

**SUPREME COURT OF INDIA**

Hindustan Paper Corporation Limited

Vs.

Ananta Bhattacharjee

C.A.Nos.3512-13 of 1998

(V. N. Khare CJI. and S. B. Sinha JJ.)

28.04.2004

**JUDGMENT**

1. These appeals are directed against a judgment and order dated 20-9-1995 passed by a Division Bench of the Calcutta High Court in FMAT No. 1161 of 1992 and FMAT No. 794 of 1992 whereby and whereunder the appellant herein was directed to refund the amounts advanced to it by Respondents 1 to 55 with interest at the rate of 12 per cent per annum from the dates on which such advances were made up to the date of actual payment.

2. The factual matrix involved in the matter lies in a very narrow compass. The Ministry of Human Resource Development, Department of Education, Government of India floated a scheme on or about 22-3-1988, purported to be for securing equitable distribution of white printing paper; the relevant features whereof are as under :

*"1. The white printing paper will be allocated to the States/UTs for the printing of school textbooks, exercise books and examination answer-sheets.*

*2. On the basis of the allocations made by this Department the States/UTs in turn shall reallocate the same to the various agencies concerned in their respective States/UTs or the State-level Committees, set up for the purpose.*

*3. Allottees in the States/UTs will be supplied paper by Hindustan Paper Corporation Ltd. at ex-mill price of Rs. 7560 per MT inclusive of excise duty and cess.*

*4. The allottees shall place firm orders with the Director (Marketing), Hindustan Paper Corporation Ltd., 75-C, Park Street, Calcutta 700 016. It will be obligatory on the part of the allottees to furnish information and make advance payment along with the orders as follows :*

*(a) The size of the paper and its exact quantity.*

*(b) Destination of station where the goods are to be dispatched.*

*(c) Mode of dispatch such as by rail or by road.*

*(d) 25% advance money by demand draft in favour of Hindustan Paper Corporation Ltd., payable at Calcutta.*

*(e) The name and the full address of the bank through which the dispatch documents for the balance amount are to be negotiated.*

*(f) 'C' form for concessional CST."*

3. Pursuant to or in furtherance of the said Scheme, the respondents allegedly placed orders for supply of white paper upon the appellant herein. The appellant did not make any supply of white paper to the respondents whereupon a writ petition was filed before the Calcutta High Court by the respondents. The said writ petition was allowed ex parte by a learned Single Judge of the High Court directing the appellant Corporation herein to take immediate steps for release of white concessional paper to the respondents wherefor allegedly the advance money had already been accepted by them for the quarters April to June 1989 and October to December 1989. An application for recalling of the said order was dismissed by the learned Single Judge.

4. Aggrieved thereby and dissatisfied therewith, the appellant preferred the aforementioned appeals before a Division Bench of the Calcutta High Court. The Division Bench of the High Court noticed the contention of the appellant to the effect that having regard to the increase in the cost of paper the respondents would unjustly enrich themselves if paper is supplied to them at the concessional rate. The Division Bench of the High Court further noticed that the appellant herein had in fact already refunded a large amount to the allottees without any interest subsequent to the discontinuation of the Scheme, but proceeded to hold that by such act it could not absolve itself from the liability to compensate the respondents in cash if not in kind in consideration of their default. Relying upon or on the basis of some decisions of this Court, the High Court directed the appellant to refund the amounts advanced to it by each of the respondents with interest at the rate of 12 per cent per annum from the dates on which the advances were made up to the date of payment within a period of eight weeks from the date.

5. Before advertng to the matter further, we may notice that as far back as 22-3-1991, the appellant herein expressed its readiness and willingness before a learned Single Judge of the Calcutta High Court to refund the amounts of advance but the respondents were not willing to accept the same; whereafter the advance amounts received by the appellant were deposited in a cash-credit account in a scheduled nationalised bank which did not carry any interest.

6. For the purpose of this appeal, it is not necessary for us to consider the rival contentions of the parties raised in the High Court, inasmuch as, as noticed hereinbefore, the Division Bench of the High Court had set aside that part of the judgment of the learned Single Judge

whereby the appellant had been directed to release white concessional paper to the respondents.

7. The Division Bench of the High Court had directed payment of interest by way of compensation.

8. The question which arises for consideration is as to whether in exercise of its jurisdiction under Article 226 of the Constitution of India such a direction was permissible in law. We are of the opinion that it was not. Public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution is violated and not otherwise. It is not every violation of the provisions of the Constitution or a statute which would enable the court to direct grant of compensation. The power of the court of judicial review to grant compensation in public law remedy is limited. The instant case is not one which would attract invocation of the said rule. It is not the case of the respondents herein that by reason of acts of commission and omission on the part of the appellant herein the fundamental right of the respondents under Article 21 of the Constitution has been violated.

9. The Scheme in question was floated by the Union of India. It did not have any force of law. Even if it did, a writ of mandamus could have been issued, but by no stretch of imagination, the High Court could, in our considered opinion, direct grant of compensation.

10. Mr. Biswas, learned counsel appearing on behalf of the respondents, however, strongly relied upon a decision of this Court in *South Eastern Coalfields Ltd. v. State of M.P.* ( ) *South Eastern Coalfields Ltd.* was a mining lessee in terms of the provisions of the Mineral Concession Rules, 1960 framed under the Mines and Minerals (Regulation and Development) Act, 1957. In terms of the covenants contained in the deed of mining lease as contained in Form K, the mining lessees were liable to pay interest to the State on the unpaid portion of royalty. The liability of mining lessees to pay interest in that case was considered having regard to the statutory liability of the lessees. In that decision, this Court, however, observed that obligation to pay interest in equity can arise only in certain circumstances, even in absence of agreement or custom to that effect. The Court held that the doctrine of restitution would be applicable in the matter of grant of interest. However, even for the said purpose, indisputably it was necessary for the respondents to demonstrate as to the amount of loss they had suffered by reason of wrongful withholding of the amount advanced by them. We may notice that even in *South Eastern Coalfields Ltd.* ( ) this Court referred to a decision of a Division Bench of the Andhra Pradesh High Court in *Suvarna Cements Ltd. v. Union of India*<sup>1</sup> which is in the following terms :

“It cannot be said that the term "charges" occurring in Section 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.”

11. In the instant case, the appellant had offered refund of the advance amount to the respondents herein as far back as on 22-3-1991, but the respondents for reasons best known to them refused to accept the said offer. The appellant in the aforementioned situation had no other option but to deposit the amount in a cash-credit account which did not carry any interest.

12. In that view of the matter, we are of the opinion that even in equity the respondents were not entitled to claim any interest from the appellant.

13. For the reasons aforementioned, the judgment of the High Court cannot be sustained. It is, accordingly, set aside. The appeals are allowed. No costs.

<sup>1</sup>*2001 Indlaw AP 514*