<u>25</u> **29.10.2025**

<u>Ct. No. 07</u>

Ab

WPA 24750 of 2016

Essel Mining and Industries Limited
Vs.
Union of India and others.

Mr. Soumya Majumder,
Mr. Paritosh Sinha,
Mr. Amitava Mitra,
Ms. Debjani Sengupta,
Ms. Urmi Sengupta,
Mr. Naman Agarwal.
... for the petitioner.

Ms. Aparna Banerjee.
... for the respondents.

1. The present writ petition has been instituted to assail the legality and propriety of the communication bearing No. AS/60C/1026 dated 12.07.2016 (Annexure-A to the supplementary affidavit filed by the petitioner), issued by the Chief Transport Planning Manager, South Eastern Railway, addressed to the Vice President (Logistics) of the petitioner-company, whereby the request of the petitioner for refund of the Registration Fee amounting to Rs. 5 (five) Crores was declined. Accordingly, the petitioner prays for issuance of a writ of *Certiorari* for quashing the said letter dated 07/12.07.2016, and further prays for a writ of *Mandamus* commanding the respondent authorities to refund the aforesaid sum of Rs. 5 (five) Crores deposited by the petitioner.

2. Before embarking upon the intricacies of the controversy involved in the present writ petition, it would be apposite to advert to the essential facts, as discernible from the pleadings of the parties and the documents

annexed thereto, leading to its institution.

3. The petitioner company (hereinafter referred to as the petitioner), incorporated under the provision of Companies Act, 1913 is engaged in the business of mining of iron ore in various districts in the State of Odisha.

4. Pursuant to an advertisement published by the respondents in certain newspapers on 30.10.2010, the petitioner submitted an application for the construction of a private siding connecting its Kasia Mines for loading iron ore (approximately 4 million tonnes annually), to take off from the section between Barbil and Bolani Khadan under the Chakradharpur Division of the South Eastern Railway. The proposed site was located at a distance of approximately 4 to 5 kilometres from the Barbil–Bolani section. A feasibility study report, along with a demand draft for Rs. 5 (five) crores, was enclosed with the said application.

5. Upon receipt of the petitioner's application, a meeting was convened on 01.03.2011 between the representatives of the petitioner and respondent no. 5, wherein minutes were recorded directing the petitioner to submit a revised proposal in consonance with the field study report, including details regarding the destination of the proposed project traffic. Subsequently, another meeting was held on 13.03.2012. Pursuant to the decisions taken in the said meetings, the petitioner submitted an alternative drawing along with a comprehensive and well-documented proposal, requesting that any one of the proposals so submitted be

considered and approved.

6. By a letter dated 25.11.2013, respondent no. 5 requested the petitioner to deposit 1% of the assessed cost of the project along with applicable taxes, towards *Codal* charges. In compliance therewith, the petitioner deposited a sum of Rs. 44,74,000/- together with Rs. 5,52,986/- towards *Codal* charges and applicable taxes.

7. By a letter dated 03.04.2014, respondent no. 5 accorded *in-principle* approval for the petitioner's proposal to construct an iron ore loading siding on private land to serve the petitioner between Barbil–Bolani Khadan, subject to compliance with certain formalities.

8. The letter dated 3rd April, 2014 stipulated that the construction and operation of the siding would be governed by Policy Circular FM-12 of 2008, pertaining to iron ore loading sidings. The petitioner was also asked to furnish confirmation from the competent mining authority showing that it held a valid mining lease, particularly in view of the fact that it had already applied to the Government of Odisha on 2nd September, 2004 for renewal of the said lease.

9. By the letter dated 03.04.2014, the petitioner was instructed to submit 15 (fifteen) copies of the Detailed Project Report (hereinafter, "DPR") within three months, along with the deposit of the balance 2% of the estimated project cost towards *Codal* charges, 12% service tax on *Codal* charges, 2% Education Cess on service tax, and 1% Higher Education Cess on service tax, through two

crossed cheques or demand drafts.

10. By a communication dated 11th August, 2014, a reminder was issued to the petitioner to deposit the detailed project report (DPR) and other incidental charges, including codal charges and taxes. Subsequently, by two letters dated 19th September, 2014 and 13th December, 2014, the petitioner informed respondent no. 5 that the second renewal of the mining lease for Kasia Mines was pending before the Government of Odisha and that the necessary clearance was expected within a few months. The petitioner further assured that the DPR would be submitted promptly upon receipt of such clearances.

11. Meanwhile, the Mines and Minerals (Development and Regulation) Act, 1957 was amended with effect from 12th January, 2015. Pursuant to the amended provisions of Section 8A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, any mining lease granted prior to the commencement of the Amendment Act, where the mineral is used for captive purposes, shall be deemed to have been extended up to 31st March, 2020. It was further provided that upon expiry of such period, the lease would be put to auction in accordance with the procedure prescribed under the Act.

12. Therefore, in view of the amendment to the 1957 Act, which was entirely beyond the control and contemplation of the petitioner, the mining lease of Kasia Mines granted in favour of the petitioner stood extended up to 31st March, 2020, after which the lease would be

put to auction in accordance with the provisions of the Act. Consequently, the construction of the private siding, which, according to the petitioner, would require approximately three years for completion, could not be undertaken within the remaining lease period.

13. As contended by the petitioner, in such unforeseen and fundamentally altered circumstances, the execution of the proposed siding became impracticable and the contractual obligation stood frustrated, without any default being attributable to either of the parties.

14. In the interregnum, the Director of Freight Marketing, by a memorandum dated 29th September, 2014, informed the General Managers of all Zonal Railways that, following the issuance of Freight Marketing (FM) Circular No. 12 of 2008, there might be certain investors who, despite having obtained in-principle approval, had not constructed the siding and were no longer interested in doing so. It was further directed that a review of such approvals be conducted by a Committee, and that the case files of such sidings be closed. The exercise was directed to be completed within six months.

15. By another memorandum dated 17.11.2014, the Director of Frieght Marketing informed all the General Manager of all Zonal Railways the policy decision of the Railway that policy guidelines, contained in FM circular no. 12 of 2008, regarding construction of private siding for loading of iron ore, was withdrawn and it was further stated there would not be separate policy for ‘Iron Ore’

sidings. All sidings would come under the purview of the Liberalization of Siding Rules' circular.

16. In light of these circumstances, the petitioner requested the concerned respondent to refund the sum of Rs. 5 (five) crores deposited as registration fees for the construction of the private siding. However, by a letter dated 07/12.07.2016, respondent no. 5 declined to refund the amount, relying on para 3.2 of FM Circular No. 12 of 2008 dated 28.08.2008, which stipulates that 99% of the registration fee shall be refunded only if it is not feasible to grant permission for the construction of the siding in accordance with the guidelines contained therein. According to the respondent, the petitioner's case did not fall within this category, as the proposed siding was deemed feasible from the railway's perspective; however, the petitioner failed to complete the requisite formalities and did not submit the Detailed Project Report (DPR). Hence, this writ petition.

17. The respondents, in their affidavit-in-opposition, have specifically contended that the advertisement was issued by the South Eastern Railway on 30th December, 2010, inviting applications from intending firms for the development of iron ore loading sidings on private land, with connectivity to Railway land, in terms of the policy guidelines framed by the Railway Board vide FM Circular No. 12 of 2008.

18. In response to the said advertisement, the petitioner submitted an application on 4th February, 2011, along with a non-refundable registration fee of Rs. 5

crores, in compliance with paragraph 3.1 of the said FM Circular. As per paragraph 3.2 of FM Circular No. 12 of 2008, dated 28th August, 2008, 99% of the registration fee is refundable only in cases where it is found not feasible to grant permission for construction of the siding, in terms of the guidelines issued by the Railway Board.

19. The respondents contend that In the present case, the petitioner failed to satisfy the conditions stipulated under the said paragraph, as the proposed siding was found to be feasible from the Railway's perspective. However, since the petitioner did not comply with the requisite formalities and failed to submit the detailed project report, the construction of the private siding could not be undertaken.

20. In addition to advancing oral submissions, the learned Advocate for the petitioner had earlier filed written notes of argument, which were taken on record. Today, the learned Advocate appearing on behalf of the respondents has also filed written notes of argument, which have been kept on record.

21. Mr. Majumder, learned Senior Advocate appearing for the petitioner, submits that a Mining Lease can be antedated. In the present case, he contends that the issue to be examined is whether the Railway is estopped, by its conduct or otherwise, from asserting that the petitioner's application could not be considered due to non-renewal of the Mining Lease.

22. He argues that the petitioner had made full and

complete disclosure of all relevant information. The petitioner had deposited the full registration fee, and the Railway had accorded *in-principle* approval to the proposal for construction of the siding. The modified joint layout plan was also approved by the Railway. Furthermore, the Railway directed the petitioner to deposit the project cost, codal charges equivalent to 1% of the project cost, and other incidental charges, and also instructed the petitioner to submit the Detailed Project Report (DPR).

23. He further submits that the Central Government is the ultimate authority for granting Mining Leases, and there is no single-window system for the same. The grant of a Mining Lease has wide-ranging ramifications and is a matter of national policy. The Central Government subsequently changed its policy decision, deciding not to renew Mining Leases after a certain period, and accordingly, the Mines and Minerals (Development and Regulation) Act, 1957 was amended.

24. However, he contends that prior to such amendment, the Railway itself had withdrawn FM Circular No. 12 of 2008 dated 28th August, 2008. He argues that Paragraph 3.2 of FM Circular No. 12 of 2008 contemplates a future event and that the said circular ceased to remain in force after 17th November 2014. In view of such withdrawal, he contends, certain aspects require examination, namely, what was the essence of the proposed contractual action, what effect the withdrawal of the policy had, and whether such withdrawal preserved

any pending implications.

25. He contends that a fee operates in the realm of *quid pro quo* for a service rendered, whereas a tax is not dependent upon any corresponding service. Accordingly, in the absence of any service, no fee can be lawfully levied. Referring to the letter dated 3rd April, 2014, whereby *in-principle* approval was granted in favour of the petitioner for construction of the siding, he particularly draws attention to the use of the word "serve" preceding the name *M/s. Essel Mining & Industries Ltd.*, and submits that the entire proposal for granting such approval was intended to serve entities like the petitioner.

26. Referring to the third bullet point of Paragraph 4 of the said circular, as appearing at page 73 of the writ petition, which requires submission of "Sanction for iron ore mines or long-term agreement with a mine owner for assured supply of iron ore," he submits that the word "or" is disjunctive in nature. Therefore, according to him, compliance with either of the two conditions, sanction for iron ore mines or long-term agreement with a mine owner, would suffice, and hence, submission of a long-term agreement was not a mandatory requirement.

27. He argues that, upon withdrawal of FM Circular No. 12 of 2008, the Railway was no longer in a position to grant permission for construction of the siding in accordance with the said guidelines, as those guidelines had already been withdrawn. He further asserts that there was, in fact, no subsisting contract between the parties, and consequently, the petitioner was under no

obligation to perform any act on its part.

28. He further contends that the petitioner deposited the registration fee for the purpose of availing a service from the Railway, which service the petitioner has not received. Consequently, the Railway is obligated to refund the registration fee. He submits that if the Railway were permitted to retain the amount, it would result in unjust enrichment, which is impermissible under law.

29. In rebuttal, Ms. Aparna Banerjee, learned Advocate appearing on behalf of the respondents, referring to the petitioner's letter dated 18th November, 2010 addressed to the Chief Traffic and Planning Manager, as appearing at pages 43–44 of the writ petition, submits that the petitioner had submitted a proposal for construction of a siding even before publication of the advertisement.

30. She further contends that, in response to the advertisement published on 13th December, 2010, the petitioner submitted a formal application for the same on 4th February, 2011, and deposited a sum of Rs. 5 crores on its own accord. She contends that, at the time of submitting the application, the petitioner did not disclose that it did not possess a valid mining lease. Referring to a letter dated 21st November, 2012, appearing at page 53 of the writ petition, she submits that the petitioner, for the first time, furnished a copy of the receipt of its application for renewal vide Receipt No. 4880 dated 2nd September, 2004. Thus, according to her, it was only in November, 2012 that the petitioner disclosed, for the first time, that

it did not hold a mining lease.

31. Referring to the petitioner's communication dated 23rd September, 2013, addressed to the Chief Transport Planning Manager, wherein the petitioner claimed to have submitted a copy of its application for renewal of the mining lease, originally filed on 2nd September, 2004 before the competent authority of the Government of Odisha, she contends that it was the petitioner who induced the respondents to grant in-principle approval to its feasibility report, thereby enabling it to take subsequent follow-up action. Based on such representation, the petitioner was asked to deposit 1% of the assessed project cost towards codal and other incidental charges. Upon deposit of such charges and taxes, in-principle approval of the feasibility report was granted, subject to certain conditions, including submission of confirmation from the concerned Mining Authority demonstrating that the petitioner held a valid mining lease with a specific mention of its tenure.

32. She submits that, by a letter of approval dated 11th August, 2014, the petitioner was instructed to submit the detailed project report (DPR) and other incidental charges and taxes within three months. Subsequently, several reminders were also issued; however, the petitioner failed to submit the DPR and other charges. She further contends that, due to the petitioner's failure to deposit the DPR and incidental charges, the proposed siding could not be constructed. Referring to paragraph 3.2 of FM Circular No. 12 of 2008, she submits that the

said provision clearly stipulates that, in cases where it is found not feasible to grant permission for construction of the siding in terms of the guidelines, 99% of the registration fee shall be refunded. She contends that, in the present case, due to the shortcomings and failure of the petitioner to fulfil the mandatory requirements, the permission could not be granted. Accordingly, she argues that the petitioner is not entitled to claim refund of any amount deposited towards registration fee, in view of the clear and unambiguous stipulations contained in paragraph 3.2 of the said Circular.

33. Therefore, upon careful consideration of the pleadings of the parties, the documents annexed thereto, and the submissions advanced on their behalf, it emerges that this Court is called upon to adjudicate the pivotal question as to whether the Railway Authorities are under an obligation to refund 99% of the registration fee, amounting to Rs. 5 crores, to the petitioner.

34. In the present case, neither party has placed the advertisement on record. Legally speaking, an advertisement may constitute a binding offer only if it sets forth all the essential terms of an agreement and is addressed to a specific person who accepts it, thereby resulting in the formation of a contract. Nonetheless, it is indisputable that FM Circular No. 12 of 2008 constitutes the governing circular or instrument in the present context. Paragraphs 3.1, 3.2 and 4 of the said Circular are of pivotal significance for the adjudication of the issue arising in this writ petition. The relevant provisions are

reproduced hereinbelow:

3.0 REGISTRATION FEE:

3.1 A non-refundable registration fee should be levied along with the application for construction for each new siding as under-

(i) Rs. 10.0 Crore for sidings on railway land

(ii) Rs. 5.0 Crore for sidings on private land

3.2 In case it is not feasible to grant permission for construction of the siding as per these guidelines, 99% of the registration fee shall be refunded.

4.0. DOCUMENTS:

All relevant documents shall be required to be submitted along with the applications. These will inter alia include documents relating to

. Owenership of private land for laying the siding, if applicable

. Valid MoU with respective State Governments including private land for setting up the production unit.

. Sanction for iron ore mines or Long-term agreement with a mine owner for assured supply of iron-ore.

. Any other document that a Zonal railway may consider necessary before approvals are given.

35. As noted earlier, Mr. Majumder contends that the word *"or"* employed in the third bullet point of paragraph

4 is disjunctive in nature. Consequently, the requirement would be satisfied by either obtaining a sanction for an iron ore mine or by entering into a long-term agreement with a mine owner ensuring an assured supply of iron ore. It is needless to state that a *sanction* confers a legal right or authorization to extract a specified mineral from a mine, whereas a *long-term agreement*, as referred to hereinabove, constitutes a contractual arrangement for the purchase of the extracted ore. In the present case, the petitioner produced a receipt showing submission of an application for renewal of the mining lease dated 2.9.2004, which was filed along with the application submitted on 4.2.2011. A mining lease, by its very nature, vests in the lessee a legal right to extract a particular mineral from the mine.

36. Therefore, it becomes abundantly clear that, as on the date of submission of the application, the petitioner did not possess any legal right either to extract iron ore from the mine or to procure the said mineral from the mining authority. Nevertheless, the Railway authorities proceeded on the strength of the assurance furnished by the petitioner that the requisite clearance, namely the renewal of the mining lease, would be obtained within a short span of time. Acting upon such representation, by a letter dated 23.10.2023, the petitioner was directed to deposit 1% of the assessed cost of the project towards codal charges along with 12.36% service tax thereon. The records further reveal that the petitioner duly complied with the said direction by depositing the aforesaid

amounts.

37. In view of the foregoing, Mr. Majumder contends that it falls for consideration whether the Railway authorities are estopped by their conduct or otherwise from contending that the petitioner's application could not be entertained on account of non-renewal of the mining lease.

38. In the given circumstances, the doctrine of promissory estoppel becomes applicable. The essence of this doctrine is that a party cannot go back on its promise when the other party, acting upon such promise, has changed its position to its own disadvantage. Ordinarily, when an authority proceeds to consider an application and accepts the requisite fees despite being fully aware of any existing deficiency, it conveys an implied representation that the application is otherwise valid and capable of being acted upon.

39. However, the doctrine of promissory estoppel cannot be treated as an inflexible rule that invariably binds the Government. It is well settled that the Government may be relieved from the operation of this doctrine in certain situations, for instance, where an overriding public interest demands such a change, where the promise made is contrary to law, or where a change in policy becomes necessary to serve the larger public good. In the present case, however, the respondent authorities have not been able to establish the existence of any such circumstance that could justify their deviation from the

position earlier adopted.

40. Mr. Majumder contended that there was no single window system in place, and consequently, the change in policy regarding the grant or renewal of mining leases introduced by the Mines and Minerals (Development & Regulation) Amendment Act, 2015, was not brought to the attention of the Railway authorities, nor was any consequential steps taken by them. However, despite being aware of the absence of a single window system, the petitioner proceeded to submit an application seeking permission for the construction of the siding. In these circumstances, such a plea cannot be invoked in favour of the petitioner.

41. Paragraph 3.1 of the FM Circular no. 12 of 2008 stipulates that a non-refundable registration fee should be levied along with the application for construction of siding and paragraph 3.2. which basically serves as proviso to the paragraph 3.1. stipulates that 99% of registration fee shall be refunded in case it is not feasible to grant permission for construction of the siding as per these guidelines.

42. The respondents urge the Court to interpret the expression “it is not feasible” as meaning “it is not feasible from the Railway’s perspective or by the Railway”, and contend that since the petitioner failed to fulfil its obligations, it became unfeasible to grant such permission. Accordingly, the petitioner is not entitled to a refund of the said amount.

43. However, it would be unjust to give such a narrow interpretation to the expression so as to limit its scope only to cases where it is not feasible for the Railway to grant permission. The phrase is broad enough to cover situations where the inability arises on the part of either party, or where external circumstances make the grant of such permission impracticable. In the present case, the change in policy governing the grant or renewal of mining leases, introduced by the Mines and Minerals (Development and Regulation) Amendment Act, 2015, made it impossible for the petitioner to proceed with the proposed construction. The petitioner, therefore, cannot be made to suffer for the consequences of a legislative change entirely beyond its control.

44. Paragraph 2.4 of the Railway Circular dated 29.09.2014 throws some light on this issue; however, it does not provide any clear stipulation regarding the refund of the registration fee or any portion thereof. Paragraph 2.4 of the said circular reads as follows:

> "2.4 After issue of Freight Marketing Circular no. 12 of 2008 there may be some investors who were given "In Principal Approval" but have not constructed the siding, and who are no longer interested in constructing the siding. A review should be carried out for those approvals by a Committee comprising of COM and PCE. The case files of siding that are no longer coming up should be closed. This exercise should not be completed within six months."

45. As noted earlier, FM Circular No. 12 of 2008 stood

withdrawn with effect from 17.11.2014. Nevertheless, the records reveal that even on 10.12. 2015, the respondent authorities continued to require the petitioner to furnish certain information regarding the renewal of the mining lease. However, once the said circular had been withdrawn, the Railway itself was no longer in a position to grant such permission "as per these guidelines," that is, in accordance with the provisions contained in FM Circular No. 12 of 2008. Therefore, after 17.11.2014, it was not feasible for the Railway also to grant such permission as per the guidelines contained in that circular of 2008.

46. Indisputably, a tax is a compulsory financial levy imposed by the government on individuals or entities, whereas a fee is a payment made in consideration of a specific service or privilege. Notably, in the letter dated 03.04.2014, wherein *in-principle* approval of the feasibility report submitted by the petitioner was granted, the term "serve" was used; and in Paragraph 3.1 of FM Circular No. 12 of 2008, the expression "registration fee should be levied" was employed. It thus becomes evident that the registration fee was intended to be charged in exchange for a service. It hardly needs emphasis that, apart from the exchange of certain correspondence, no further service was rendered for which such a fee could legitimately be levied.

47. The concept of unjust enrichment and the corresponding doctrine of restitution have been firmly recognised in Indian jurisprudence. This principle applies

with equal force to the State. On a proper application of this doctrine, it is evident that no governmental authority can take advantage of a narrow interpretation of any circular or rule to secure an unwarranted benefit by retaining money collected as tax or fee without lawful justification. In the present case, if the Railway authorities are permitted to retain the registration fee, or any part of it, without having rendered any corresponding service, and particularly when the grant of permission became unfeasible due to a change in policy governing the renewal of mining leases, it would clearly amount to unjust enrichment on their part.

48. Therefore, upon consideration of all the foregoing aspects, I find merit in the petitioner's claim for refund of 99% of the registration fee.

49. Consequently, in view of the discussions and reasons set forth in the preceding paragraphs, I direct respondent no. 5 to refund 99% of the registration fee, amounting to Rs. 5 crores, deposited by the petitioner along with its application dated 4th February 2011, to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

50. With these observations and order, the present writ petition is, thus, disposed of; however, without any other as to the costs.

(Partha Sarathi Chatterjee, J.)