the legality of the Scheme of e-auction was challenged by filing writ petitions in various High Courts by the traders and companies dealing with coal. Some of those petitions were transferred to this Court pursuant to the orders of this Court, the leading case being Ashoka Smokeless Coal India (P) Ltd. which was taken up for consideration along with connected matters and the same were disposed of by this Court and the said decision is now reported in Ashoka Smokeless. By the aforesaid judgment, this Court has upheld the challenge of the writ petitioners to the legality of the Scheme of e-auction. The aforesaid prayer of the writ petitioners was accepted and this Court held that the Scheme of e-auction was invalid and violative of Article 14 of the

Constitution of India and, therefore, it was declared to be ultra vires to the Constitution and this Court quashed the E-auction Scheme.

10. It must be indicated herein that the present respondent also filed the writ petition in question in the Calcutta High Court before the aforesaid decision was rendered and in his case also an interim order was passed by the Calcutta High Court. After the disposal of Ashoka Smokeless Coal India (P) Ltd., the writ petition filed by the respondent herein which was pending was also considered and the same was allowed following the decision of this Court in Ashoka Smokeless Coal India (P) Ltd. as by that decision, this Court has declared the entire Scheme to be invalid and ultra vires to the Constitution. Therefore, any action taken pursuant to the said Scheme is also illegal and null and void. Following the ratio of the said decision this Court directed the coal companies to refund the price of the coal paid in excess of the notified price under the E-auction Scheme. Certain guidelines were also laid down as to how such payments are to be made. The said decision of the learned Single Judge was upheld by the Division Bench of the High Court by affirming the conclusions and analysing all the issues that were raised before it.

11. We are unable to accept the contention of the learned Additional Solicitor General that whatever is challenged in the present petition is only an interim order. It is not so because the respondents herein also challenged the legality of the E-auction Scheme in the writ petition. The High Court has not disposed of only an interim prayer but has disposed of the entire writ petition by its judgment and order dated 25-3-2010. Consequently, it must also be held that when the entire Scheme is set at naught by this Court, whatever action has been taken following the said e-auction by the Coal Company has also been declared to be illegal and, therefore, the Coal Company has become liable to refund the entire money which was collected in excess of the

notified price. That is the consequence of quashing of the Scheme and the same came to be reiterated by this Court while contempt petitions were filed and were disposed of. Therefore, it cannot be said that the effect of the decision of Ashoka Smokeless Coal India (P) Ltd. would be restricted only to those cases which were before this Court and not for all cases which were pending in different High Courts at that stage, at least to the issues which are common in nature.”

Perusal of the aforequoted paragraphs would go to show that this Court in no uncertain terms held in Eastern Coalfields case that benefit of decision rendered in Ashoka Smokeless Coal India is not confined to those who were parties to those cases but it would be granted to all regardless of the fact whether they were party to the case or not (see para 11 of the extracted portion above). This Court, therefore, upheld the relief of refund of excess amount, which was granted to the writ petitioner by the High Court of Calcutta and accordingly dismissed the appeal filed by Eastern Coalfields Ltd.”

7. It has further been held that:

“31. Coming now to the issue of refund of excess amount payable to the writ petitioners, we find that this Court has examined the said issue in para 13 and decided in favour of the writ petitioners in the following words: (Eastern Coalfields case, SCC p. 628)

“13. In the present case, it is a case of refund of price recovered by the appellant in excess and not of any kind of payment of tax or duty. Besides, the appellant has already refunded such excess amount realised to many other parties without raising any such plea. If anything is done by a party in violation of the law, consequence has to follow and they are bound to return the money to the parties from whom excess amount has been realised. There is also no document placed on record in support of any such plea. Bald allegation of this nature cannot be accepted particularly when no such plea has been raised in this Court.”

32. In the light of the aforesaid law laid down, we find no justification to deny the benefit of such law to the present companies (writ petitioners) on the ground of parity with the writ petitioner of Central Coalfields Ltd. and Eastern Coalfields Ltd. case”

8. Hence, by virtue of the judgment in the matter of **Ashoka Smokeless Coal India (P) Ltd. (Supra)**, **Somal Pipes Private Limited (Supra)**, **Eastern Coalfields Limited (Supra)** and **S.J. Coke Industries Private Limited (Supra)**, the respondents (writ petitioners) had become entitled for the refund of the amount paid in excess of the notified price and the coal company was bound to refund the same. Learned Single Judge has duly taken note of the aforesaid judgments of the Hon’ble Supreme Court and has rejected the plea of delay in approaching the Court by observing that the claim for refund made by the writ petitioners is not a mere money claim but statutory liability of respondent No. 1 in view of the judgment of the Hon’ble Supreme Court binding under Article 141 of the Constitution and liability to refund arises consequent upon declaration of the enactment as ultra vires in the case of **Ashoka Smokeless Coal India (P) Ltd. (Supra)** and since such liability flows from the receipt of excess amount by the respondent No. 1, therefore, it continues till the amount is refunded furnishing a continuous cause of action to the writ petitions.

9. In the peculiar circumstances of the case, the plea raised by the counsel for the appellant to reject the writ petition on the ground of delay and laches cannot be accepted, hence, the appellant is not entitled to the benefit of the judgments of the Hon’ble Supreme Court in the matter of **Virender Chaudhary vs. Bharat Petroleum Corporation and Others** reported in (2009) 1 SCC 297, **S.S. Balu and Another vs. State of Kerala and Others** reported in (2009) 2 SCC 479, **New Delhi Municipal**

Council vs Pan Singh and Others reported in (2007) 9 SCC 278, **U.P. Jal Nigam and Another vs. Jaswant Singh and Another** reported in (2006) 11 SCC 464 and **Eastern Coalfields Limited vs. Dugal Kumar** reported in (2008) 14 SCC 295.

10. It is worth noting that reliance has been placed by learned Counsel for the respondent upon the judgment of the Hon'ble Supreme Court in the matter of **Surya Constructions vs. State of Uttar Pradesh and Others** reported in (2019) 16 SCC 794 wherein it has been held that for refund of undisputed amount, the writ petition is maintainable. In the matter of **State of Uttar Pradesh and Others vs. Arvind Kumar Srivastava and Others** reported in (2015) 1 SCC 347, it is held that when a particular employee is given relief by the Court, all other identically situated persons should be treated alike by extending the same benefit since not doing so would amount to discrimination and be violative of Article 14 of the Constitution and that the exception of delay would not apply to those cases where judgment pronounced by the Court was judgment *in rem* with intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. In the matter of **Tukaram Kana Joshi and Others vs. Maharashtra Industrial Development Corporation and Others** reported in (2013) 1 SCC 353, it is held that delay and laches is one of the facets to deny exercise of discretion but it is not an absolute impediment and there can be mitigating factors, continued all cause of action, etc. Reliance is also placed by Counsel for the respondents (writ petitioners) upon the judgment of the Hon'ble Supreme Court in the matter of **Bhag Singh and Others vs. UT of Chandigarh** reported in (1985) 3 SCC 737 wherein in a matter relating to right to claim higher compensation, the Hon'ble Supreme Court held that the legitimate

and just claim of a citizen should not be defeated on technical plea. Attention of this Court has been drawn to the order of learned Judge in **WP 1058 of 2012** dated 01st April, 2014 in the matter of **Shivam Coke Pvt. Ltd. vs. Eastern Coalfields Ltd.** wherein it was held that respondent was expected to suo motu refund the amount after it was declared unconstitutional. Nothing has been pointed out to show that this order was challenged any further.

11. In the present case, the learned Single Judge considering the above judgments and facts on record has exercised the discretion under Article 226 of the Constitution to direct for refund of the excess amount paid by the writ petitioners. The said exercise of discretion in our considered view is justified in the peculiar circumstances of the case and the judgments noted above.

12. Hence, we find no reason to interfere in the order of the learned Single Judge and accordingly, the appeals are dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Later:

After the order was pronounced, the learned Counsel for the appellant had made a prayer for stay of operation of the order passed by this Court today.

We find no ground to accept the prayer and hence, the prayer is rejected.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
30.03.2022

PA(RB)

(A.F.R./N.A.F.R.)