

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Rai Chattopadhyay**

***WPA 12537 of 2019***

**Paras Power & Coal Benefication Ltd. & Anr.**

**Vs.**

**South Eastern Coalfields Ltd. & Ors.**

**For the Petitioners** : Mr. Ram Anand Agarwala  
: Ms. Nibedita Pal  
: Mr. A. G. Mukherjee  
: Ms. S. Ray

**For the respondent No. 3 to 5** : Mr. Pradipta Bose  
: Mr. N. Banerjee

**For the respondent No. 1 & 2** : Mr. Shiv Shankar Banerjee  
: Ms. Sanchita Barman Roy  
: Mr. Partho Proteem Das

**Judgment on** : **06.03.2026**

**Rai Chattopadhyay, J. :-**

**(1)** On the allegation of arbitrary withholding and refusal of payment of the legitimate dues of the writ petitioners, the instant writ petition has been filed by the petitioners to seek orders inter alia that an amount of Rs.1,83,53,754/- [one crore eighty three lacks fifty three thousand seven hundred and fifty four] may be directed to be released by the respondents No.1 – 4 in favour of the petitioner, along with interest.

**(2)** Be it mentioned here that admittedly the said respondents have already refunded back an amount to the tune of Rs.1,47,16,528/- [one crore forty seven lacks sixteen thousand five hundred and twenty eight], on October 30, 2019. Admittedly, also the respondents are still withholding an

amount to the tune of Rs.38,37,226/- [thirty eight lacks thirty seven thousand two hundred and twenty six], which they claim to be their legitimate due and not refundable to the writ petitioners. Therefore, the dispute practically rests on the said amount which still stands withheld with the said respondents.

- (3)** For best understanding of the perspective leading to filing of this writ petition, the background facts are needed to be stated in a nut shell.
- (4)** The petitioners are dealing in coal as traders and purchase coal from the coal subsidiaries through e-Auction Scheme, the terms and conditions of which are framed and finalized by the Coal India Limited, having office at Kolkata. Clause 4.4 of the scheme prescribes for quotation of bidding price exclusive of other charges. Clause 6.1 of the scheme provides for deposit of 100% coal value in advance. Clause 11.11 of the scheme provides that sale under each auction shall be an individual, independent, unique and complete transaction.
- (5)** Coal India Limited, Kolkata, being the respondent no. 3, issued a notice dated March 05, 2013 inter alia directing the Coal Subsidiaries to discharge the past Central Excise Duty liability on Royalty and Stowing Excise Duty for the period covering from March 2011 to February 2013.
- (6)** Sometime in August 2013, the coal subsidiaries started demanding the said excise duty by shifting their liabilities on the petitioners, whose transactions were already concluded (Para 11 of writ petition). Allegedly, the respondent threatened the petitioners to adjust the said liability from the amount lying with them and also from the running sale orders.
- (7)** The coal traders challenged the memo dated March 05, 2013 of Coal India Limited and the consequential memos issued pursuant thereto by different coal subsidiaries by filing several writ petitions and one of such

writ petition was filed by the petitioners, being WP 27462 (W) of 2013. All writ petitions including of the petitioners, being W.P. No. 27462 (W) of 2013, were disposed of by a common Judgment and Order dated April 11, 2014 passed by this Hon'ble Court, inter alia, directing the authorities to suspend their action for realization of the said amount from the future contracts since the issue is pending before the larger Bench of the Hon'ble Supreme Court and directing the petitioners to give an indemnity bond indemnifying their obligations to pay the said amount.

- (8)** Coal India Limited and one of the coal traders, namely, R. S. Fuel Pvt. Ltd. filed two separate appeals, being FMA 3549 of 2024 and FMA 1461 of 2018 respectively, challenging the Judgment dated April 11, 2014, which was disposed of by a common order dated February 26, 2019, inter alia, directing that no deposit need be made by writ petitioners-traders in response notice dated March 05, 2013 of Coal India Limited and no indemnity bond need be furnished.
- (9)** As the petitioners were not party to the said appeals, the petitioners furnished indemnity bond in compliance with the order dated April 11, 2014.
- (10)** The petitioners preferred separate appeal, being MAT 807 of 2019, against the Judgment dated April 11, 2014, which was dismissed by an order dated February 26, 2019 with observation that the petitioners have accepted the Judgment dated April 11, 2014, regarding submission of indemnity bond, indemnifying their obligation to pay the amount demanded.
- (11)** Sometime in December, 2018, the writ petitioners purchased coal from the respondent coal company and deposited valuable consideration for 16000 MT of coal in respect whereof three delivery orders were issued. Out of 16000 MT about 6040 MT of coal could not be lifted and the

petitioners were entitled to get the refund of the valuable consideration of the said lapsed 6040 MT of coal upon forfeiture of earnest money as per conditions of e-Auction Scheme but the coal subsidiary allegedly withheld the entire amount.

- (12)** By a letter dated May 22, 2019, the petitioners made a representation before the respondent coal company for refund of the amount since withheld from the current sales, reminder whereof was given on June 10, 2019, but the respondent coal company did not refund the amount and being aggrieved thereby, the petitioners filed the instant writ petition.
- (13)** The writ petitioners say that refund of the amount as above has been done upon threat and coercion compelling the petitioners to give undertaking dated September 7, 2019, in respect of the past liabilities as dictated.
- (14)** The petitioners have relied on the Appeal Court's judgment dated April 11, 2014 suspending realization from the future contract and submission of the indemnity bond, as already submitted by the present petitioners in terms of the said order dated April 11, 2014.
- (15)** Ms. Nibedita Pal learned advocate for the writ petitioners submit that the respondents' inaction in refunding the said amount to the petitioners is only arbitrary and illegal. That, it jeopardizes the vital legal and statutory rights of the petitioners. It has been submitted that withholding of money on account of excise duty on royalty and stowing charges from the future contract of the petitioners of the year 2018, is against the order of the Court as well as severely infested with mala fide and arbitrariness. She has indicated that no credence can be accorded to the undertaking furnished by the petitioners which was done under threat to release the contract amount, only upon deduction being made on account of the past liabilities. It has been submitted that in spite of the operation of the Memo of the respondent dated March 5, 2013 being restrained, by dint of this

Court's order, the amount of Rs. 38,37,226/- [thirty eight lacks thirty seven thousand two hundred and twenty six] has been unauthorizedly withheld by the respondents pursuant to the said Memo, in respect of the past liabilities of the writ petitioners to be realized from the future contract, in complete violation of the Court's order. Hence according to the writ petitioners such withholding is arbitrary, mala fide, illegal and unsustainable. Therefore, necessary direction is sought for in order to release the said amount.

**(16)** The respondents' first argument is about maintainability of the instant writ petition. Mr. Shiv Shankar Banerjee, learned advocate for the respondent has contended that the instant writ petition is nothing but a money claim in the guise of seeking relief under the extraordinary jurisdiction of this Court under Article 226 of the Constitution, which is not maintainable. In support the judgments in (i) *Orissa Agro Industries Corporation Ltd. versus Bharati Industries* reported at *AIR 2006 SC 198* and (ii) *Hitendra Vishnu Thakur versus State of Maharashtra* reported at *1994 AIR Online SC 353*, have been referred to.

**(17)** It is further submitted that the instant dispute is private in nature which has arisen concerning contractual obligations between the parties. He has submitted further that in the dispute between the parties no element of public law is involved, that the writ petitioners only intend to enforce a commercial contract within the realm of private law, which is not permissible under the law to be done in a writ petition. In this regard reliance has been placed on the judgments (i) *Indian Bank versus Godhara Nagrik Corporation Credit Society Ltd.* reported at *AIR 2008 SC 2585* and (ii) *State of Bihar versus Jain Plastics and Chemicals Ltd.* reported at *AIR 2002 SC 206*. The respondents' further submission is that the writ petitioners at best could have proceeded in a contempt proceeding on the allegation of violation of Court's order by the said respondents.

That, since there is no fresh cause of action, the instant writ petition is not maintainable, Mr. Banerjee has submitted.

**(18)** According to the said respondents the instant writ petition is not maintainable before the Court due to lack of territorial jurisdiction of this Court, as the cause of action arises outside the same. They say that all transactions have taken place at Bilaspur at Chattisgarh being the Head Quarters of the South Eastern Coal Field Limited. That, all documents based on which the petitioners claim refund are issued and all correspondences have been exchanged from Bilaspur. That, not even a part of cause of action has arisen within the territorial jurisdiction of this Court. Mr. Bose has relied on judgments of the Supreme Court in this regard that is (i) *ONGC versus Utpal Kumar Bose and Others [(1994) 4 SCC 711]*, (ii) *Kalyan Kumar Banerjee versus Eastern Coalfields Limited [(2008) 3 SCC 456]*, (iii) *Nawal Kishor Sharma versus Union of India [(2014) 9 SCC 329]*.

**(19)** Mr. Bose has further submitted that the order of the respondent/Coal India Limited [in short 'CIL'] dated March 5, 2013, still exists and has never been set aside by the Court in the writ petition No. WP 27462 (w) of 2013. That, according to the said order the central excise duty is to be discharged by the coal producing subsidiaries on the element of 'royalty' and 'stowing excise duty' collected, that is the past central excise duty liability for the period from March 1, 2011 to February 28, 2013. It is submitted that the said order still being in vogue, the allegation made by the petitioners of illegally withholding its fund, is only unsubstantiated and unfounded.

**(20)** Also, that the arbitration clause as enumerated in the contract, provides for an alternative dispute resolution mechanism which is the best suitable mechanism for solution of dispute in this case, if any, and the said

contractual clause eliminates this Court's jurisdiction to entertain the present writ petition.

- (21)** The petitioner has stated in reply argument that objections raised by the respondent as regards maintainability of this writ petition due to lack of territorial jurisdiction of this Court is not to be sustained for the reason that the respondent Corporation is a subsidiary of the respondent Coal India Limited and situates within the territorial limits of this Court; also that the parties are bound by the earlier order of this Court, in previous writ petition and connected appeal, cause of action of which case has been identical with that of the present writ petition. It has been further submitted by the petitioner in reply argument that the amount withheld by the respondent to the tune of Rs. 38,37,226/- concerning past liability of the petitioner but from the future contract, is in violation of the Court's order passed in this regard in which the Court has directed not to realise any amount on account of past liability, from any future contract.
- (22)** The question whether 'royalty' or 'stowing excise duty' should be incorporated as valid components to arrive at the assessable value for levy of central excise duty has been considered by the Court in writ petition *W.P. No. 22309 (w) of 2013 [R. K. Enterprises versus Coal India Ltd.]*, vide order dated April 11, 2014. The Court has directed that the action of the respondents by issuing notices of recovery is not sustainable. The Court directed further that the authorities are to suspend their action for realization of the said amount from the future contract if to be awarded to the writ petitioners there. The writ petitioners were directed to furnish indemnify bond to indemnify their obligation to pay the due amount.
- (23)** The Division Bench has subsequently tested the said order of the Single Bench in appeal No FMA 3549 of 2014 and passed its order dated February 26, 2019 holding inter alia that no deposit is needed to be made by the petitioner – traders in response to the coal companies notices

following Coal India's instructions to its subsidiary companies, issued on March 5, 2013, in respect of the past and concluded transactions between the period from March 1, 2011 and February 28, 2013. The Division Bench has specifically restrained recovery of excise duty for the period above stated by directing that the coal companies shall not make any recovery of the excise duty claims in respect of the past transaction of the said period [from March 1, 2011 to February 28, 2013] from the writ petitioners there. The Division Bench has also held that no indemnify bond is required to be furnished.

- (24)** Demand against the present petitioners is for the said period, from March 2011 to February 2013.
- (25)** However, the petitioners being the regular traders, purchased coal in the year 2018 (vide delivery orders dated December 31, 2018) and deposited consideration therefor, with the respondent coal company. However, lesser amount of coal being lifted, the petitioners became entitled to refund.
- (26)** According to the petitioners, the respondent coal company was only agreeable to refund the money after adjustment of the recoverable amount on account of excise duty claimed. According to the petitioners, they were compelled to submit the indemnity bonds too, all of which were in violation of the letters and spirit of the order of the Courts, as discussed above, of the Single Bench as well as that of the Division Bench too.
- (27)** Fact is that an amount of Rs. 1,47,16,528/- has been refunded back to the petitioners, by the respondent coal company. But it has withheld an amount to the tune of Rs. 38,37,226/-, which amounts to realisation by the respondent company of the past due (if at all) of the petitioners, from a transaction which took place on a later date.

- (28)** The Division Bench vide its order dated February 26, 2019 has passed three very categorical directions – that no deposit is required to be made to the coal companies on account of central excise duty; also that there should not be any recovery by the coal companies on account of excise duty claims in respect of past transactions of the period as mentioned above; and further that no indemnity bond is required to be filed by the petitioners. This Court is of the considered view that benefit of the said order should also be extended to the present petitioners, as the claim against the petitioner is same, that is, on account of central excise tax dues for the period from March 2011 to February 2013.
- (29)** The respondent has very strongly contended about non-maintainability of the instant writ petition for lack of territorial jurisdiction of this Court. Needless is to mention that, in similar circumstances, the Court has earlier entertained writ petitions / appeal and passed order. Also that, the office of the respondent situates within the jurisdiction of this Court. In the considered opinion of this Court, the reasons as aforesaid, should be sufficient to hold that, the present writ petition is maintainable before this Court so far as territorial jurisdiction of this Court is concerned. The said point urged by the respondent authorities is thus struck down.
- (30)** Article 226 empowers High Courts to issue writs for enforcement of fundamental rights and for “any other purpose” (i.e., enforcement of legal rights). The respondents argued the petition is a money claim disguised as a writ, it arises out of a contractual relationship, an arbitration clause exists, no public law element is involved, remedy lies in civil suit or arbitration. Thus, the key issue is can a writ under Article 226 be maintained for refund of money arising from a contract? The watershed principle of law laid down is that the State cannot act arbitrarily even in contractual matters. If arbitrariness is alleged, writ lies. In the present case, the allegation was not for mere non-payment or contractual breach, but that recovery of amount is in direct violation of binding Division

Bench orders and circumvention of judicial restraint. Hence involvement of public law is apparent.

- (31)** Courts generally refuse writs where the claim is for damages, or the liability is disputed and facts require trial. In this case however, the amount as well as refund entitlement was admitted by refunding Rs.38,37,226/-. The withheld amount was clearly adjusted toward past excise dues. The case deals with the legal issue that whether such recovery was barred by prior judicial orders. Thus, this was not a case of determining contractual liability, or adjudicating disputed facts. It was a question of legality of State action in the teeth of binding judicial precedent. That squarely attracts Article 226.
- (32)** It is not a simple money dispute. It involved enforcement of judicial direction. Public law element is involved as the State instrumentalities have acted contrary to Court order. Recovery of tax contrary to judicial restrain engages Article 226 jurisdiction. Appellate judgment has a binding effect on this Court.
- (33)** Even in contractual setting writ jurisdiction lies when State action is arbitrary due to violation of the Court's order. Recovery of tax for a particular period which is restrained for the time being by the Court's order, cannot be achieved indirectly, via withholding refunds.
- (34)** The Court further finds that, the present petitioners are similarly circumstanced with the petitioners in the other writ petitions / appeal as mentioned above who cannot be dissimilarly treated by the respondent Authority in case of recovery of tax from them. Since the component of tax and period thereof in case of the present petitioners are similar with that of the petitioners in the earlier cases, the benefit allowed to them should also apply in case of the present petitioners. Hence, this Court directs that, following the footsteps of the Hon'ble Division Bench in

FMA 3549 of 2014 vide order dated February 26, 2019, the present petitioners are neither required to make any deposit or furnish indemnity bond in response to the notices issued under instruction of the Coal India Limited dated March 05, 2013, in respect of the past and concluded transactions between March, 2011 and February, 2013. It is further directed that, the respondent company shall not make any recovery of the excise duty claims in respect of the past transaction for the said period as indicated above from the present writ petitioners, from any later or future transaction made between them.

- (35)** The further direction is made upon the respondent company, therefore, to immediately refund to the writ petitioners the amount of Rs. 38,37,226/-, within a period of six (06) weeks from the date of communication of this order.
- (36)** However, the writ petition is not disposed of here and now. Following the direction of the Hon'ble Division Bench in FMA No. 3549 of 2014, vide order dated February 26, 2019, the present writ petition is adjourned sine die with liberty to mention, subject to the decision by the Constitution Bench of Supreme Court of India on the subject matter involved therein.
- (37)** Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Rai Chattopadhyay, J.)**