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WPO/293/2019

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SOMAL PIPES PVT. LTD.

-Versus-

COAL INDIA LIMITED AND ORS.

BEFORE
The Hon'ble Justice RAJASEKHAR MANTHA
The Hon'ble Justice AJAY KUMAR GUPTA
Date: 12th March, 2025

APPEARANCE:
Mr. Siddhartha Mitra, Sr. Adv.
Mr. M. Hossain, Adv.
Ms. Reshmi Hossain, Adv.
Mr. Diptomoy Talukder, Adv.
Ms. Mohua Biswas, Adv.
....for petitioner.

Mr. Debnath Ghosh, Sr. Adv.
Mr. BiswaroopMukherjee, Adv.
Mr. Nilankan Banerjee, Adv.
....for respondents.

1. The instant writ petition has been assigned by the Hon'ble The Chief Justice to this Bench. The order of assignment came to be made upon a decision, of the Single Bench dated 20th November, 2024, that it needed clarification from a larger Bench, of an earlier order passed by another Division Bench of this Court dated 21st January, 2016 in APOT/1/2016. The writ petition itself, therefore, came to be placed before this Bench.

2. The brief facts relevant to the instant case are that sometime in the year 2005, the Coal India Limited (CIL) and its subsidiaries, in deviation of the existing practice of supplying coal to linked consumers at a notified price, sought to adopt a process of e-auction to determine its price. Linked consumers across the country filed writ petitions in several High Courts. Interim orders were passed in some writ petitions and declined in the others.
3. The matter reached the Hon'ble Supreme Court which, by an order dated 19th October, 2005 in inter-alia SLP No. 20471 of 2005 filed by the linked consumers, passed an interim order to the effect that until final disposal of the writ petitions challenging the propriety of the e-auction process, the linked consumers would be entitled to lift coal upon payment of 33.1/3% of the price over and above the notified price and secure the balance 66 odd %, with an indemnity bond.
4. The writ petitioner herein is also a linked consumer who filed a writ petition (WP 2068 of 2005) seeking to lift coal on the same terms as the interim order dated 19th October, 2005 (Supra). The following reliefs were prayed for:-

a) A declaratory order, if necessary directing the writ petitioner unit be permitted to lift coal as per entitlement by furnishing Indemnity Bond and other undertakings as per solemn orders of Hon'ble Supreme Court dated 19.10.05 and extensions thereof.

b) A writ in the nature of Mandamus do issue directing the respondents to supply coal as per entitlement by furnishing Indemnity Bond and other undertakings as per solemn orders of Hon'ble Supreme Court dated 19.10.05 and extensions thereof.

c) A writ in the nature of Certiorari do issue calling upon each of the respondents including respondent companies to transmit all records pertaining to e-auction in NEC/ECL.

d) Rule NISI in terms of prayers above and to make such rule absolute.

e) An Injunction or order do issue to treat the writ petitioner unit at par with linked units of CIL who are being compelled to pay a variable e-auction price instead of notified price as enumerated hereinabove.

f) CIL and its subsidiaries cannot discriminate against the writ petitioner or similarly circumstanced units.

g) Writ petitioner be permitted to lift coal as per entitlement by furnishing Indemnity Bond and other undertaking specified by the Hon'ble Supreme Courtin solemn orders dated 10.10.05 and extensions thereof till date.

h) Ad interim order in terms of prayers above till the Hon'ble Supreme Court makes a final adjudication for units who are beneficiaries of the aforesaid orders.

i) Such further and/or other order or orders as this Hon'ble Court may deem fit and proper in the aforesaid context or entitle thereto."

5. In the meantime, by a specific interim order passed in several SLPs and Transfer Petitions, in the case of ***Ashoka Smokeless Coal Industries (P) Limited & Ors. v. Union of India and Ors.***reported in***(2006) 9 SCC 228 (Ashoka Smokeless 1st)***, the Supreme Court ordered as an interim measure, that if the petitioners succeed in the challenge to the e-auction process, the deposit of 33.13 % over and above the notified price by the linked consumers would be refunded back to them with interest @ 12% per annum from the

date of payment till the date of return to the linked consumer/ writ petitioner concerned,

6. The earlier interim order dated 19th October 2005, was modified on 24th February, 2006 by the Hon'ble Supreme Court, in the case of the writ petitioner who moved a transfer petition of the instant writ petition before the Hon'ble Supreme Court being T.C No. 100 of 2006, and was directed to continue until disposal of the writ petitions by the Hon'ble Supreme Court.

7. By order dated 24th February 2006, the Hon'ble Supreme Court in the said transfer petition 100 of 2006 directed the CIL to accept 33.13% over and above the notified price as a precondition to supply coal to the appellant. The said amount was directed to be refunded to the appellant if it succeeded in the writ petition.

8. By a detailed judgment, the Hon'ble Supreme Court, in the case of ***Ashoka Smokeless Coal Industries P. Limited & Ors. v. Union of India and Ors.***reported in***(2007) 2 SCC 640 (Ashoka Smokeless 2nd)*** struck down the e-auction process. By reason thereof, the benefit of the interim order passed in ***Ashoka Smokeless 1st (Supra)*** accrued to all the writ petitioners before the Supreme Court including the applicant in the transfer petitions, except to the writ petitioner, who was pursuing his remedies independently.

9. The writ petitioner herein having realized that they had filed an independent writ petition and did not get the benefit of the interim and final orders in ***Ashoka Smokeless 1st and 2nd,*** sought to press for final hearing of the instant writ petition.

10. In contempt proceedings taken out, inter alia, by the petitioner before the Hon'ble Supreme Court, by an order dated 30th October, 2007, it was directed that the amounts paid in excess of the notified price would be refunded to each of the petitioners upon verification of documents which were to be submitted in that behalf. There is no mention of payment of any interest on the said amounts.

11. The appellants thereafter unconditionally withdrew T.P. No. 100 of 2006 on 18th April 2013.

12. The learned Single Bench disposed of the first writ petition being WP/2068/2005 by an order dated 1st October, 2015 directing the writ petitioner to approach the General Manager (Sales) for expeditious re-verification of their claims. The CIL was directed to complete the process of re-verification within a period of four weeks from the date of communication of the said order. The claims once settled, were directed to be paid forthwith to the petitioners by the Coal Companies.

13. There was no prayer or direction for any interest on the amounts to be refunded. The petitioners did not also seek amendment of the WP 2068 of 2005, to seek any interest on the refund.

14. The Coal India, upon re-verification of accounts, paid interest to, the writ petitioner on the excess amounts paid on and from the date of the 1st interim order of the Hon'ble Supreme Court dated 12th December, 2005. In so far as the excess payment made over and above the notified price prior thereto interest was refused by the Coal companies.

15. The writ petitioners filed GA/3815/2015 in the disposed of writ petition WP/2068/2005 seeking modification of the order dated 1st October, 2015 passed by the Single Bench disposing of the writ petition. The modification was to the extent of seeking interest in respect of the excess payments made by the writ petitioner to Coal Companies prior to 12th December, 2005. Such prayer was allowed by the Single Bench by order dated 6th January 2016.

16. On an appeal being carried by the CIL therefrom, a Co-ordinate Bench of this Court by judgment and order dated 21st January, 2016 passed in APOT/1/2016, held that GA/3815/2015 could not have been maintained by the writ petitioner in a disposed of writ petition. The Court went on to hold that the claim for interest may have been impliedly declined by the Single Bench in its order dated 22nd December, 2015. In the same breath, the Co-ordinate Bench went on to hold that prayer for interest may be barred by the principles of res judicata. The Division Bench also made a stray observation that the claim of the petitioner for interest prior to December 2005 towards payment made in excess of the notified price prior to 12th December 2005 could be a fresh cause of action.

17. It is based on the aforesaid stray observation that the present writ petition, WPO 293 of 2019, was filed seeking interest on the excess sums paid prior to the order of the Supreme Court dated 12th December 2005 (Supra)

18. The Single Bench was in quandary as recorded in the order dated 20th November 2024 as to which line adopted by the Co-ordinate Bench in its orders dated 21st January, 2016 and 27th June, 2016 was the ratio and which was obiter.

19. This Court, having carefully considered the judgment dated 21st January, 2016, is of the view that the writ petitioner, after striking down of the e-auction process by the Hon'ble Supreme Court in ***Ashoka Smokeless 2nd (Supra)***, either ought to have sought amendment of his writ petition to include a claim for interest or should have prayed for leave either under Order 2 Rule 2 and 3 or under the other provisions of the CPC to take out independent proceedings for such interest, in the order dated 22nd December, 2015. Such prayer and such leave not having been reserved to the writ petitioner, the second writ petition being WPO 293 of 2019, could not have been maintained. In this regard, the decision of the Supreme Court in***CuddalorePowergen Corporation Ltd v. M/s ChemplastCuddaloreVinyls Limited and Anr.*** reported in ***2025INSC 73***may be referred to**:-**

> 38. Order II Rule 2(1) requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of a particular cause of action. However, the plaintiff has an option to relinquish any part of his claim for the purpose of bringing the suit within the jurisdiction of any court. Order II Rule 2(2) contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, then he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished.It must be noticed that Order II Rule 2(2) does not contemplate the omission or relinquishment of any portion of the plaintiff's claim **with the leave of the court** so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief(s) earlier omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rules 2(2) and (3) CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situation where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit, provided that at the time of omission to claim the particular relief, he had obtained the leave of the court in the first suit

> 44. Therefore, the phrase "cause of action" for the purposes of Order II Rule 2 would mean the cause of action which gives an occasion for and forms the foundation of the suit. <u>If that cause enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot be permitted to recover the balance reliefs through independent proceedings afterwards, especially when the leave of the court has not been obtained.</u>
>
> emphasis applied

20. The context in which the Co-ordinate Bench in its judgment dated 21st January 2016 observed that a new cause of action has arisen from the letter dated 2nd December 2015, written by the learned advocate on record of the petitioner to the respondent, seeking the payment of interest needs to be considered for appreciating the true purport of such an observation. The relevant paragraphs from the said judgment are set out below:-

> "As noted, the learned advocate on record for the respondent/writ petitioner,byletter dated 13th October, 2015 intimated the order dated 1st October, 2015 and requested for re-verification of accounts. Thereafter, hearing was held on 5th November, 2015 in which the respondent / writ petitioner appeared. On 17th November, 2015 the ECL had passed an order after re-verification. **Subsequently, the learned advocate on record for the respondent/ writ petitioner issued the letter dated 2nd December, 2015 requesting, inter alia, for payment of interest @ 12% on the amount in question.**
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> Since the Supreme Court in its judgments did not issue direction for grant of interest, **the letter dated 2nd December, 2015 issued by the learned advocate on record for the respondent/writ petitioner claiming interest is a new cause of action."**

21. The claim for interest to be paid on the excess amount, paid by the petitioner before the date of the aforesaid interim order formed part of the cause of action pleaded in the ***WPO 2068 of 2005***. The cause of action for interest arises from the principal amount itself. The petitioner having claimed and secured the relief of refund of the excess sum (principal amount) in WPO 2068 of 2005, ought to have also argued the payment of interest thereon in

and/or during the hearing of the writ petition itself. Since it has not been raised therein, the subsequent plea of interest is barred by constructive res judicata. The decision of the Supreme Court in ***State Of Andhra Pradesh v. Dr. Rao, V.B.J. Chelikani***reported in ***2024 INSC 894*** is referred to:-

> "30. In Forward Construction Company (supra), this Court, relying upon Explanation (IV)18 to Section 11 of the Code of the Civil Procedure, 1908 observed that any matter that might or ought to have been made a ground of attack in a former suit is deemed to have been made a matter directly or substantially an issue in the said suit. Therefore, res judicata impacts not only the actual matter determined, but every other matter which the parties might or ought to have litigated and have decided as incidental to, or essentially connected with the subject matter of the litigation. It includes every matter coming into the legitimate purview of the original action, both in respect of the matters of claim and defence. The judgment explains that the underlying principle in Explanation (IV) is that where the parties have had an opportunity of controverting a matter, that should have been taken to be the same thing as if the matter had been actually controverted and decided"
>
> Emphasis Applied

22. Admittedly, the letter dated October 13, 2015 was written by the petitioner to intimate the respondent about the order of the learned single judge dated October 1, 2015 passed in WPO 2068 of 2005. It did not contain any claim for interest to be given for the period preceding the passing of aforesaid interim order. It was only after the respondent refused to pay the interest for the said period that the petitioner on December 2, 2015, wrote another letter to the respondent claiming interest to that effect. This letter has been observed by the coordinate bench to have given birth to a new cause of action. Therefore a new cause of action cannot be created by writing a letter. It shall be based on the happening of an event. No new event intervened after the learned single judge passed the order.

23. While it may be attractively argued that the refusal of the respondent to pay interest constituted a new cause of the action. However, the said argument

loses its breath when one notes that the payment of the interest, so refused by the respondent, relates to the subject matter of WPO 2068 of 2005, wherein only the excess amount paid by petitioner, was claimed by it, and the payment of the interest thereon was never raised and/or argued. Hence, no new cause of action arose either from the refusal to pay the interestor fromsubsequent letter dated 2ndDecember, 2015. The decision of the Supreme Court in ***A.K. Gupta and Sons Ltd. v. Damodar Valley Corpn.*** reported in ***1965 SCC OnLine SC 49*** may be referred to, which expounded the meaning of 'new cause of action' while dealing with an application for amendment of pleadings:-

> "9. The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke v. Gill [(1873) LR 8 CP 107, 116] in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd. [(1962) 2 All ER 24] and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "**new set of ideas**" : Dornan v. J.W. Ellis & Co. Ltd. [(1962) 1 All ER 303] This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.
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> 10. Now, how does the present case stand on these principles? Does the amendment introduce a new cause of action or a new case? We do not think it does. The suit was on the contract. It sought the interpretation of a clause in the contract only for a decision of the rights of the parties under it and for no other purpose. It was the contract which formed the cause of action on which the suit was based. The amendment seeks to introduce a claim based on the same cause of action, that is, the same contract. It introduces no new case or facts. Indeed the facts on which the money claim sought to be added is based are not in dispute. Even the amount of the claim now sought to be made by amendment, was mentioned in the plaint in stating the valuation of the suit for the purpose of jurisdiction. The respondent had notice of it. It is quite clear that the interpretation of the clause was sought only for quantifying the money claim. In the written statement the respondent specifically expressed its willingness to pay the appellant's legitimate dues which could only mean such amount as might be due according to the rates applicable on a proper interpretation of the clause. The respondent was fully aware that the ultimate object of the appellant in filing the suit was to obtain the payment of that amount. It was equally aware that the amount had not been specifically claimed in the suit because the respondent

> had led the appellant to believe that it would pay whatever the court legitimately found to be due. It in fact said so in the written statement. If there was any case where the respondent was not entitled to the benefit of the law of limitation, the present is that one. The respondent cannot legitimately claim that the amendment will prejudicially affect his right under that law for really he had no such right. It is a case in which the claim for money was in substance in the plaint from the beginning though it had not formally been made.
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> Emphasis applied

24. The letter dated at best is a belated claim, which was raised for the first time.

25. For the reasons stated above WPO 293 of 2019 fails and is hereby dismissed.

26. There shall be no order as to costs.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA, J.)

As./Arsad/GH/snn.