SUPREME COURT OF INDIA

South Eastern Coalfields Ltd

Vs.

State of M.P.

C.A.No.5282 of 2002

(R. C. Lahoti and Ashok Bhan, JJ.)

13.10.2003

JUDGEMENT

R. C. LAHOTI, J.:-

1. M/s. South Eastern Coalfields Ltd.. and M/s Western Coalfields Ltd. are Government Companies operating various coal mines in the State of Madhya Pradesh, holding mining leases granted to them by the State Government under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, hereinafter 'the Act', for short. Coal is a major mineral and the said companies, hereinafter collectively called as 'coalfields', have the exclusive right for extraction of coal under the lease deeds held by them.

2. Sub-section (3) of Section 9 of the Act empowers the Central Government to enhance or reduce the rate at which royalty shall be payable in respect of any mineral including coal w.e.f. such date as may be specified in the notification published in the official gazette in that behalf. In exercise of the power so conferred, the Union of India enhanced the royalty payable on coal to Rs.120/- per ton from Rs. 6.50 per ton, which was the rate prevailing till then. So far as the State Government is

concerned, it is entitled to collect the royalty including the enhanced royalty from the lessees, i.e. the coalfields, and the coalfields can, in law, pass-on the burden of royalty to the purchasers/consumers of coal by including the amount equivalent to royalty in the price of the coal. Coal is a controlled commodity and governed by the provisions of the Essential Commodities Act, 1956 and the Coal Control Order issued thereunder. Inasmuch as the State Government took steps for recovering the royalty on coal at the enhanced rates from the lessees and the lessees in their turn proposed to enhance the rate at which the coal was supplied to the purchasers/consumers, about 60 writ petitions came to be filed in the High Court of Madhya Pradesh by different consumers who were to bear the burden of enhancement ultimately. In the writ petitions, the enhancement of royalty on coal was sought to be impugned on two grounds : firstly, that Section 9(3) of the Act itself was ultra vires the Constitution; and secondly, that the notification dated 1st August, 1991 issued by the Central Government under S. 9(3) of the Act was unconstitutional being arbitrary, unreasonable and lacking in bona fides. The High Court of Madhya Pradesh by its decision dated 17-12-1993 upheld the vires of S. 9(3) of the Act but quashed the notification dated 1-8-1991 enhancing the rate of royalty on the ground that it was arbitrary and lacking in bona fides.

3. It is pertinent to note that the coalfields did not lay any challenge to the enhancement. All the writ petitions in the High Court were filed by the consumers/purchasers. The coalfields were impleaded as respondents. When the State of Madhya Pradesh filed appeals by special leave in this Court impugning the judgment of the High Court, the coalfields joined as appellants with the State of Madhya Pradesh. A batch of appeals was decided by this Court on February 1, 1995 (decision reported as State of M. P. v. Mahalaxmi Fabric Mills Ltd. and Ors. 1995 Supp (1) SCC 642). This Court allowed the appeals, set aside the decision of the High Court of Madhya Pradesh and directed the writ petitions filed in the High Court to be dismissed. AIR 1995 SC 2213 :1995 AIR SCW 1621

4. The writ petitions in the High Court were filed on different dates. The High Court had, on a prayer made by the respective writ petitioner, passed orders protecting the writ petitioners from the recovery of enhanced royalty. Chronologically, the first of the interim orders which has been brought to our notice is dated 20-8-1992 passed in CWP No. 3239 of 1992. The order is so worded:-

".....It is directed that the respondents shall not charge royalty on coal from the petitioners at the enhanced rate but the old rate as it was prevalent before 1-8-1991 until further orders."

5. Several interim orders so made remained in operation during the pendency of the writ petitions in the High Court. On special leave petitions being filed in this court against the final judgments of the High Court dated 10-12-1993, this Court, vide order dated 6-11-1993, directed the operation of the judgment of the High Court to remain stayed. The result of the interim stay granted by this Court was that the notification dated 1-8-1991 became operative and the enhancement in rate of royalty made thereby became operational and the enhanced royalty became recoverable.

6. It seems that at some stage of the proceedings, under orders of the court, the consumers had furnished bank guarantees for payment of differential amount of royalty in the event of their liability being uphold by the court. On the operation of the judgment of the High Court having been stayed by the Supreme Court, the Coalfields issued notices demanding payment of differential royalty and on account of the bank guarantees being available, the differential amount of royalty was paid in full and the bank guarantees furnished by the parties were released.

7. In the year 1997 the Director, Mines and Geology, Government of Madhya Pradesh, issued letters to the Coalfields demanding payment of interest at the rate of 24% per annum for the period for which the payment of the enhanced amount of royalty was delayed. The Coalfields in their turn raised bills on their consumers /buyers demanding payment of similar interest from them for the period for which they had delayed the payment of amount equivalent to differential royalty to the Coalfields. At this point of time the several consumers as also the Coalfields filed several writ petitions seeking quashing of the demand raised on account of interest. A batch of writ petitions was disposed of by a Division Bench of the High Court of Madhya Pradesh on 3-9-1998 by allowing relief in part to the several writ petitioners. The High Court had directed interest to be paid at the rate of 12% per annum instead of 24% per annum if paid within a month of the date of the order failing which the liability to pay interest at the rate of 24% per annum shall stand. The reasoning which has prevailed with the High Court is that it was on account of the various interim orders passed by the High Court restraining the recovery of royalty at the enhanced rate that the Coalfields were prevented from recovering the royalty at the enhanced rate from the consumers, and as they could not collect the amount of royalty they in their turn could not pass on the amount of royalty to the State. The interim orders of the Court cannot be construed as wiping out the liability to pay, even temporarily, for the period for which the interim order of the Court remained in operation, so as to permit a plea being raised that where there be no demand there can be no liability to pay interest. The demand was there; the liability too was there; only its enforcement was suspended. The interim orders of the Court can neither prejudice the right of the State to recover interest from the Coalfields nor the right of the Coalfields to recover interest from the consumers /buyers. However, placing reliance on Gurusharan Singh and Ors. v. New Delhi Municipal Committee and Ors. (1996)2 SCC 459 the High Court held that levy of interest at the rate of 24% per annum would be too harsh and the interest of justice demanded the rate of interest being reduced to 12% per annum which it did . So far as the State is concerned the High Court held that it was entitled to recovery from the Coalfields which could, in their turn, recover the amount of interest from the consumers either by filing suits or by stopping their supplies for the future unless the dues were paid. The consumers and Coalfields have come up in appeal by special leave disputing their liability to pay interest. The State of Madhya Pradesh has also come up in appeal by special leave staking its claim for recovery of interest at the rate of 24% per annum in place of 12% per annum as directed by the High Court. AIR 1996 SC 1175 :1996 AIR SCW 749

7. We have heard S/Shri R. F. Nariman, P. K. Jaiswal, A. K. Chitale and S. Ganesh, Senior Advocates for the consumers, S/Shri Ajit Kumar Sinha and Anip Sachethey, Advocates for the Coalfields and Shri Satish Kumar Agnihotri, Advocate for the State of Madhya Pradesh. We have also heard Shri Mukul Rohtagi, the learned Additional Solicitor General for the Union of India.

8. The questions arising for decision in this batch of appeals may, for facilitating discussion, be grouped into two, as under :

(i) The liability of Coalfields to pay interest to the State Government; and

(ii) The liability of the consumers/purchasers to pay interest to the Coal-fields.

(a) for the period for which there was no restraint order on recovery passed by the Court,

and

(b) for the period for which the restraint order passed by the court remained in operation.

9. Liability of Coalfields to pay interest to the State

It is not disputed that the mining rights have been leased to the coalfields by the State Government under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957. Under S. 4 of the Act no mining operation in any area shall be undertaken except under and in accordance with the terms and conditions of a mining lease granted under the Act and the rules made thereunder. Rule making power has been conferred on the Central Government by S. 13 of the Act. The relevant part of S. 13 is extracted and reproduced hereunder :-

13. Power of Central Government to make rules in respect of minerals.-

(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of [reconnaissance permits, prospecting licenses and mining leases] in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) to (f) xxx xxx xxx xxx xxx

(g) the terms on which, and the conditions subject to which, any other (reconnaissance permit, prospecting licences or mining leases] may be granted or renewed;

(h) xxx xxx xxx xxx xxx

(i) the fixing and collection of fees for [reconnaissance permits, prospecting licences or mining leases] surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable;]

(j) to (qq) xxx xxx xxx xxx

(r) any other matter which is to be, or may be, prescribed under this Act.

10. In exercise of the powers conferred by the abovesaid S. 13, The Mineral Concession Rules, 1960 have been framed. Once an application for the grant of a mining lease has been sanctioned by an order for the grant of such lease, a lease deed in Form 'K' appended to the said rules is required to be executed under Rule 31. The following two clauses of the lease deed are relevant and hence are reproduced hereunder :-

Part V - Rents and Royalties reserved by this lease

Clause 3. Subject to the provisions of clause 1 of this Part, the lessee/lessees shall during the subsistence of this lease pay to the State Government at such times and in such manner as the State Government may prescribe royalty in respect of any mineral/minerals removed by him/them from the leased area at the rate for the time being specified in the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957.

Part VI- Provisions relating to the rents and royalties

Clause 3. Should any rent, royalty or other sums due to the State Government under the terms and conditions of these presents be not paid by the lessee/lessees within the prescribed time, [the same, [together with simple interest due thereon at the rate of [twenty four per cent] per annum] may be recovered] on a certificate of such officer as may be specified by the State Government by general or special order, in the same manner as an arrear of land revenue.

Rule 64A provides as under :

64A. The State Government may, without prejudice to the provisions contained in the Act or any other rule in these rules, charge simple interest at the rate of [twenty-four per cent] per annum on any rent, royalty or fee (other than the fee payable under sub-rule (1) of rule 54) or other sum due to that Government under the Act or these rules or under the terms and conditions of any prospecting licence or mining lease from the sixtieth day of the expiry of the date fixed by that Government for payment of such royalty, rent, fee or other sum and until payment of such royalty, rent, fee or other sum is made.

11. It is not disputed that the Coalfields have executed lease deeds in Form 'K' wherein the abovesaid two clauses, i.e. Part V, Clause 3 and PartVI, Clause 3 are both incorporated. There is the statutory rule providing for payment of simple interest at the rate of 24% per annum on the amount of any royalty or other sum which remains unpaid. Also, the contract in the statutory form entered into between the parties contains a recital consistent with Rule 64A obliging the Coalfields to pay such interest. Thus, the liability of the Coalfields to pay interest to the State is statutory as well as contractual.

12. Shri S. Ganesh, the learned senior counsel made an ingenious submission that the liability to pay interest on the amount of royalty to be statutory should have been provided for by the Act itself, and as the Act does not make any provision for payment of interest the Central Government could not have, in exercise of delegated power of legislation, made provision for interest on overdue royalty. He further submitted that the liability to pay interest or the right to levy interest can be brought into being only by a substantive provision of law; liability to pay interest cannot be left to be created by procedural law. Even if the constitutional validity of Rule 64A, has not been put in issue, yet the consumers, upon whom the burden of paying the amount of interest would ultimately be passed on, are entitled to dispute the levy of interest on the ground that the same is not supported by the provisions of the Act. He further submitted that there being no provision in the Act for payment of interest, a mere incorporation of a term to that effect in the lease deed executed by the Coalfields in favour of the State Government, in the pro forma appended to the rules, creating a liability in excess of those created by the Act itself, cannot be relied on by the State Government to support its claim for interest. Reliance was placed on the decisions of this Court in India Carbon Ltd. and Ors. v. State of Assam (1997)6 SCC 479 , V. V. S. Sugars v. Govt. of A. P. and Ors. (1999)4 SCC 192 and Vikrant Tyres Ltd.. v. First Income Tax Officer, Mysore (2001) 3 SCC 76. AIR 1997 SC 3054 :1997 AIR SCW 3091, AIR 1999 SC 2124 : 1999 AIR SCW 1871, AIR 2001 SC 800 : 2001 AIR SCW 624 : 2001 Tax LR 323 : 2002 AIR- Kant HCR 645

13. We have carefully perused all the three decisions. All these decisions relate to recovery of tax whereon interest was sought to be levied for delayed payment. The Court chose to assign a literal meaning to the provisions of the substantive law as opposed to a liberal interpretation, and hold that to empower levy of interest for delayed payment of tax there must be a substantive provision in the taxing statute. All the cases relied on by Shri S. Ganesh, the learned senior counsel, are such cases wherein the levy of interest was sought to be justified by reference to some provision made in the rules, which provision was held to be beyond the rule making power as delegated by the parent statute and the statute itself did not make a provision for payment of interest. The levy of such interest was held to be ultra vires the power of the authority levying the interest. Such is not the case before us. Here it is clear from the several provisions of the Act and the rules quoted hereinabove, no mining operation is permissible except in accordance with the terms and conditions of a mining lease and the rules made under the Act. The rules clearly provide for payment of interest. The lease deed executed by the Coalfields incorporates a recital for the payment of interest. It is one of the terms and conditions of obtaining a mining lease that any delay in payment of royalty, referable to a period beyond the sixtieth day of the expiry of the date fixed by the Government for payment of such royalty, shall carry a liability to pay simple interest calculated at the rate of 24% per annum on such amount of royalty. Rule 64A has been framed in exercise of the powers conferred on the Central Government by S. 13 of the Act. The terms for payment of royalty, and for payment of interest for the period of delay, are authorized by the power to make rules for regulating the grant of mining lease. That apart, interest is included within the expression 'other charges' - the phrase as employed in clause (i) of sub-sec. (2) of S. 13 of the Act. A decision by a Division Bench of Andhra Pradesh in Suvarna Cements Ltd. and Anr. v. Union of India and Ors. AIR 2002 AP 244 has been brought to our notice. The Division Bench has held - "It cannot be said that the term 'charges' occurring in S. 13(2)(i) does not include 'interest'. Undoubtedly, interest payable by a lessee for delayed payment is a financial liability on the lessee and, therefore, a debt. It may also be construed as a cost or price or compensation payable to the contracting State authority for delay in payment of dues such as cess, royalty, etc." We find ourselves in respectful agreement with the view of the law so taken by the High Court.

14. The Central Government can, in exercise of delegated power of legislation, make provisions for payment of interest on the amount of royalty for the period of delay in payment. Rule 64A has been validly enacted. The mining lessees, that is the Coalfields, having entered into mining lease contracts with full knowledge of terms and conditions thereof and having taken advantage thereunder of operating the mines, they cannot be subsequently allowed to wriggle out of the contractual obligations incurred by them, including the one for payment of interest, by executing the mining leases. The proposition is so well settled that it hardly needs any authority in support thereof. Yet, reference may be had to Har Shankar and Ors. v. Dy. Excise and Taxation Commissioner and Ors. (1975)1 SCC 757 and State of Haryana and Ors. v. Lal Chand and Ors. (1984)3 SCC 634 , and the several decisions cited therein. AIR 1975 SC 1121

AIR 1984 SC 1326

15. In sum, we are of the opinion that the Coalfields, i.e. the mining lessees, are bound to pay

interest as per the terms of mining leases incorporating the clause for payment of interest consistently with R. 64A of the Mineral Concession Rules, 1960.

16. Liability of the consumers/purchasers to pay interest to the Coalfields:

(a) (for the period for which there was no restraint order on recovery passed by the Court)

It cannot be denied that the sale of minerals by Coalfields to the consumers/purchasers is a sale of goods. Section 61 of the Sale of Goods Act, 1930 provides as under :

"61. Interest by way of damages and special damages.-

(i) Nothing in this Act shall affect the right of the seller or the buyer to recover interest of special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price-

(a) to the seller in a suit by him for the amount of the price - from the date of the tender of the goods or from the date on which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of breach of the contract on the part of the seller - from the date on which the payment was made.

17. What Section 61 incorporates is a rule of equity, justice and sound logic. The buyer should not unduly benefit by holding the goods bought in one hand and yet retaining in the other hand the money equivalent to the price of goods due and payable by him to the seller. Similarly, the seller should not unjustly enrich by retaining the money received in advance as price in full or part of the goods forming subject matter of the contract, and retaining in the other hand the goods legitimately due for delivery to the buyer. It was submitted on behalf of the consumers/purchasers that S. 61 does not create any right in the seller (that is, the Coalfields) by itself; it only confers power on the Court to award interest at such rate as it thinks fit. In the present case, the Coalfields are demanding

interest without having recourse to any Court for recovery and that too in the absence of a contract in that regard. We are not impressed by the submission. Though, Section 61 may not in terms apply yet the principle underlying the provision can very well be relied on for the purpose of settling the rights of the parties in a just manner.

18. It was submitted that the royalty as payable is not a constituent of price agreed upon between the lessee and the consumer. A few decisions were cited in support of such submission but they are in a different context and do not have any applicability to the issue arising for resolution before us. The royalty is paid as royalty by the mining lessee to the State. However, the burden of royalty is specifically allowed to be passed on by the mining lessee to the consumer/purchaser of the mining products. The amount which is recovered by the mining lessee from the buyer is obviously a part of the price agreed upon in the sense that the amount is incurred as a cost towards recovering the minerals offered for sale. In any case, the amount of royalty is recovered by the seller and paid by the buyer along with and as part of the price of the mineral. In either case, it would attract the applicability of S. 61 of the Sale of Goods Act.

19. Interest is also payable in equity in certain circumstances. The rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (See : Chitty on Contracts, Addition 1999, Vol. II, Part 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

20. We may refer to the decision of this Court in Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N. C. Budharaj (Deceased) by LRs. and Ors. (2001)2 SCC 721, wherein the controversy relating to the power of an arbitrator (under the Arbitration Act, 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju, J. has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, viz., interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest. AIR 2001 SC 626 :2001 AIR SCW 255

21. Under the English Law, generally speaking, a seller cannot recover interest when the buyer is in default of paying the price, nor can the buyer recover it when claiming a refund of the purchase price. Yet special damages have been held permissible to be awarded in respect of interest paid by the plaintiff as due to the defendant's breach subject to the rule of remoteness. The English Law

caused considerable debate in India as well, but the matter was set at rest by the enactment of S. 61 of the Sale of Goods Act, 1930. Recovery of interest by way of damages is permissible under sub-sec. (2) of S. 61 (See Mulla on Sale of Goods Act, Sixth Edition, pp. 61-62). Power to award interest by way of damages at a reasonable rate if there be no contract rate specified, or at the contract rate as specified, flows from S. 61 of the Act.

22. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty which is a constituent part of the price of the mineral for the period for which it remained unpaid. The justification for award of interest stands fortified by the weighty factor that the Coalfields themselves are obliged to pay interest to the State on such amount. It will be a travesty of justice to hold that though the Coalfields must pay the amount of interest to the State but the consumers /purchasers in whose hands the money was actually withheld be exonerated from liability to pay the interest.

23. Liability of the consumers/purchasers to pay interest to the coalfields:

(b) (for the period for which the restraint order passed by the Court remained in operation)

On the principle which we have upheld just hereinabove, it would not have been necessary to enter into this aspect of the issue; however, it becomes necessary to deal therewith inasmuch as it was submitted on behalf of the consumers/purchasers that their non-payment of enhanced amount of royalty was protected by judicial orders, though of interim nature, passed by the Courts, and therefore they should not be held liable for payment of interest so long as the money was withheld under the protective umbrella of the Court order. Merely because the writ petitions were finally held liable to be dismissed, it cannot be urged that the interim orders passed by the courts were erroneous. Soon on dismissal of their writ petitions, the payment of the enhanced amount of royalty which was disputed earlier was promptly cleared by the writ petitioners and, therefore, their act was bona fide. We find no merit in this submission either.

24. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the Court or in direct consequence of a decree or order (See Zafar Khan and Ors. v. Board of Revenue, U. P. and Ors. AIR 1985 SC 39). In law, the term 'restitution' is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, Seventh Edition, P. 1315). The Law of Contracts by John D. Calamari and Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring

to the disgorging of something which has been taken and at times referring to compensation for injury done. "Often, the result in either meaning of the term would be the same. ..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed." The principle of restitution has been statutorily recognized in S. 144 of the Code of Civil Procedure, 1908. Section 144 of the C. P. C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the Court at the stage of final decision, the Court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

25. Section 144 of the C. P. C. is not the fountain source of restitution; it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from S. 144 AIR 1922 PC 269, (1871) LR 3 PC 465, AIR 1971 Madras 162 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In Jai Berham v. Kedar Nath Marwari (1922) 49 I. A. 351, their Lordships of the Privy Council said : "It is the duty of the Court under S. 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved. Cairns, L. C. said in Rodger v. Comptoir d'Escompte de Paris, (1871) L.R. 3 P.C. : "One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the Case." This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, A. A. Nadar v. S. P. Rathinasami (1971)1 MLJ 220. In the exercise of such inherent power the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of S. 144.

26. That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the Court not intervened by its interim order when at the end of the proceedings the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the Court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court withholding the release of money had remained in operation.

27. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

28. So far as the appeal filed by the State of Madhya Pradesh seeking substitution of rate of interest by 24% per annum in place of 12% per annum as awarded by the High Court is concerned, we are not inclined to grant that relief in exercise of our discretionary jurisdiction under Article 136 of the Constitution especially in view of the opinion formed by the High Court in the impugned decision. The litigation has lasted for a long period of time. Multiple commercial transactions have taken place and much time has been lost in between. The commercial rates of interest (including bank rates) have undergone substantial variations and for quite sometime the bank rate of interest has been below 12%. The High Court has, therefore, rightly (and reasonably) opined that upholding entitlement to payment of interest at the rate of 24% per annum would be excessive and it would meet the ends of justice if the rate of interest is reduced from 24% per annum to 12% per annum on the facts and in the circumstances of the case. We are not inclined to interfere with that view of the High Court but make it clear that this concession is confined to the facts of this case and to the

parties herein and shall not be construed as a precedent for overriding Rule 64A of the Mineral Concession Rules, 1960. It is also clarified that the payment of dues should be cleared within six weeks from today (if not already cleared) to get the benefit of reduced rate of interest of 12%; failing the payment in six weeks from today the liability to pay interest @ 24% per annum shall stand.

29. For the forgoing reasons, all the appeals are held liable to be dismissed and they are dismissed accordingly. Needless to say the interest shall be calculated for the period commencing from the sixtieth day of the expiry of the date fixed by the State Government for payment of such royalty consistently with Rule 64A till the date of actual payment. The demands shall be worked out accordingly. No order as to the costs.

Appeals dismissed.