

EASTERN COALFIELDS LTD.

v.

M/S TETULIA COKE PLANT (P) LTD. & ORS.  
(Civil Appeal No. 6888 of 2011)

AUGUST 10, 2011

[DR. MUKUNDKAM SHARMA AND  
ANIL R. DAVE, JJ.]

COAL:

*Refund of excess price paid – Scheme of e-auction introduced by Union of India – Held ultra vires of Article 14 of the Constitution and quashed by Supreme Court in Ashoka Smokeless Coal India (P) Ltd. – Coal companies directed to refund the excess amount paid by the purchasers – Writ petition involving similar issues pending before High Court – Disposed of, following the decision of Supreme Court in Ashoka Smokeless Coal India's case – Held: It cannot be said that the effect of the decision in Ashoka Smokeless Coal India's case would be restricted only to those cases which were before the Supreme Court and not for all cases which were pending in different High Courts at that stage, at least to the issues which were common in nature – Without taking a plea of unjust enrichment either in the writ petition or before the Supreme Court, the plea cannot be entertained at the time of argument, particularly, in view of the fact that the respondents did not have any notice of such a plea taken for the first time at argument stage – In the instant case, it is a case of refund of price recovered by the appellant in excess and not of any kind of payment of tax or duty – Besides, the appellant has already refunded such excess amount realised to many other parties without raising any such plea – If anything is done by a party in violation of the law, consequence has to follow and the party is bound to return the money to the parties from whom excess amount has been*

- A *realised – Pursuant to the orders of Supreme Court, the accounts in terms of the orders of the High Court have been verified and the said accounts have been settled –Therefore, appropriate steps shall be taken to give effect to the judgment and order passed by the High Court – The amount in terms*
- B *of the settled accounts shall be paid by the respondents in accordance with law – Unjust enrichment – Plea – Constitution of India, 1950 – Article 14.*

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6888 of 2011.

From the Judgment and Order dated 04.10.2010 of the High Court of Calcutta in APO No. 226 and 321 of 2010, WP No. 1279 of 2005 and GA No. 1929 of 2010.

- D P.P. Malhotra, ASG, Anip Sachthey, Mohit Paul and Shagun Matta for the Appellant.

Ashwani K. Dhatwalia, Piyush Meharia, Amit Meharia and Meharia & Company for the Respondents.

- E The following order of the Court was delivered

### ORDER

Leave granted.

- F This appeal is directed against the judgment and order dated 4.10.2010 passed by the Calcutta High Court whereby the Division Bench of the High Court dismissed the appeal of the Appellant herein and while doing so, affirmed the findings and conclusions arrived at by the learned Single Judge.

- G A writ petition was filed by the respondents herein before the Calcutta High Court which was registered as Writ Petition No. 1279 of 2005. In the said writ petition the respondents challenged the legality of the e-auction scheme introduced by the Union of India and adopted by the Appellant herein. In the
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said writ petition, an interim order was also passed on 08.08.2005 with regard to the liability for payment of price for purchasing coals under e-auction scheme and for furnishing bank guarantee in connection thereof.

During the pendency of the said writ petition in the High Court, some other writ petitions involving similar issues and also pending before the Calcutta High Court and also other High Courts were transferred to this Court. This Court passed certain interim orders. However, finally the said cases were taken up for final hearing and were disposed of by a judgment and order rendered on 01.12.2006 in the matter of *Ashoka Smokeless Coal India (P) Ltd. & Ors. Vs. Union of India & Ors.* reported in (2007) 2 SCC 640. By the said judgment and order this Court upheld the challenge of the writ petitioners therein to the scheme of e-auction. This Court in the said judgment further held that the said scheme of e-auction was invalid. Consequently, this Court declared the same as ultra vires of Article 14 of the Constitution of India and quashed the said e-auction scheme.

Contempt petitions were filed by some of the parties thereto in which several orders came to be passed by this Court whereby this Court directed the coal companies for refunding the excess amount paid by the purchasers who were petitioners before this Court in those cases.

The writ petition filed by the respondents, however, was pending consideration before the High Court. After the disposal of the cases involving similar issues which were raised and also disposed of by the aforesaid decision, which is now reported in (2007) 2 SCC 640. The writ petition of the respondents herein also was taken up for consideration and a judgment and order was passed by the learned Single Judge disposing of the said writ petition on 25.03.2010. By the said order the High Court followed the decision of this Court in *Ashoka Smokeless Coal India (P) Ltd.* (supra) and passed orders and certain directions. The respondents were directed

A to furnish all documents to the counsel for coal company showing actual payments made by the respective applicants during the period from May, 2005 to December, 2006 and the difference between the amount paid and the amount notified by April 30, 2010. Another direction which was passed was that  
 B the documents furnished shall be verified by the concerned coal companies and in case of any difference, the parties to deliberate upon the matter so as to enable them to come to an accepted solution.

C The legality of the aforesaid judgment and order came to be challenged by filing an appeal before the Division Bench of the High Court which was dismissed, as stated hereinbefore. Still aggrieved, the Appellants have filed the present appeal on which we have heard the learned counsel appearing for the  
 D parties.

Mr. P.P. Malhotra, learned Additional Solicitor General has submitted before us that the respondents herein were not parties when the matter was heard by this Court nor were they parties when the interim orders were passed by this Court and,  
 E therefore, the respondents cannot get the benefit which arises out of the interim orders passed and the final orders passed by this Court in the case of *Ashoka Smokeless Coal India (P) Ltd.* (supra). It is submitted that as their writ petition was a separate writ petition, the same will have to be considered on  
 F its own facts and merit. The learned Additional Solicitor General also sought to submit that to the facts of the present case, the principles of unjust enrichment would be applicable and on that ground also the respondents cannot claim for any refund claiming payment of the same.

G We have also heard the counsel appearing for the respondents on the issues raised. Having considered the submissions and having gone through the records, we proceed to dispose of this appeal by recording our reasons thereof.

H There is no dispute with regard to the fact that the legality

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of the scheme of e-auction was challenged by filing writ A  
petitions in various High Courts by the traders and companies  
dealing with coal. Some of those petitions were transferred to  
this Court pursuant to orders of this Court, the leading case  
being *Ashoka Smokeless Coal India (P) Ltd.* (supra) which  
was taken up for consideration along with connected matters B  
and the same were disposed of by this Court and the said  
decision is now reported in (2007) 2 SCC 640. By the  
aforesaid judgment, this Court has upheld the challenge of the  
writ petitioners to the legality of the scheme of e-auction. The  
aforesaid prayer of the writ petitioners was accepted and this C  
Court held that the scheme of e-auction was invalid and violative  
of Article 14 of the Constitution of India and, therefore, it was  
declared to be ultra vires to the Constitution and this Court  
quashed the e-auction scheme. It must be indicated herein that  
the present respondent also filed the writ petition in question D  
in the Calcutta High Court before the aforesaid decision was  
rendered and in his case also interim order was passed by the  
Calcutta High Court. After the disposal of *Ashoka Smokeless*  
*Coal India (P) Ltd.*, the writ petition filed by the respondent  
herein which was pending was also considered and the same E  
was allowed following the decision of this Court in *Ashoka*  
*Smokeless Coal India (P) Ltd.* (supra) as by that decision, this  
Court has declared the entire scheme to be invalid and ultra  
vires to the Constitution. Therefore, any action taken pursuant  
to the said scheme is also illegal and null and void. Following F  
the ratio of the said decision this Court directed the coal  
companies to refund the price of the coal paid in excess of the  
notified price under e-auction scheme. Certain guidelines were  
also laid down as to how such payments is to be made. The  
said decision of the learned Single Judge was upheld by the  
Division Bench of the High Court by affirming the conclusions G  
and analysing all the issues that were raised before it.

We are unable to accept the contention of the learned  
Additional Solicitor General that whatever is challenged in the  
present petition is only an interim order. It is not so because H

A the respondents herein also challenged the legality of the e-auction scheme in the writ petition. The High Court has not disposed of only an interim prayer but has disposed of the entire writ petition by its judgment and order dated 25.03.2010. Consequently, it must also be held that when the entire scheme is set at naught by this Court, whatever action has been taken following the said e-auction by the coal company has also been declared to be illegal and, therefore, the coal company has become liable to refund the entire money which was collected in excess of the notified price. That is the consequence of quashing of the scheme and the same came to be reiterated by this Court while contempt petitions were filed and were disposed of. Therefore, it cannot be said that the effect of the decision of *Ashoka Smokeless Coal India (P) Ltd.* (supra) would be restricted only to those cases which were before this Court and not for all cases which were pending in different High Courts at that stage, at least to the issues which are common in nature.

Learned Additional Solicitor General has also submitted before us that the respondents are not entitled to the benefit, if they are otherwise entitled to on the principles of unjust enrichment. We specifically asked the learned Additional Solicitor General during the course of the arguments to show us whether any such plea was taken in the writ petition which was filed before the learned Single Judge. The learned Additional Solicitor General was unable to show that any such defence or plea was taken about unjust enrichment in the pleadings filed before the learned Single Judge. Such an issue was also not argued before the learned Single Judge as no such reference is there in the order of learned Single Judge. It is, however, stated by the learned Additional Solicitor General that such an issue was raised before the Division Bench. But we could not find the same raised in pleadings nor was it considered. But a mention is made in the judgment that such a plea was argued. However, on going through the records, we find that no such ground has also been taken even in the

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Memorandum of Appeal filed in the present appeal. Therefore, without taking a plea of unjust enrichment either in the writ petition or before this Court, we are not inclined to allow him to argue the plea at the time of argument and entertain such a plea, particularly, in view of the fact that the respondents did not have any notice of such a plea taken for the first time at argument stage. In the present case, it is a case of refund of price recovered by the appellant in excess and not of any kind of payment of tax or duty. Besides, the appellant has already refunded such excess amount realised to many other parties without raising any such plea.

If anything is done by a party in violation of the law, consequence has to follow and they are bound to return the money to the parties from whom excess amount has been realised. There is also no document placed on record in support of any such plea. Bald allegation of this nature cannot be accepted particularly when no such plea has been raised in this Court.

In that view of the matter, we find no reason to take a different view than what is taken by the learned Single Judge of the High Court of Calcutta as also by the Division Bench of the same Court. Pursuant to the orders passed by this Court, the accounts in terms of the orders of the learned Single Judge has been verified and the said accounts have been settled. Therefore, appropriate steps shall be taken now to give effect to the judgment and order passed by the learned Single Judge.

The amount in terms of the settled accounts shall be paid by the respondents in accordance with law within a period of two months, failing which the amount will carry an interest @9% per annum.

In terms of the aforesaid order, this appeal is disposed of, leaving the parties to bear their own costs.

R.P.

Appeal disposed of.