

State of Orissa and Others

Vs

Mahanadi Coalfields Ltd. and Others

In The Matter of : Orient Paper & Industries Ltd. and Another

Vs

Mahanadi Coalfields Ltd. and Others

I.As. Nos. 278-556 of 1995 In C.As. Nos. 330-604 of 1995

(CJI A. M. Ahmadi, B. L. Hansaria, S. C. Sen JJ)

06.05.1996

ORDER

1. By an interim order dated 3-1-1994 (Mahanadi Coalfields Ltd. v. Orient Paper & Industries Ltd., 1995 Supp (2) SCC 717), this Court directed (i) furnishing of bank guarantee for the amounts in respect of the difference in regard to past dues; (ii) payment of duty for the period subsequent to 1-1-1994 on condition that the said amount shall be kept in a separate bank account in interest-earning deposits; and (iii) if the respondents succeed in the writ petitions, the amount together with interest should be refunded to the respondents. Admittedly the High Court by its judgment dated 26-4-1994 allowed the writs and this Court affirmed that order by its decision dated 21-4-1995 (State of Orissa v. Mahanadi Coalfields Ltd., 1995 Supp (2) SCC 686). Ordinarily, therefore, under the Court's order dated 3-1-1994 the respondents would be entitled to refund.

2. However, the language of this Court's order dated 21-4-1995 is relied upon to deny refund since it said : (SCC pp. 705-6, para 26)

"In our opinion, the amount so collected may be refunded to persons entitled to the same, within a period of one year from today, failing which they shall pay interest at 18% p.a. on expiry of one year."

Emphasis is laid on the word 'entitled' to say that the respondents are not entitled to refund. In this connection, our attention was also invited to our subsequent order dated 11-8-1995 whereby pending determination of the dispute Mahanadi was ordered to deposit the amount of the difference within three weeks, which deposit we understand has come to be made. A separate statement was also required to be filed in regard to those who were granted refunds. This is evident from the affidavit of Kumarendra Nath, General Manager (Finance), which shows that the company had deposited Rs 49,22,68,098.89 by two separate demand drafts. Appended to the affidavit is a statement marked Appendix 'A' which shows the amounts collected from the purchasers/consumers of coal together with interest due thereon minus the amount refunded between 21-4-1995 and 11-8-1995. Appendix 'B' is a statement showing the amount refunded/adjusted towards the sale price. The total amount Rs 4,34,32,498 is shown to have been refunded/adjusted.

3. We see no merit in the objection raised. We consider it to be frivolous. The submission that the refund must be refused because it would amount to "unjust enrichment" cannot be countenanced since this Court's order dated 3-1-1994 in no uncertain words provided that on the respondents succeeding in the writ petitions, they shall, without any other condition or stipulation, be granted refund together with accrued interest. By our order of 11-8-1995, we secured the amount by directing Mahanadi to deposit the amount in this Court subject to their contentions. Accordingly the amount of Rs 49,22,68,098.89 came to be deposited on 31-8-1995.

4. Now it is clear from this Court's order of 3-1-1994 that on a certain event happening, namely, the respondent succeeding in the writ petitions, the amount was to be refunded to them together with interest accrued thereon. The words used were "shall be refunded" and the High Court was requested to dispose of the writ petitions. Indisputably the writ petitions have been finally disposed of in favour of the respondents. The condition precedent to the order of 3-1-1994 has since been satisfied. The subsequent order dated 21-4-1995 extracted hereinbefore merely said that the refund may be allowed to those entitled to the same. By the use of the expression 'entitled', the Court did not and could not have intended to depart from or modify the order of 3-1-1994. And the question of entitlement in relation to unjust enrichment was far from the Court's mind. It is only another attempt on the part of the State to retain the money. Besides, the position has also been clarified in this behalf in the subsequent affidavits dated 4-8-1995. The allegation that the tax liability had been passed on and collected from the consumers has been specifically and emphatically denied. We, therefore, see no merit in the contention.

5. In the result, we see no merit in the objections raised and repel them in toto. We direct that pursuant to this Court's order dated 3-1-1994, the tax amount with interest deposited in this Court be refunded to the respondents in the appeal arising from SLPs Nos. 16120-21 of 1993.

6. There is no doubt that in the concluding part of the judgment of this Court dated 21-4-1995 in *State of Orissa v. Mahanadi Coalfields Ltd.* (State of Orissa v. Mahanadi Coalfields Ltd., 1995 Supp (2) SCC 686), Shri Shanti Bhushan had appeared on behalf of the Orient Paper and Industries and not for Mahanadi Coalfields Ltd. and therefore, the reference to him as counsel for Mahanadi Coalfields is inaccurate and needs to be corrected by substituting the name of Orient Paper and Industries in place of Mahanadi Coalfields Ltd. That disposes of IA No. 278 of 1995.

7. In view of the above, the Interim Applications Nos. 279-553 of 1995 filed by the State of Orissa will stand dismissed. Interim Applications Nos. 278, 554 and 556 of 1995 will stand allowed and the applicants shall be entitled to refund and discharge of bank guarantee.

8. IA No. 555 of 1995 has been filed by Mahanadi Coalfields Limited pursuant to the directions of this Court in its order dated 11-8-1995. It seeks to record the deposit of Rs 4.92 crores with the Court and seeks further directions in respect of (i) a sum of Rs 27,77,000 which had earlier been deposited with the State of Orissa by Mahanadi Coalfields which in turn had collected it from customers who had not gone to court but had nevertheless paid the amount, and (ii) a sum of Rs 1,82,173 which still remains with Mahanadi Coalfields as a result of a computation error. With respect to (i), the State is directed to return the sum to the customers who were not parties to the litigation by referring to the details provided by Mahanadi Coalfields, and as regards (ii), our directions in respect of the money already deposited with this Court will apply to this amount also.

9. There will be no order as to costs.

