

SUPREME COURT OF INDIA**Bench: Justices B.R. Gavai and Sandeep Mehta****Date of Decision: 22nd February 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024 (Arising out of SLP(Civil) No(s). 34194 of 2016)

M/S. DOMCO SMOKELESS FUELS PVT. LTD. ...APPELLANT(S)**VERSUS****STATE OF JHARKHAND AND ORS. ...RESPONDENT(S)****Legislation:** None Mentioned.

Civil appeal against the High Court's dismissal of a contempt application related to the non-compliance of orders for refund of excess payment made for coal consignments.

Headnotes:

Contempt Proceedings – Non-compliance with court orders – Appellant sought refund of excess amount paid over notified price for coal consignments in e-auction – Orders passed by High Court and Supreme Court directing refund – Contempt proceedings initiated due to non-compliance – Contempt application dismissed by High Court – Appeal against dismissal – High Court's order misconceived – Conclusion of claim for refund by Supreme Court – Justification for refund with interest – Interest rate discrepancy – Failure to comply with court orders – Direction for payment of interest at 12% per annum on refund amount – Deduction of interest already paid – Two-month deadline for payment – Personal liability of officers for non-payment – Appeal disposed of accordingly.

Referred Cases:

- Somal Pipes Pvt. Ltd. v. Coal India Ltd. & Ors., (Transfer Petition (Civil) No. 100 of 2006)
- Ashoka Smokeless Coal Industries(P) Ltd. and Ors. v Union of India & Ors (2006) 9 SCC 228

J U D G M E N T**Mehta, J.**

1. Leave granted.
2. The appellant has approached this Court seeking to assail the order dated 17th March, 2016 passed by the learned Single Judge of the High Court of Jharkhand whereby the contempt application preferred by the appellant alleging non-compliance of order dated 22nd September, 2008 passed by the

learned Single Judge of the High Court in Writ Petition (Civil) No. 3040 of 2005 was dismissed.

3. The appellant claims to have paid a higher price than the notified price in an e-auction conducted by the respondent, towards lifting of consignments of coal. After the coal had been lifted, the appellant and other similarly placed companies sought refund of the price paid by them over and above the notified price.
4. However, the prayer for refund was not acceded to, upon which the appellant instituted Writ Petition (Civil) No. 3040 of 2005 before the Jharkhand High Court claiming refund of excess price paid by it over and above the notified price towards e-auction of lifting of consignments of coal by the respondent Company.
5. Likewise, numerous other similarly situated aggrieved coal consumers filed writ petitions before different High Courts across the country. These writ petitions were transferred to this Court as same involved substantial question of general importance. However, the writ petition filed by the appellant was not transferred and remained pending before the Jharkhand High Court.
6. The issue was adjudicated by this Court vide order dated 30th October, 2007 in the case of *Somal Pipes Pvt. Ltd. v. Coal India Ltd. & Ors.*, (Transfer Petition (Civil) No. 100 of 2006). The learned Solicitor General of India made a statement before this Court on behalf of the respondents that the difference of price paid by the party from the period running from 12th December, 2005 to 1st December, 2006 shall be refunded.
7. In view of the above development, the appellant filed an Interlocutory Application No. 4 of 2008 in the pending writ petition seeking a direction to refund of excess price paid over and above the notified price for the period running between January, 2005 till October, 2007 along with 12% interest per annum.

8. Learned Single Judge allowed I.A. No. 4 of 2008 vide order dated 22nd September, 2008 and directed as follows: -

“We, while accepting the apology tendered by the alleged contemnors, direct as under:

i. The petitioners shall furnish all documents to the learned Advocates-on-Record of the respondents, showing the actual payments made to any of the subsidiaries of the Coal India Ltd. and the difference between the amount paid and the amount notified, by 12th November 2007.

ii. The documents furnished by the petitioners shall be verified by the officers of the concerned coal companies within four weeks thereafter.

iii. In case of any difference, the learned counsel would deliberate upon the matter so as to enable them to come out with an accepted solution.

iv. The Bank guarantee furnished by the petitioners shall stand discharged.

In view of the aforementioned directions, personal appearance of the alleged contemnors is dispensed with till further orders. Post this matter for further orders, if any, on 8th January 2008.”

Learned counsel for the petitioner submits that in the light of the above direction of the Apex Court, the petitioner is entitled to refund of the excess payment made by the petitioner over and above the notified price.

Considering the above facts and circumstances, in terms of the above stated order of the Apex Court, the petitioner shall, furnish all requisite documents if not already furnished, to the counsel for the respondents, showing actual payments made to any of the subsidiaries, to enable assessment in proper perspective regarding the actual payment of money made, if any, by the petitioner over and above the notified price. After making final assessment in this regard, the parties shall sit together and decide all the issues relating to refund of the excess amount and the mode of refund of such amount, between themselves.”

9. However, the payment was not made despite the above order. Being aggrieved by the non-compliance of the order dated 22nd September, 2008, the appellant filed Cont. Case (Civil) No.247 of 2010 before the High Court, beseeching the Court to initiate contempt proceedings against the respondents. The Cont. Case (Civil) No.247 of 2010 was disposed of by the High Court with a direction to the respondents to refund the amount collected in excess of notified price together with interest within a period of one month, vide order dated 29th May, 2010.

10. Being aggrieved by non-payment of the amount collected in excess of the notified price along with interest, the appellant filed Cont. Case(Civil) No. 403 of 2011 for the alleged breach of order dated 22nd September, 2008 passed in Writ Petition (Civil) No. 3040 of 2005 and order dated 29th May, 2010 passed in Cont. Case(Civil) No. 247 of 2010 by the High Court of Jharkhand.
11. The Cont. Case(Civil) No. 403 of 2011 was dismissed by the High Court of Jharkhand vide order dated 17th March, 2016, which has been assailed in the present appeal.
12. It is admitted that for the period between 12th December, 2005 to 1st December, 2006, the excess amount has been refunded to the appellant. However, the issue regarding the interest payable on the refund amount survives.
13. As per the response in the High Court, the respondents claimed to have refunded an amount to the tune of Rs. 30,80,022/- to the appellant as against the claim of Rs. 65,93,538/- which, as per the authorities, includes the interest towards the period from 1st January, 2005 to 11th December, 2005.
14. The appellant, however, disputes the claim of the respondents that the amount has been paid towards full compliance of the orders passed by the High Court and this Court. It is also asserted by the appellant that refund of excess amount for the period between 1st January, 2007 to March, 2008 is still pending.
15. Learned senior counsel representing the appellant drew our attention to the order dated 12th December, 2005 passed by this Court in a matter involving same controversy in the case of ***Ashoka Smokeless Coal Industries(P) Ltd. and Ors. v Union of India & Ors.***¹, to be specific, para 8 wherein following observations/directions were passed:-

¹ (2006) 9 SCC 228

"8. It is pointed out that in respect of some entities, coal was being supplied at the notified price enhanced by 20% thereof and this would be a guide for fixing the percentage of the excess price to be paid by the petitioners. It is pointed out that enhancement of the notified price only by 20% was in respect of very small consumers and in respect of Central and State Agencies and that cannot form the basis for supply of coal to the petitioners herein having a coal linkage with the coal companies. Taking note of the circumstances as a whole we feel that it would be just and proper to direct the petitioner companies/firms, having coal linkage, to pay in addition to the notified price, 33 1/3% of the enhanced price, each time they claim supply of coal to them based on the linkage and by furnishing security for the balance 66 2/3% of the enhanced price with an undertaking filed in this Court that the said part of the price will also be paid within 6 weeks of the decision of this Court in the writ petitions in case the writ petitions are decided against the petitioners. To protect the interest of the petitioners and to ensure that no permanent harm is caused to them we also think it proper to record the undertaking given on behalf of Coal India Ltd. and its subsidiaries that in case this Court upholds the challenge made by the petitioners and allows the writ petitions filed by them, the enhanced price of 33 1/3% now to be paid by the petitioners will be refunded to the petitioners within 6 weeks of the judgment of this Court with interest thereon at 12% per annum from the date of payment till the date of return to the petitioner concerned."

16. Learned senior counsel urged that this Court clearly directed that the petitioner therein would be entitled to interest @ 12% per annum on the refund amount. However, admittedly, the respondents have refunded the excess amount to the appellant after applying interest @ 3.5% per annum only, i.e., the bank rate, which fact is highlighted from the affidavit filed on behalf of the respondents in Contempt Case (Civil) No. 403 of 2011.

17. The averments to this effect made in para nos. 11, 12 and 13 of the said affidavit are extracted hereinbelow:-

"11. That thereafter this Contempt application was taken up for hearing and the counsel appearing for the opposite parties submitted that due to some confusion regarding rate of interest the interest could not be paid however the principal amount has been refunded. The Hon'ble Court therefore allow the opposite parties time to calculate the interest at the bank rate and payment be made thereof.

12. That thereafter the opposite parties by their letter dated 30.04.2012 requested their Banker namely the SBI, Bank More, Dhanbad Branch to inform to them the banking rate of interest prevailing during the year 2005 so that the order passed by this Hon'ble Court in the case of the petitioner could be complied with.

13. That the SBI, Bank More, Dhanbad Branch by their letter dated 30.04.2012 informed the opposite party that the banking rate of interest has been 3.5 % with effect from 1.03.2003 and 4% with effect from 3.05.2011.”
18. Learned senior counsel urged that the appellant is also entitled to a direction for payment of interest on the amount as well as on the refund due @ 12% per annum as against 3.5% per annum paid by the respondents for the period running from 1st January, 2005 to 11th December, 2005 based on the above order passed by this Court.
19. He also drew our attention to the order dated 29th May, 2010 passed by the learned Single Judge of Jharkhand High Court in Contempt Case (Civil) No. 247 of 2010, which was passed in relation to non-compliance of order dated 22nd September, 2008 in I.A No. 4 of 2008 in W.P. (C) No. 3040 of 2005, wherein the High Court directed as below:-

“1. This application has been filed by the petitioner for intimation of contempt proceedings against the Opposite Parties for wilful disobedience and violation of the order dated 22.9.2008 passed by this Court in a writ petition being W.P. (C) No. 3040 of 2005.

2. It appears that the aforementioned petition was filed by the petitioner for a direction restraining the respondents-opposite parties to charge or realize the price determined during E-auction for the linked quantity of coal which was booked prior to E-auction on the basis of scheduled price fixed by the respondents, but the said booked and valued paid quantity of coal was not lifted. The petitioner also prayed for a direction upon the respondents to continue supply of linked quantity of coal to the petitioner's unit as per the notified price in terms of the order passed in C.W.J.C. No. 2750 of 1997(R) as also the order passed by Supreme Court in Civil Appeal No. 6317 of 1998. The writ petition was heard and disposed of by learned Single Judge on 22.9.2008 taking into consideration the earlier order passed in the writ petition and also the direction issued by the Supreme Court. For better appreciation, the relevant portions of the order passed in the writ petition, which is the subject matter of this contempt proceeding, are reproduced herein below:

“From the records, it appears that the present writ application was filed originally challenging E-auction proposed to be conducted by the respondent BCCL in respect of linked quantity of coal with a prayer for a direction to the respondent to release the price determined during E-auction of the linked quantity of coal in the light of the orders passed in CWJC No. 2750 of 1997(R) which was affirmed by the Supreme Court in Civil Appeal No. 6317 of 1998.

Subsequently, on the allegation that the orders were not complied with, petition was filed by the petitioner vide I.A. No. 4 in Com Pet. (C) No. 138 of 2007 in C.A. No. 5324 of 2006. While hearing all the contempt petitions together in Transfer Petition (Civil) No. 100 of 2006, the Apex Court had passed an interim order on 30. 10. 2007 in following terms:

Let the amount deposited by the Coal India Ltd. be invested on a short term fixed deposit for 60 days.

It is stated by the learned Solicitor General that Mr. A.P. Singh, General manager (Sales) CCL, has not been able to appear in Court today as his father has expired. His personal appearance is exempted.

The learned Solicitor General appearing on behalf of the alleged contemnors tenders an unqualified apology on their behalf. The learned Solicitor General does not press the other I.As. He also does not press the other contentions raised in the affidavits of the respective alleged contemnors.

It is submitted by the learned Solicitor General that the amount paid by the petitioners, in excess of the notified price shall be refunded to them upon verification of the documents which may be submitted in that behalf.

We, while accepting the apology tendered by the alleged contemnors, direct as under:

(i). The petitioners shall furnish all document to the learned Advocates-on-Record of the respondents, showing the actual payments made to any of the subsidiaries of the Coal India Ltd. and the difference between the amount paid and the amount notified, by 12th November 2007.

(ii). The documents furnished by the petitioners shall be verified by the officers of the concerned coal companies within four weeks thereafter.

(iii). In case of any difference, the Learned Counsel would deliberate upon the matter so as to enable them to come out with an accepted solution.

(iv). The Bank guarantee furnished by the petitioners shall stand discharged.

In view of the aforementioned directions, personal appearance of the alleged contemnors is dispensed with till further orders.

Post this matter for further orders, if any, on 8th January, 2008.

Learned Counsel for the petitioner submits that in the light of the above direction of the Apex Court, the petitioner is entitled to refund of the excess payments made by the petitioner over and above the notified price.

Considering the above facts and circumstances, in terms of the above stated order of the Apex Court, the petitioner shall, furnish all requisite documents, if not already furnished, to the Counsel for the respondents, showing actual payments made to any of the subsidiaries, to enable assessment in proper perspective regarding the actual payment of money made, if any,

by the petitioner over and above the notified price. After making final assessment in this regard, the parties shall sit together and decide all the issues relating to refund of the excess amount and the mode of refund of such amount, between themselves.

This writ application along with the I.A. No. 4 of 2008 are disposed of with the aforesaid observations.”

3. From the order passed by the Supreme Court it is evidently clear that the learned Solicitor General appearing before the Supreme Court, admitted that excess amount was realized by the respondent-Coal Company and, therefore, the said amount in excess of the notified price shall be refunded to them upon verification of documents. In the light of the order passed by the Apex Court, the learned Single Judge directed the petitioner to furnish all documents showing actual payment made to any of the subsidiaries so that the amount in excess of notified price could be refunded. Instead of refunding the said amount, now the respondent-opposite party is taking a different stand that the claim for refund of the amount pertaining to the period between January, 2005 to April, 2008 is not tenable as the said amount i.e., 13.4% was a part of notified price w.e.f. January, 2005. No such stand was taken by the respondent-Coal Company before the Supreme Court. It cannot be disputed that the power of fixing and notifying price was with the Ministry of Coal and the said power was delegated to Coal India Limited. Hence, any amount cannot be added with the notified price by the subsidiaries of Coal India Limited inasmuch as those subsidiaries were never vested with the power to add any amount in the notified price. It appears that the matter before the Supreme Court was in relation to the undertaking given with regard to refund of the amount deposited by the Coal Company in excess of the notified price.
 4. Recently a similar question arose with regard to refund of the excess amount deposited by the Coal Company in a writ petition before the Patna High Court being CWJC No. 6530/2009 and the Patna High Court directed refund of the amount collected by the Coal Companies in excess of the notified price.
 5. In the light of the order passed by the Supreme Court and the direction issued by this Court, the respondents-opposite parties are bound to refund the excess amount with interest in excess of the notified price collected by the Coal Companies from the petitioner for the period in question. The stand taken by the respondents in the show cause cannot be accepted.
 6. In the facts and circumstances, although a prima facie case is made out for initiation of contempt proceeding against the respondents, but instead of proceeding further the respondents are directed to refund the amount collected in excess of notified price together with interest for the period in question within a period of one month from today.”
20. Learned senior counsel pointed out that SLP(Civil) No. 21019 of 2010 preferred by the respondents against the order dated 29th May, 2010, has been rejected by this Court vide order dated 9th September, 2010.

21. He submitted that in this background, there was no option for the respondents, but to comply with the orders passed by the Jharkhand High Court and this Court. As these orders have been wilfully disobeyed, appropriate directions deserve to be issued to the respondents to make the payment to the appellant in terms thereof.
22. Learned counsel representing the respondents admitted that the Jharkhand High Court has taken a view in favour of the appellant Company in the very same litigation. However, his submission was that identical claims had been raised by several claimants in different High Courts, one of them being filed before the High Court of Calcutta in APO No. 10 of 2011 wherein also, the order of refund was passed in favour of the claimant Company on 4th April, 2012. The said order has been challenged by the respondent Company in SLP(Civil) No. 21888 of 2012 wherein this Court has granted stay vide order dated 9th August, 2012.
23. Thus, as per learned counsel representing the respondents, learned Single Judge of the Jharkhand High Court was justified in rejecting the contempt application vide order dated 17th March, 2016 and denying the relief claimed by the appellant for refund of amount for the third period beginning from 1st January, 2007 till March, 2008 and so also the issue of interest as the *lis* is sub judice before this Court with a stay operating in favour of the respondent Company in an analogous matter. On these grounds, he implored the Court to reject the appeal filed by the appellant.
24. We have anxiously considered the submissions advanced at Bar and perused the material placed on record.
25. At the outset, we may note that the plea of respondents that on account of pendency of SLP(Civil) No. 21888 of 2012 arising from an order passed by the Calcutta High Court, the appellant should be denied the rightful claim of refund of excess amount is misconceived.

26. Suffice it to say that the claim of the appellant for refund pertaining to the third period, i.e. 1st January, 2007 till March, 2008 stands concluded with the rejection of SLP(Civil) No. 21019 of 2010 vide order dated 9th September, 2010 passed by this Court(*supra*). Admittedly, the appellant has not been refunded the amount for the period running from 1st January, 2007 till March, 2008 and, therefore, the learned Single Judge was not justified in discharging the respondents in the contempt case without ensuring payment of the refund amount with interest to the appellant herein.
27. The recourse taken by the learned Single Judge in the impugned order to the pendency of the SLP before this Court, arising from an order passed by the Calcutta High Court was absolutely unfounded as the issue *inter se* between the parties herein, has already been concluded by this Court.
28. As a matter of fact, on going through the impugned order dated 17th March, 2016, we find that the learned Single Judge completely ignored the order dated 9th September, 2010 passed by this Court in SLP(Civil) No. 21019 of 2010.
29. Regarding the issue of interest on the refund for the period running from 1st January, 2005 to 11th December, 2005, the learned Single Judge rejected the claim of the appellant herein holding the said demand to be exaggerated. While drawing such inference, the learned Single Judge completely ignored the judgment rendered by this Court in ***Ashoka Smokeless Coal Industries(P) Ltd. and Ors.***(*supra*) wherein a pertinent direction had been given to make the refund of the excess amount with interest @ 12% per annum. Admittedly, as per the affidavit filed by the respondents(referred to *supra*), the interest which has been applied on the refund amount for the period between 1st January, 2005 to 11th December, 2005 is at the bank rate i.e. 3.5% per annum. Evidently thus, the respondents have failed to faithfully

comply with the orders passed by the Jharkhand High Court as well as this Court.

30. As a consequence, it is hereby directed that the appellant shall be entitled to interest @ 12% per annum on the refund amount for the period running from 1st January, 2005 to 11th December, 2005. The interest @ 3.5% per annum, already paid, shall be deducted from the differential amount. The appellant shall also be entitled to receive refund of the excess amount paid for the period between 1st January, 2007 till March, 2008 with interest @ 12% per annum in the same terms as directed by this Court vide order dated 9th September, 2010. The amount as directed above shall be paid to the appellant within a period of two months from today failing which, the officers concerned shall be made personally liable to pay the interest amount to the appellant.
31. The appeal stands disposed of. No order as to costs.
32. Pending application(s), if any, shall stand disposed of.

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