IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C)No. 2995 of 2008
With
W.P.(C)No. 2999 of 2008
With
W.P.(C)No. 1504 of 2009
With
W.P.(C)No. 1505 of 2009

Tata Steel Limited ... ... Petitioner (in all cases).

Vs.

State of Jharkhand & Ors. ... ... Respondents
(in WP(C) Nos. 2995 & 2999 of 2008)

Union of India & Ors. ... ... Respondents
(in WP(C) Nos. 1504 & 1505 of 2009)

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Petitioners : Mr.Dushyant Dave, Senior Advocate
M/s. Punit Tyagi, Ankit Parhar, Aniruddha Deshmukh, G.M.Mishra, Ananda Sen & Indrajit Sinha, Advocates.

For the Respondent UOI : Mr. Md. Mokhtar Khan, ASGI

For the Respondent State: Mr. Sunil Kumar, Senior Advocate
Mr. Rajesh Shankar, G.A.

CAV on 13th of February, 2014 **Pronounced on 12th, March,2014**

R.Banumathi, C.J. In these writ petitions, the Petitioner, interalia, challenges the validity of Rules 64B and 64C of the Mineral Concession Rules, 1960 inserted by the Central Government, Ministry of Mines and the petitioner also challenges the demand of royalty raised by the State of Jharkhand on the "processed coal"(washed coal) contending that royalty is payable only on Run-Of-Mine (ROM) extracted by it at the rate prescribed in the Second Schedule and liability to pay royalty is not postponed after processing. Additionally, WP(C) No. 2995 of 2008 also questions the demand of royalty on de-shale

rejects on the ground that it does not fall within the category of A to G of Colliery Control Order and is non-gradable and thus, is not a "mineral" liable for payment of royalty under the Second Schedule of the Mines and Mineral (Development and Regulation) Act, 1957. The petitioner also seeks for refund of royalty paid in excess of rates at Run-of-Mine (ROM) stage during the period from November, 2008 and also the deposits made in compliance of the interim orders in the writ petitions.

2. The Petitioner, Tata Steel Limited, is a company incorporated under the Companies Act. The Petitioner, Tata Steel Ltd., holds mining leases for coal in the State of Jharkhand. In WP(C)Nos. 2995 and 2999 of 2008, the Petitioner, Tata Steel, holds a mining lease of coal over an area of 13007 Bigha in various villages in the district of Ramgarh (erstwhile Hazaribagh), which is also known as West Bokaro Colliery, and the above mine is a captive coal mine. The above mines are captive coal mines, i.e. coal produced or raised from the above leased area is solely for self use or consumption. The Petitioner has two washery plants within the leased area where the raw coal produced from the mine is washed to improve the quality of grade of the coal for being sent for its use in its Steel Plant at Jamshedpur. In W.P (C) Nos.1504 and 1505 of 2009, the petitioner holds six self amalgamated mining leases of coal over an area of 3511.63 acres in various villages in the district of Dhanbad for a period of 99 years,

which comes under the administrative control of Jamadoba Group of Collieries of Tata Steel. The above mines are captive coal mines. In the above leased area, the petitioner has two washery plants and the petitioner has also a captive power plant. In the District of Dhanbad, the Petitioner, Tata Steel, also holds five self amalgamated mining leases of coal over an area of 1996.19 acres in various villages for a period of 99 years, which comes under the administrative control of Bhelatand Group of Collieries of Tata Steel. In Bhelatand group of collieries, the petitioner has two washery plants and a captive power plant. In Jamadoba Group of Collieries, Jamadoba Coal Processing Plant is situated within the leasehold area, likewise, in Bhelatand Group of Collieries, Bhelatand Coal Processing Plant is situated within the leasehold area. The above coal mines of the petitioner are captive coal mines, i.e. coal produced or raised from the mines in the above leased area is solely for self-use for its steel plant at Jamshedpur. The process of washing generates clean coal, middlings, tailings and rejects, each of which has an end-use. After washing of coal in the washery plant, clean coal/steel grade of coal is sent to Petitioner's own steel plant at Jamshedpur for production of iron and steel. The middlings and rejects are used by the petitioner in the respective power plants situated in the aforesaid collieries. Some quantity of middlings and tailings and rejects generated from the washery

are subsequently sold to end users after obtaining permission from the authority.

3. In CWJCNo.1/1984(R), the petitioner sought declaration that it was liable to pay royalty on tonnage of the washed coal, when it is removed from the coal washery. Vide order dated 7.8.1990 passed in CWJC No.1/1984(R), learned Single Judge held that royalty is payable on the weightage of the washed coal and accordingly, the petitioner paid royalty on the basis of weightage of the washed coal till 1998. Subsequently, in the case of *State of Orissa Vs. Steel Authority of India Ltd. [(1998) 6 SCC 476],* Hon'ble Supreme Court, while interpreting Section 9 of the MMDR Act in respect of mineral of "**Dolomite**", held that the entire mineral extracted is exigible to levy of royalty and the royalty cannot be levied on quantity of mineral obtained after processing. After the aforesaid decision of the Supreme Court, the petitioner represented before the District Mining Officer, Hazaribagh, vide letter dated 23rd September, 1998, informing that it has to pay royalty on raw coal – Run-of-Mine (ROM) - extracted with effect from 10th August, 1998, i.e. the date of the judgment of the Supreme Court in the case of *Steel Authority of India Limited.* It was rejected by the District Mining Officer, Hazaribagh, vide letter dated 27.9.1998, on the ground that the issue between the parties stood settled by the court decision dated 7.8.1990 passed in CWJC No.1/1984(R) and

the petitioner cannot derive any advantage of the subsequent decision of the Supreme Court. The order of the District Mining Officer was challenged by the petitioner in CWJC No.3040/1998(R). The stand taken by the District Mining Officer had been upheld by the learned Single Judge, vide order dated 1st March, 2000 passed in CWJC No.3040/1998(R). The said order dated 1st March, 2000 passed in CWJC No.3040/1998(R) was challenged in LPA No.117/2000.Vide judgment dated 23.7.2002, the Division Bench of this Court held that the decision rendered in the case of Steel Authority of India Limited is not only binding upon the parties before the Supreme Court, but law having laid down is binding on all being a nature of judgment under Article 141 of the Constitution of India. The Division Bench held that as per decision of the case of Steel Authority of India Limited, the petitioner to pay royalty on the coal extracted. The Division Bench further held that since the State of Bihar has been reorganized since 15th November, 2000, now in place of State of Bihar, the State of Jharkhand will be charging royalty and the petitioner shall not ask for refund of excess royalty, if deposited. Being aggrieved by the decision passed in LPA No.117/2000, the State of Jharkhand preferred an appeal before the Supreme Court in Civil Appeal No.307/2004. Being aggrieved by the direction not to seek refund of excess royalty, Tata Steel preferred an appeal in the Supreme Court in Civil Appeal No.303/2004 and the said appeals are pending.

4. Subsequent to the decision in the case of ***Steel Authority of India Limited***, in exercise of power under Section 13 of the Mines and Mineral (Development and Regulation) Act, 1957, vide notification GSR No.743(E) dated 25.9.2000, the Ministry of Mines has inserted Rule 64B and Rule 64C in the Mineral Concession Rules, 1960, (MCR). Rule 64B deals with charging of royalty in case of minerals subjected to processing. Rule 64C deals with royalty on tailings or rejects.

5. According to the Respondents, in terms of Section 9 read with the Second Schedule of the MMDR Act read with Rules 64B and 64C of the MCR, royalty is payable on the processed mineral, namely, clean coal and also middlings, rejects, de-shale etc. Various impugned orders were raised by the respondent no.6, District Mining Officer, demanding royalty being differential amount of royalty on clean coal, middlings etc. in consonance with Section 9(1) of the MMDR Act and Rules 64B and 64C of the MCR and also interest in terms of Rule 64A of the MCR.

6. Challenging the vires of the Rule 64B and 64C of the MCR and also the impugned demand notices, the petitioner, Tata Steel Ltd., has filed these writ petitions. According to the petitioner, in exercise of power under Section 9(3) of the MMDR Act, the Central Government has been issuing Colliery Control Orders and notifications from time to time revising the

rate of royalty on coal and those orders and notifications are determinative of the price of coal, which clearly fix the payment of royalty on Run-of-Mine (ROM) coal at pit-head. The petitioner contends that even after insertion of Rules 64B and 64C, the respondents have been accepting payment of royalty on Run-of-Mine (ROM) basis, i.e. raw coal extracted and after the judgment passed in LPA No.117/2000, when appeals are pending before the Supreme Court, issuance of impugned demand notices is arbitrary and the impugned notices are liable to be quashed. The demands in question raised for the period starting from the year 2000 till 2008 are also beyond the reasonable period of limitation and the impugned assessment are, therefore, liable to be quashed on this ground as well.

7. On notice, Union of India filed counter affidavit contending that Rules 64B and 64C of the MCR are not ultra vires of Section 13 of the MMDR Act.

8. The State of Jharkhand filed counter-affidavit contending that Rules 64B and 64C of the MCR is applicable to all minerals and the said rules are merely an explanation of Section 9 read with Section 13(2)(i) of the MMDR Act. According to the respondents, since raw coal – Run-of-Mine (ROM) – is processed in the washery plants situated in the Petitioner's leasehold area, the petitioner is liable to pay royalty, as per Rules 64B and 64C of the MCR read with

Section 9 and the Second Schedule of the MMDR Act, on the processed mineral, namely, clean coal which is the mineral removed from the leasehold area to the petitioner's steel plant at Jamshedpur. The rest of the products, namely, middlings, tailings and rejects are consumed in the petitioner's power plants and a part of which is also sold to outside consumers, on which royalty is payable under Rule 64(C) of the MCR.

9. We have heard Mr. Dushyant Dave, learned Senior Counsel appearing along with M/s. Punit Tyagi, Ankit Parhar, Aniruddha Deshmukh, G.M.Mishra, Ananda Sen, Indrajit Sinha for the petitioner and Mr. Sunil Kumar learned Senior Counsel appearing along with Mr. Rajesh Shankar for the respondent nos.3 to 7. We have also heard Mr. Md. Mokhtar Khan, learned ASG appearing for the Union of India.

10. The learned Senior Counsel appearing for the petitioner Mr. Dushyant Dave, interalia, raised the following contentions:-

(i) In exercise of power under Section 9(3) of the MMDR Act, the Central Government has been issuing notifications from time to time revising rate of royalty of coal and the Colliery Control Orders and the Notifications are determinative of payment of royalty which is on Run-of-Mine (ROM) at pit-heads and Rules 64B and 64C of the MCR are not applicable to coal.

(ii) Rules 64B and 64C of the MCR are liable to be struck down as being (a) ultra vires the Constitution of India; (b)contrary to the parent Act – Section 9 and Section 13 of the MMDR Act; and (c) wholly arbitrary and therefore violative of Article 14 of the Constitution of India.

(iii) The judgment of the Supreme Court in the case of *State of Orissa Vs. Steel Authority of India Ltd. (1998) 6 SCC 476*, holding that levy of royalty is in respect of the minerals removed or consumed from the leased area and not on the processed mineral, is the law of the land and binding on all courts in India by virtue of Articles 141 and 144 of the Constitution of India.

(iv) Since appeals are pending in the Supreme Court in Civil Appeal Nos.303/2004 and 307/2004 and since the judgment passed in LPA No.117/2000 has not been stayed, the State is to be prohibited by the writ of mandamus from issuing any notice demanding royalty impugned herein.

(v) The impugned notices issued demanding payment of differential royalty on clean coal, middlings, rejects etc. for the period from 2002 to 2008 are beyond the reasonable period of limitation and are liable to be quashed.

11. Mr. Sunil Kumar, learned Senior counsel for the Respondent-State, submitted that Rules 64B and 64C are applicable to all types of minerals and Rules 64B and 64C are merely an explanation of Section 9 of the MMDR Act and are not ultra vires the Constitution of India and the parent Act. Learned Senior Counsel contended that the judgment in SAIL case was in the context of the mineral, Dolomite, and the ratio of the said decision is not applicable in the case of coal. Learned Senior Counsel further contended that since the petitioner did not file returns as per the statutory requirements (Rules 51, 64B, 64C of MCR), the impugned demand notices were issued. Mr. Sunil Kumar, learned Senior counsel, further submitted that since the processing of Run-of-Mine (ROM) is carried out within the Petitioner's leasehold area, royalty shall be chargeable, as per Section 9 of the MMDR Act read with Second Schedule read with Rule 64B of the MCR, on the processed mineral, namely, the clean coal which is removed from the leasehold area and in terms of Section 9 read with the Second Schedule of the MMDR Act read with Rule 64C of the MCR, the petitioner is also liable to pay royalty on tailings or rejects, which are used for consumption/sale.

12. For the purpose of appreciation of the contention of the Petitioner pertaining to the challenge to the vires of Rules 64B and 64C of the MCR, it is necessary to refer to the

relevant provisions of Section 9 of the MMDR Act. Section 9 reads as under:-

> "**9. Royalties in respect of mining leases-** (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent manager, employee, contractor or sub- lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.
>
> (2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub- lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.
>
> (2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one- third of a tonne per month.
>
> (3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the- notification:
>
> Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

In terms of Section 9(1) and 9(2), royalty is payable in respect of any mineral removed or consumed from the leased area. The rates are specified in the Second Schedule.

13. Rules 64B and 64C of the MCR read as under:-

> "**64B.Charging of Royalty in case of minerals subjected to processing -**
> (1) In case processing of run-of-mine is carried out within the leased area, then, royalty shall be chargeable on the processed mineral removed from the leased area.

(2) In case run-of-mine mineral is removed from the leased area to a processing plant which is located outside the leased area, then, royalty shall be chargeable on the unprocessed run-of-mine mineral and not on the processed product.

64C. Royalty on tailings or rejects - On removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty:

Provided that in case so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty."

14. **Re. Contention : Rules 64B and 64C of the Mineral Concession Rules is not applicable to Coal.**

The learned Senior Counsel for the petitioner submitted that coal plays an important role in the development of the economy as coal is the primary raw material in many sectors and in exercise of power under Section 3 read with Section 5 of Essential Commodities Act and under Section 9(3) of the Act, the Central Government in the Ministry of Coal and Mines has been issuing Colliery Control Orders and notifications from time to time revising the rate of royalty on coal and one such notification was issued on 16.08.2002 and another notification was issued on 01.08.2007 revising the rate of royalty on coal fixed earlier vide notification dated 16.08.2002. The learned Senior Counsel submitted that in view of Section 9 of the MMDR Act, the Second Schedule, the Colliery Control Orders and the notifications issued thereunder, treating coal as distinct from other minerals, Rules 64B and 64C of the Mineral Concession Rules are not applicable to coal. The learned Senior Counsel

further submitted that over the decades coal has been declared as an essential commodity and actually Colliery Control Orders and notifications are issued and price of coal is accordingly fixed and Rules 64B and 64C have no application to coal.

15. The learned Senior Counsel for the respondents submitted that Rules 64B and 64C are applicable to all types of minerals and language of the Rules do not warrant any such restricted meaning. Placing reliance upon the judgment in ***National Mineral Development Corporation Ltd. v. State of M.P. and Another, (2004) 6 SCC 281***, the learned Senior Counsel submitted that in the said case the Hon'ble Supreme Court held that Rules 64B and 64C are general in nature and applicable to all types of minerals.

16. The Mines and Minerals (Development and Regulation) Act, 1957 is an Act to provide for the *development and regulation of mines and minerals under the control of the Union.* Section 3(a) defines minerals as under:-

> *"**3(a)** "minerals" includes all minerals except mineral oils*;"

Section 3(a), which contains definition of 'mineral', is an inclusive provision meaning thereby that the Act and the Rules are applicable to all minerals except mineral oils.

17. Rule 64B deals with charging of royalty in case of minerals subjected to processing. Rule 64B(1) deals with charging of royalty on the processed mineral removed from

the leased area after processing of Run-of-Mine (ROM) within the leased area. Rule 64B(2) deals with charging of royalty, in case Run-of-Mine (ROM) mineral is removed from the leased area and royalty is charged on the Run-of-Mine (ROM). Rule 64C deals with royalty on tailings or rejects. The language of Rules 64B and 64C are plain and unambiguous. From the plain reading of Rules 64B and 64C, it is clear that it is applicable to all types of minerals. The provisions of the Act and Rules including Rules 64B and 64C are applicable to all minerals except mineral oil. The word, "mineral" occurring in Rules 64B and 64C is to be understood in the same meaning as that of Section 3(a) of the MMDR Act. In Rules 64B and 64C, there is nothing to indicate that the Legislature intended to make any distinction regarding the applicability of the Rules 64B and 64C to coal. If really the Legislature intended that Rules 64B and 64C be not applicable to coal, the Legislature would have specifically excluded, but the Parliament has chosen not to do so.

18. The word "mineral" is not defined in the Act; but has been judiciously interpreted. While considering the meaning of the term "mineral", in ***V.P.Pithupitchai and Another v. Special Secretary to the Govt. of T.N., (2003) 9 SCC 534,*** in paras 10 and 12 the Hon'ble Supreme Court held as under :-

> *"**10.** According to this Court's view in State of M.P. v. Mahalaxmi Fabric Mills Ltd. :*

> *"Mineral in ordinary and common meaning is a comprehensive term including every description of stone and rock deposit whether containing metallic or non-metallic substance. The word mineral in popular sense means those inorganic constituents of the earth's crust which are commonly obtained by mining or other process for bringing them to the surface for profit."*

> *12. … … Therefore, a mineral as judicially defined would mean an inorganic substance found either on or in the earth which may be garnered and exploited for profit."*

19. In ***National Mineral Development Corporation Ltd., (2004) 6 SCC 281***, the Hon'ble Supreme Court considered the question whether slimes exigible to charge of royalty, as forming part and parcel of iron ore. In the process of mining, the iron ore is extracted and separated into ore lumps, fines and waste materials which is generally referred to and known as *"slime"*. *"Slime*" is not iron ore within the meaning of the provisions of the Act and the Second Schedule. *"Slimes"* are nothing but impurities left available to be discarded at the end of the process of production of iron ores and iron ore fines. The State of Madhya Pradesh levied royalty on *slimes*. The Madhya Pradesh High Court, interpreting Entry 23 of the Second Schedule of MMDR Act, held that the royalty is payable on the *'slimes'*. In the appeal filed before the Hon'ble Supreme Court, the NMDC contended that in view of the provisions contained in Section 9 and Entry 23 of the Second Schedule, *Slime* is the resultant waste material and slime consists of impurities and minute particles with ferrous content but the ferrous part can neither be retrieved nor

utilized for production of iron/steel as no technology for the said purpose is yet developed and therefore, contended that the State cannot claim to levy royalty on such waste material namely *"slimes"* and hence the action of the State is liable to be struck down. Interpreting Entry 23, the Hon'ble Supreme Court held that the *"slimes"* do not have any commercial value and that *"slimes"* have been left out of consideration by Entry 23 for the purpose of quantification and levy and therefore held that the *"slimes"* are not exigible for levy of royalty.

20. In ***NMDC Case {(2004) 6 SCC 281}***, the Hon'ble Supreme Court's attention was drawn to the amendment made in Mineral Concession Rules by introducing Rules 64B and 64C by G.S.R. No.743(E) dated 25.09.2000 and submissions were made that as per Rule 64C, in case dumped tailings or rejects are used for sale or consumption, then such tailings or rejects shall be liable for payment of royalty and hence the waste material 'slimes' is exigible to tax. The Hon'ble Supreme Court held that dumped tailings or rejects may be liable to payment of royalty if they are sold or consumed and further held that Rules 64B and 64C cannot be applied retrospectively and the Hon'ble Supreme Court set aside the judgment of the Madhya Pradesh High Court which upheld the levy of royalty on "slimes". In para (32), after referring to Rules 64B and 64C, the Hon'ble Supreme Court held that *"Rules 64B and 64C are general in nature, applicable to all types of minerals"*. In view of the observation of the Hon'ble Supreme Court in ***NMDC's case*** that Rules 64B and 64C are general in nature and applicable

to all types of minerals, we find no merit in the contention of the Petitioner-Tata Steel that Rules 64B and 64C are not applicable to coal.

21. On behalf of the Petitioner much reliance was placed upon the counter affidavit filed by the Union of India (deponent is the Under Secretary of the Ministry of Coal) wherein the Ministry of Coal has expressed its opinion that Rules 64B and 64C may not be applicable to coal. In para 22 of the counter affidavit the Union of India averred as under :-

> *"22. … … in view of the judgment of Hon'ble Supreme Court in the matter of State of Orissa and Ors vs. Steel Authority of India Limited [(1998) 6 SCC 476] which has been taken up for deliberation by a larger bench in the Supreme Court in a bench of Civil Appeals, the applicability of rule 64B and rule 64C of MCR stands curtailed to the extent it is not in harmony with the section 9 of the MMDR Act, especially in context of Second Schedule of the MMDR Act, 1957."*

In para 28 and 31 of the counter affidavit the Ministry of Coal expressed its opinion that -

> *"28. … … the Respondent No. 1 & 2 are of the opinion that Rule 64B and Rule 64C may not be particularly applicable to coal minerals.*
>
> *31. … … the applicability of Rule 64B and Rule 64C is necessary for minerals that need processing or beneficiation before being used, especially metallic minerals. However, its applicability to coal minerals is concerned, considering the fact that in case of coal, where the entire ROM can be generally made usable, the Respondent No.1 & 2 are of the opinion that Rule 64B and Rule 64C may not be particularly applicable to coal mineral."*

22. Taking strong exception to the above averments in the counter affidavit, the learned Senior Counsel for the

respondents submitted that the opinion expressed by the Ministry of Coal has no basis and is a self serving statement in order to protect the coal companies. The learned Senior Counsel submitted that the Mineral Concession Rules have been amended by the Ministry of Mines and Ministry of Coal has no authority to interpret or restrict the operation of the Rules. The learned Senior Counsel further submitted that the opinion expressed by the Ministry of Coal in its counter affidavit is contrary to the observation of the Hon'ble Supreme Court in ***NMDC case*** that "*"Rules 64B and 64C are general in nature, applicable to all types of minerals"*.

23. Admittedly the petitioner's mining leases are governed by the MMDR Act. As per Section 3(a) of the MMDR Act, mineral includes all types of minerals except mineral oils. In exercise of powers under Section 13 of the Act, the Rules 64B and 64C have been introduced by way of amendment by notification G.S.R. No.743(E) dated 25.09.2000 issued by the Ministry of Mines. We have also perused the above Gazette Notification issued by Ministry of Mines, Government of India, produced before us. In exercise of powers conferred under Section 13 of the Act, by notification issued by the Ministry of Mines, Rules 64B and 64C have been introduced in Mineral Concession Rules and Ministry of Coal cannot interpret the same by giving restrictive interpretation to Rules 64B and 64C.

24. As per Rule 2 of the Government of India (Allocation of Business) Rules, 1961, the business of the Government of India shall be transacted in the Ministries, Departments, Secretariats and Offices specified in the First Schedule. As per Rule 3, the distribution of subjects among the departments shall be as specified in the Second Schedule to the said Rules. Ministry of Mines (Khan Mantralaya) is in the First Schedule. As per the Second Schedule of GOI, Allocation of Business Rules, the subject relating to business of coal is allocated to Ministry of Coal. The distribution of subjects relating to the business of coal to Ministry of Coal is only for the distribution of the subjects among the departments. Though for administrative convenience, business of coal is allocated to Ministry of Coal, coal as a mineral is governed by MMDR Act, we are of the view that Ministry of Coal is not justified in giving restrictive interpretation to Rules 64B and 64C. Such opinion of the Ministry is contrary to the observation of the Hon'ble Supreme Court in ***NMDC's case*** that Rules 64B and 64C are general in nature and applicable to all types of minerals. We find much force in the submission of learned Senior Counsel for the respondent-State that affidavit of the Ministry of Coal is self serving and appears to be to protect various coal companies and is only fit to be ignored. In exercise of powers under Rule 13 of the MMDR Act, when Rules 64B and 64C have been introduced by way of

amendment, the opinion expressed by the Ministry of Coal cannot dilute the statutory rules framed under the Act.

25. **Royalty payable on ROM at its pit-head or processed mineral and whether Rules 64B and 64C, deferring the payment of royalty to the stage of processing, are ultra vires?**

The learned Senior Counsel for petitioner contended that royalty is always payable in respect of using of the land or privilege which the State gives in respect of such user especially on the mineral extracted but by resorting to Rules 64B and 64C, the State unfortunately has shifted the payment of royalty from the stage of extraction of the coal to the stage of processing. The learned Senior Counsel contended that Section 9 of the MMDR Act stipulates that royalty shall be payable on the mineral removed or consumed from the leased area at the rate specified in the Second Schedule and the Second Schedule has been amended from time to time and the notifications dated 14.10.1994, 16.08.2002 and 01.08.2007 provide for royalty for different groups of coal/different grades. Drawing our attention to notification dated 16th June, 1994 issued by the Government of India, Ministry of Coal in pursuance of clauses 3 and 4 of the Colliery Control Order, 1945, the learned Senior Counsel submitted that joint reading of the notes will show that Run-of-Mine (ROM) coal is recognized for the purpose of law as well as in the market and these notes further provide that the prices are determined with

reference to sale of coal at pit-heads and that any other cost incurred by a miner towards beneficiation would be an additional charge to be negotiated with the buyer and such processing of coal is irrelevant for levy of royalty. The learned Senior Counsel submitted that a combined reading of Section 9 and Second Schedule, as amended from time to time, clearly fix the payment of royalty on Run-of-Mine (ROM) coal at pit-head. Contending that the Colliery Control Orders and notifications are to be read together with Section 9 and Second Schedule, the learned Senior Counsel placed reliance upon the judgment in the case of ***Poppatlal Shah v. The State of Madras, (1953) SCR 677*** wherein the Hon'ble Supreme Court has held that it is a settled rule of construction that to ascertain the legislative intent all the constituent parts of a Statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. The learned Senior Counsel also placed reliance upon ***District Mining Officer and Others v. Tata Iron and Steel Co. and Another, (2001) 7 SCC 358,*** where the Hon'ble Supreme Court held as under:-

> *"**18.** … … A statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature… …"*

26. Refuting the contention, the learned Senior Counsel for the respondents submitted that the petitioner has coal washeries/coal processing plants in Jamadoba, Bhelatand and West Bokaro in the leased area and in these washeries the ash content of the raw coal extracted from mine is removed and the middlings, rejects and other by-products are segregated and the washed coal is sent to Jamshedpur for production of hard coke to be used in the petitioner's steel plant at Jamshedpur. The learned Senior Counsel further submitted that the petitioner uses the middlings, tailings and rejects, each of which has an end use, in the captive power plant located within the leasehold area and part of which are subsequently sold to end users. It was therefore submitted that it is an admitted position that everything that is taken out from the mines is subjected to further mining process and the clean coal, middlings, tailings and de-shale, each of which has a commercial value, royalty is charged differently on all these products depending upon various factors and grades. Placing reliance upon ***National Mineral Development Corporation Ltd., (2004) 6 SCC 281****,* it was submitted that Section 9 is not the beginning and end of the levy of royalty and royalty has to be quantified for the purpose of levy and Section 9, charging provision, has to be read with the Second Schedule. It was submitted that the holder of mining lease has to pay royalty in respect of mining mineral removed or consumed from the leased area and payment of royalty would differ from

mineral to mineral and in certain categories of minerals, the levy of royalty is postponed till the stage of processing as in the case of coal where the quantification and computation of the royalty is postponed till the end of mining operation. The learned Senior Counsel referred to Section 13(2) of the MMDR Act to submit that Rule making power of the Central Government is very wide and submitted that in exercise of the power under Section 13, levy of royalty on coal (Item 10 of the Second Schedule) has been amended from time to time and royalty on coal is fixed depending on their categorization. It was submitted that in the Second Schedule no royalty is prescribed on raw coal and as such royalty prescribed only on various grades of coal and payment of royalty as prescribed under the Second Schedule depends upon the grade and category of coal that is removed from the leased area. The learned Senior Counsel for the respondents distinguished the decision in ***SAIL's case [(1998) 6 SCC 476]*** and submitted that SAIL decision was in the context of the mineral involved in the said case namely '*Limestone and Dolomite*' and further submitted that levy of royalty differs from mineral to mineral and therefore, the decision in SAIL case is not applicable to the present case where we are concerned with mineral, coal.

27. Section 9 deals with royalty payable by the holder of a mining lease. Section 9(1) deals with payment of royalty in respect of any mineral removed or consumed by the holder of

a mining lease granted before commencement of the MMDR Act. Section 9(2) deals with payment of royalty in respect of any mineral removed or consumed by the holder of a mining lease granted on or after commencement of the MMDR Act. In terms of Section 9 of MMDR Act, the holder of a mining lease is liable to pay royalty *"on the mineral removed or consumed by him … … from the leased area, at the rate for the time being specified in the Second Schedule in respect of that mineral*". Rates of royalty payable are specified in the Second Schedule of the MMDR Act. As per Section 9(3), the Central Government may, by notification in the official Gazette, amend the Second Schedule so as to enhance or reduce the rates at which royalty is payable in respect of any mineral. In terms of the proviso to Section 9(3), the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years.

28. Learned Senior Counsel for the petitioner contended that removal of coal from mother earth is the only event which obliges the petitioner to pay royalty on the quantum of coal extracted, which, thus, forms the charging event for the purposes of levy of royalty in contradiction to other events such as processing etc. It was further contended that the term, "consumed" clarifies that royalty is to be levied at the time when the coal is extracted from the mines and is not to be deferred or postponed till it is subjected to any process of washing. According to the petitioner, royalty on coal has

always been payable on extraction, i.e. Run-of-Mine (ROM) coal extracted from the mine - pit heads, which is clear from the manner and mode in which royalty has been payable throughout under the scheme of the Statute.

29. To contend that royalty is payable on the quantity of mineral extracted at its pit-head, much reliance is placed upon the judgment of the Hon'ble Supreme Court in ***State of Orissa v. Steel Authority of India, (1998) 6 SCC 476***. In para-11 of the said judgment, the Hon'ble Supreme Court held as under :-

> *"**11.** It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the process that the mineral was said to undergo before the same was removed from the leased area. Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted. We are unable to agree with the distinction made by the High Court and the conclusion that the royalty can be levied only on the quantity of mineral obtained after processing."*

30. It was submitted that in view of the judgment in ***SAIL's case*** which was followed by the Division Bench in L.P.A. No. 117/2000, the Petitioner, Tata Steel, is bound to pay royalty on the Run-of-Mine (ROM) and the respondents cannot interpret or give any other meaning of Section 9(1) than the interpretation given by the Hon'ble Supreme Court. The mineral involved in ***SAIL's case*** was ***Dolomite*** and ***Limestone***. In the context of the mineral involved in ***SAIL's***

case and its peculiar nature, the Hon'ble Supreme Court held that processing of minerals '*Limestone and Dolomite*' amounts to consumption. We will elaborate upon the judgment in ***SAIL's case*** a little later and demonstrate how the decision in SAIL case cannot be applied to the impugned demand notices. At this juncture, suffice it to note that after the judgment in ***SAIL's case*** on 10.08.1998, in exercise of powers under Section 13 of the MMDR Act, amendment was made in the Mineral Concession Rules by introducing Rules 64B and 64C by G.S.R. No.743(E) dated 25.09.2000.

31. There is no force in the contention that the extraction of mineral from the leased area is the taxable event and that royalty is payable on the mineral extracted at its pit-head. Section 9 of the MMDR Act contains the statutory provision with regard to the liability for payment of royalty. In terms of Section 9 of the MMDR Act, "the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him ……. from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral". The taxable event is not the extraction of the mineral. But the taxable event under Section 9 is the "removal or consumption of mineral from the mining lease area". If a processed mineral is removed from the mining lease area, as per Section 9 read with Rule 64B(1), royalty is payable on such processed mineral removed from the mining lease area. If

the ROM (Run-of-Mine) is removed from the leased area to a processing plant situated outside the leased area, then as per Section 9 read with Rule 64B(2), royalty is payable on such ROM (Run-of-Mine) removed from the leased area. Royalty is payable on mineral removed from the leased area for use as an economic commodity or consumed depending upon its categories.

32. Section 9 is the charging Section and Section 9 does not prescribe the rate of royalty nor does it lay down how the royalty shall be computed. The rate of royalty and its computation methodology are found in the Second Schedule. As held in ***NMDC Case***, reading of Section 9 which is the charging Section cannot be complete unless what is specified in the Second Schedule and also Rules 64B and 64C and other Rules are read as part and parcel of Section 9.

33. In ***NMDC Case, (2004) 6 SCC 281***, the Hon'ble Supreme Court held that Section 9 is not the beginning and end of the levy of royalty and that the royalty has to be quantified for the purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. In the ***NMDC Case***, in paragraphs 22 to 25 the Hon'ble Supreme Court held as under :-

> *"**22.** There can be no manner of doubt that the entire material extracted from the earth, so far as iron ore mines are concerned, has to be subjected to a process for the purpose of winning iron therefrom. The process results in (i) lumps, (ii)*

fines and (iii) slimes. Section 9 of the Act obliges the holder of a mining lease to pay royalty in respect of any mineral removed or consumed from the leased area. If only it would have been the question of considering Section 9 and determining the impact thereof, may be, it is the total quantity of mineral removed from the leased area or consumed in the beneficiation process which would have been liable for payment of royalty and that quantity may have included the quantity of slimes as well, as was held by this Court in State of Orissa Vs. Steel Authority of India Ltd. But in case of iron ore the process of beneficiation involves introduction of catalytic agents leading to separation and generation of waste consisting of impurities which the scheme of the Act has left out from charging.

23. *Section 9 is not the beginning and end of the levy of royalty. The royalty has to be quantified for purpose of levy and that cannot be done unless the provisions of the Second Schedule are taken into consideration. For the purpose of levying any charge, not only has the charge to be authorized by law, it has also to be computed. The charging provision and the computation provision may be found at one place or at two different places depending on the draftsman's art of drafting and methodology employed. In the latter case, the charging provision and the computation provision, though placed in two parts of the enactment, shall have to be read together as constituting one integrated provision. The charging provision and the computation provision do differ qualitatively. In case of conflict, the computation provision shall give way to the charging provision. In case of doubt or ambiguity the computing provision shall be so interpreted as to act in aid of charging provision. If the two can be read together homogenously then both shall be given effect to, more so, when it is clear from the computation provision that it is meant to supplement the charging provision and is, on its own, a substantive provision in the sense that but for the computation provision the charging provision alone would not work. The computing provision cannot be treated as mere surplusage or of no significance; what necessarily flows therefrom shall also have to be given effect to.*

> ***24.*** *Applying the abovestated principle, it is clear that Section 9 neither prescribes the rate of royalty nor does it lay down how the royalty shall be computed. The rate of royalty and its computation methodology are to be found in the Second Schedule and therefore the reading of Section 9 which authorizes charging of royalty cannot be complete unless what is specified in the Second Schedule is also read as part and parcel of Section 9.*
>
> ***25.*** *A bare reading of Entry 23 reveals that the Parliament has not chosen to compute royalty on iron ore by itself and quantifiable as run of mine (ROM). Parliament is conscious of the fact that iron ore shall have to be subjected to processing whereafter it would yield (i) lumps, (ii) fines, (iii) concentrates, and (iv) slimes - the last one to be found deposited in the tailing pond. Parliament has to be attributed with the knowledge that keeping in view the advancements in the field of science and technology as on the day, the slimes do not have any commercial value. While carrying out prospecting operations it is known what will be the strength of the iron ore (i.e. the percentage of ferrous content) available in a particular area. By reference to such strength or quality of iron ore, the rate of royalty could have been made available for calculation based on the quantity of the iron ore as run of mine and quantifiable on per tonne of iron ore, that is, tonnage of iron ore as such. Parliament has chosen not to do so. Entry 23, the manner in which it has been drafted, mandates the quantification of royalty to await or be postponed until the processing has been carried out and the lumps, fines and concentrates are prepared. Once the result of processing is available, the lumps, fines and the concentrates are subjected to levy of royalty at different rates applied by reference to the quantity of each of the three items earned as a result of processing. The slimes have been left out of consideration by Entry 23 for the purpose of quantification and levy."* (***Emphasis added***)

34. In the context of mineral, "Iron Ore" and Entry 23 of the Second Schedule, in ***NMDC's*** case Hon'ble Supreme Court held that quantification of royalty is to await or be postponed

until the processing has been carried out and lumps, fines and concentrates are prepared. The ratio of the above decision is squarely applicable to the present case. Once coal is processed, clean coal, middlings, tailings, rejects emerge. Royalty is payable on such clean coal removed from the leased area and also on the middlings, tailings and rejects, which are either used for own use or sold as an economic commodity. Quantification of royalty is to await or be postponed, until the coal is washed/processed.

35. Let us now elaborate the process of coal beneficiation/coal washing. The raw coal (Run-of-Mine coal) that is mined out of the mine pit straight from the ground contains foreign materials such as soil, rock, dirts etc. The treatment of Run-of-Mine (ROM) coal is the coal preparation also known as coal beneficiation or coal washing. The washery plant is a facility that washes the impurities of the Run-of-Mine (ROM) coal of soil, rock, dirt etc. The main object of coal washing is to recover clean coal of high grade by separating the stones and high ash shales from raw coals. Coal washing essentially consists of number of unit operations. These unit operations can be enumerated as (1) Crushing, (2) Screening, (3) Deshaling, (4) Sizing, (5) Heavy Media Treatment and (6) Floatation. The two main products in a coal washery are :-

(a) Clean coal (for metallurgical use)
(b) Middling (for Thermal Power Plants).

36. We may usefully refer to the main products that emerge in a coal washery through Coal Processing/Coal Preparation Plant after the CPP and nature of their use:-

- Clean coal
- Middlings
- Tailings
- Rejects including De-shale rejects.

37. **Clean Coal**

The clean coal as recovered from coal washery results in value addition of coal due to reduction in ash percentage. The clean coal is used in manufacturing of hard coke for steel making or for power generation or used by cement, sponge iron and other industrial plants.

Middlings

Middlings are by-products of the three stage coal washing as a fraction of raw coal. It is used for power generation and also used by domestic fuel plants, brick manufacturing units, cement plants industrial plants, etc.

Tailings

Tailings are the materials left over in the process of coal washing. Tailings are also called mine dumps, culm dumps, slimes, tails, refuse, leach residue or slickens. Tailings are displaced during mining and they are typically small and range from the size of a grain of sand to a few micrometres. Tailings may be used in low land filling or road construction.

Rejects including De-shale Rejects

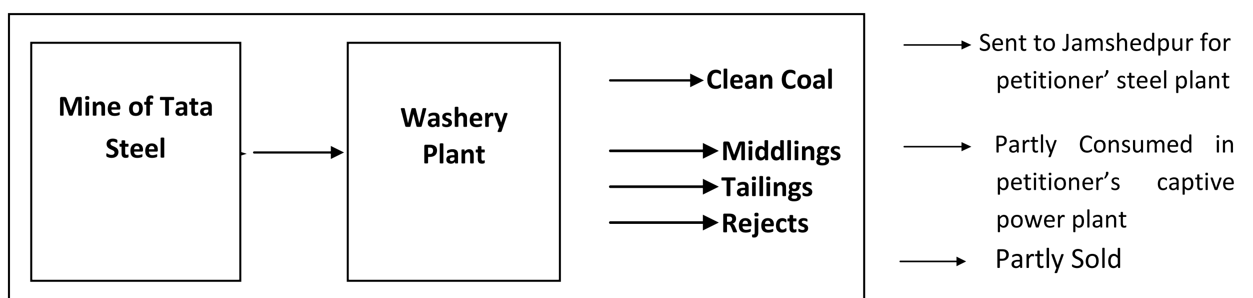
Rejects are the products of coal cleaning process. Reject as a shale is found in the process of de-shaling. De-shaling is the process of removal of shaly matter from raw coal in the washery. Rejects including De-shale rejects are used for FBC boilers (Fluidized Bed Combustion) for power generation, road repairs, briquette (domestic fuel) making, land filling etc.

38. As pointed out earlier, W.P.(C) No.1504 of 2009 relates to (i) six self amalgamated mining leases for coal over an area of 3511.63 Acres which come under the administrative control of Jamadoba Group of Colliery of Tata Steel and (ii) five other self amalgamated mining leases of coal in Dhanbad district over an area of 1996.19 Acres which come under the administrative control of Bhelatand Group of Collieries of Tata Steel. In Jamadoba Group of Collieries, Jamadoba Coal Processing Plant and Petitioner's captive power plant is situated within the leasehold area. Likewise, in Bhelatand Group of Collieries, Bhelatand Coal Processing Plant and Petitioner's captive power plant is situated within the leasehold area. In W.P.(C) Nos.2995 of 2008 and 2999 of 2008, the petitioner holds a mining lease of coal over an area of 13007 Bigha in various villages in District Ramgarh (earlier Hazaribagh) called West Bokaro Colliery. Here again, the petitioner has two washeries and has a captive power plant.

Raw coal extracted from the mine is fed to the washery plants situated within the leasehold area. The washery plant, after washing or processing of coal, yields four different varieties of coal such as, (i) Clean Coal or washed (Steel Grade-II) Coal, (ii) Middlings (Grade – “E”), (iii) Tailing (Grade – “G/F”), (iv) Rejects (Grade – “F”/“G”).

39. The clean coal, (Steel Grade II), so washed in Petitioner’s washery plant is sent to its steel plant at Jamshedpur for production of coke and thereafter the coke is used in the steel plant of the petitioner in Jamshedpur for production of iron and steel. Admittedly, the middlings and rejects, each of which has an end use, are used by the petitioner in its captive power plants situated in Jamadoba and Bhelatand and the captive power plant situated in West Bokaro Colliery and the remaining is subsequently sold to the end users.

40. To appreciate the procedure of processing of coal and use of various processed mineral by the Petitioner – Tata Steel, we may usefully refer to the graphic version given in para-12 of the counter affidavit of the respondents –



41. In the writ petition while elaborating the processing of coal, the petitioner admits the fact of washed coal being sent to Petitioner's own Steel Plant at Jamshedpur. The petitioner also admits using the middlings and rejects, each of which have an end use, in its captive power plants situated within the leased area and some quantity of middlings and rejects generated from the washery is sold to end users. We may usefully refer to relevant admissions/averments in paragraphs 9, 10, 11 and 12 of W.P.(C) No.1504 of 2009 :-

> "9. That for the purpose of manufacturing steel, coke is an essential raw material and for producing coke, clean coal is required. In the Washeries, the ash content of the raw coal extracted from mine is reduced and the rejects and other by-products are segregated. The coal so washed is sent to Jamshedpur for production of coke and thereafter the coke is used in the Steel Plant of the Petitioner in Jamshedpur for production of iron & steel.
>
> 10. … … Run of Mines (herein after referred to as ROM) extracted in the lease area of the Petitioner is washed in the washery situated in the said area itself. The process of washing generates clean coal, middlings and rejects, each of which has an end use.
>
> 11. … … that within the group of Collieries, the Petitioner has two washeries, one in Bhelatand lease area, which is called Bhelatand Coal Processing Plant (BCCP) and another in Jamadoba lease area, which is called Jamadoba Coal Processing Plant (JCPP). The Petitioner also has a captive power plant situated within the Jamadoba lease area.
>
> 12. … … that rejects, one of the by-products, is generated after washing the ROM in the washery. … the Petitioner uses the same in their Captive Power Plant located within the leasehold area … Some quantity of rejects Middlings generated from the washery are subsequently sold to end-users after taking due permission from the Ministry of Coal. Other by-products are likewise sold to end-users only."

42. By the own version of the petitioner, the Run-of-Mine (ROM) coal is washed/processed in the leased area and clean coal or washed coal is removed from the leased area and the petitioner is liable to pay royalty on such processed mineral/washed coal which is removed from the leased area as explained in Rule 64B(1). By the own version of the petitioner, the middlings, tailings and rejects are also of substantial use having commercial value and they are used by the petitioner's captive power plant as fuel. As per the proviso to Rule 64C when tailings or rejects are used for sale or consumption, such tailings or rejects shall be liable for payment of royalty. Even as admitted by the petitioner, nothing is left unutilized.

43. It is then contended that language of Section 9 of the Act "levy of royalty in respect of any mineral removed or consumed by the holder of mining lease" and when that be so, washing/processing of coal amounts to consumption and therefore entire Run-of-Mine (ROM) mineral extracted is exigible to levy of royalty.

44. There is no merit in the contention that extracted mineral being fed into the washery plant and washing of coal amounts to consumption. As discussed earlier, royalty is payable on the various categories of coal which emerge after processing. Royalty becomes payable on mineral removed from the mining leased area as an economic commodity. Washing of coal is only for beneficiation of coal i.e. to bring out steel grade

coal and that steel grade coal is removed by the Petitioner to its steel plant at Jamshedpur. As held in ***NMDC case***, quantification of royalty to await or be postponed until the processing has been carried out and different categories of coal emerge – clean coal (Steel Grade), middlings, tailings, rejects etc.

45. The Petitioner is liable to pay the royalty on the mineral removed or consumed from the Petitioner's mining lease area :-

(i) Clean coal/Steel Grade removed from the mining lease area is sent to petitioner's own steel plant at Jamshedpur for making hard coke for being used in its own steel plant at Jamshedpur (royalty payable under Section 9 read with Second Schedule read with Rule 64B(1));

(ii) Middlings, Rejects and De-Shale rejects are partly used in petitioner's own captive power plant as fuel and the remaining sold to the customers and other by-products are likewise sold to end users (royalty payable under Section 9 read with the Second Schedule read with Rule 64C).

46. ***Re:- Contention:- Section 9 read with Second Schedule of the MMDR Act and Colliery Control Orders and Notifications issued from time to time fix payment of royalty on Run-of-Mine (ROM) at Pit Head.***

Section 18 deals with mineral development and says that it shall be the duty of the Central Government to take all

such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of the environment by preventing or controlling any pollution which may be caused by prospecting or mining operations. The obligation of the Central Government under Section 18 is to take steps for the systematic development of minerals in India and for such purpose to make rules and systematic exploitation of minerals. In exercise of the power conferred by sub-section (1) and (2) of Section 18 of the MMDR Act, Colliery Control Rules, 2004 was notified. Prior to 2004, Colliery Control Order, 1995 and Colliery Control Order, 2000 were in force. The Colliery Control Rules, 2004, Rule 2(ii) defines coal as under:-

> *"2(ii) 'coal' includes anthracite, bituminous coal, lignite, peat and any other form of carbonaceous matter sold or marketed as coal and also coke."*

Rule 2(iii) defines Coal Controller as under:-

> *"2(iii) 'Coal Controller' means the person appointed as such by the Central Government under the provisions of the Coal Controller's Organization (Group 'A' Posts) Recruitment Rules, 1986".*

47. In terms of Rule 3 of the said Rules, the Central Government may, by notification in the Official Gazette, prescribe the classes, grades or sizes into which coal may be categorized and the specifications for each such class, grade or size of coal. Rule 4 thereof deals with the procedure for categorization of coal. As per rule 4(1), on the basis of

categorization notified by the Central Government under rule 3, the Coal Controller shall lay down the procedure and method of sampling and analysis of coal for the purpose of declaration and maintenance of grades of coal mined in a colliery. As per Rule 4(2), the owner, agent or manager of a colliery shall declare the classes, grades or sizes of the coal of any seam of section of a seam in a colliery in accordance with the procedure specified in sub-rule (1). Sub-rule (3) of Rule 4 gives power to the Coal Controller to ensure the correctness of the class, grade or size so declared. Rule 5 of the said Rules deals with submission of returns and information to Coal Controller.

48. In pursuance of the clauses 3 and 4 of the Colliery Control Order, 1945 as continued in force by Section 16 of the Essential Commodities Act, 1955 vide Notification dated 16th June, 1994, the Central Government in Table I prescribed the classes and grades into which coal and coke shall be categorized and fixed in Tables II, III, IV, V and VI the sale prices at which coal or coke may be sold by the colliery owners at pit-heads.

49. After the above notification issued by the Ministry of Coal dated 16th June, 1994, in exercise of the power conferred by Section 9(3) of the MMDR Act, the Central Government made the amendments in the Second Schedule of the MMDR Act prescribing royalty for various categories of coal as

indicated in the notification of the Ministry of Coal dated 16th June, 1994. Subsequently, amendments in the Second Schedule to the MMDR Act was made by the Notifications dated 16.8.2002 and 1.8.2007 revising rates of royalty on coal. Shortly, we shall refer to these Notifications and the rates of royalty prescribed thereon.

50. The contention of the petitioner is that combined reading of Section 9(2) with the Second Schedule of the MMDR Act as amended from time to time and the Colliery Control Orders and Notifications issued thereunder from time to time are determinative of the coal price and they clearly fix the payment of royalty on Run-of-Mine (ROM) coal at pit-head and not on the processed mineral. According to the petitioner, in various notifications dealing with royalty on coal, an explanation has been provided linking the grading to the respective Colliery Control Orders/Rules and it is, therefore, that under the Colliery Control Rules, 2004, read with relevant Gradation Notifications Criteria issued by the Ministry of Coal, Union of India, through the Colliery Controller, different grades of raw coal are categorized/ascertained/ declared at the pit-heads on the basis of bore hole data and therefore, royalty is payable on the Run-of-Mine (ROM) at the pit-head. The contention of the petitioner is that as per the Rules of Colliery Control Order, it is the owner or agent or manager of the colliery who is to declare the grade of the coal and if there is any dispute with regard to the grade or its

correctness, it is to be assessed by the Controller. It is the further contention of the petitioner that as per the procedure laid down by the Colliery Controller, the grade of only Run-of-Mine (ROM) is required to be declared.

51. In terms of Section 9(3) of the MMDR Act, the Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified. The rates of royalty payable on coal have undergone several changes. Ministry of Coal, in pursuance of Rules 3 and 4 of the Colliery Control Order issued notification dated 16th June, 1994.In exercise of power under Section 9(3), the Central Government issued notification on 14.10.1994 making amendments in Item No.11 (coal) in the Second Schedule of the rate of royalty payable on various categories of coal. Again vide notification dated 16.8.2002, the same was amended making further amendment in the Second Schedule for Item no.11(coal)of the rate of royalty payable on various categories of coal. Again another Notification was issued, vide GSR522(E) dated 1.8.2007, making further amendment in the Second Schedule in respect of royalty payable on Item No.11 (coal). Again vide GSR46(E) dated 25.1.2012, Central Government made further amendment in the Second Schedule regarding rates of royalty payable in respect of Item No.11 (coal).

52. In the above Notifications, no royalty has been prescribed for Run-of-Mine (ROM). Categorization of coal is done as per Colliery Control Order. Pursuant to that categorization, Second Schedule has been amended for prescribing different rates for different groups of coal and for different categories. Previously, royalty was paid on Tonnage basis depending upon their Groups. By perusal of the various groups of coal and various categories, it is seen that the classification keeps in view the process to which the coal is subjected to produce various grades of steel grade, washery grade, ungraded coals, rejects etc. The various categories of coal enumerated in the Second Schedule (with effect from 1987) clearly indicate that the royalty is payable on the processed mineral depending upon its grade.

53. On the basis of the recommendation of a Study Group constituted for revision of the rate of royalty for coal, vide Notification dated 1.8.2007, following combination of specific and ad-valorem rates of royalty has been notified by the Government. As per the said notification, royalty shall be a combination of specific and ad valorem rates of royalty, which shall be as follows:-

> *"R (Royalty Rupees/tonnes) = a+bP*
>
> *Where 'P' (price) shall mean basic pithead price of ROM (run-of-mine) coal and lignite as reflected in the invoice, excluding taxes, levies and other charges and the values of 'a' (fixed component) and 'b' (variable or ad valorem component)".*

54. In these writ petitions, we are concerned with demand notices issued for the period from 2002 to 2010 and the relevant notifications are the Notifications dated 16.8.2002 and 1.8.2007. As pointed out earlier, in these notifications, royalty is not prescribed for the raw coal i.e. Run-of-Mine (ROM). Royalty is payable on the processed mineral/coal depending upon its grade.

55. For proper appreciation, we may usefully refer to the rates of royalty on various groups and categorization of coal (per tonne) as per the Notification as on 1.8.1991, 14.10.1994, 16.8.2002 and 1.8.2007, which is as under:-

Coal Group	**Royalty w.e.f 1-8-1991 In Rupees**	**Royalty w.e.f 14-10-1994 In Rupees**	**Royalty w.e.f 16-8-2002 In Rupees**	**Royalty w.e.f 1-8-2007**
Group – I (Coking Coal SG I,II,WG I)	150	195	250	a = Rs.180 b = 5%
Group – II(Coking Coal WG II, III,SC I, II Grade A,B)	120	135	165	a = Rs.130 b = 5%
Group – III (Coking Coal WG IV, Grade C)	75	95	115	a = Rs.90 b = 5%
Group – IV (GradeD,E)	45	70	85	a = Rs.70 b = 5%
Group – V (GradeF,G)	25	50	65	a = Rs.55 b = 5%
Middlings	-	-	-	(i) Useful Heat value > 1300 rate applicable to corresponding grade of coal (ii) Useful Heat = < 1300 a = Rs.45 b = 5% *

Note: i) These rates are not applicable to West Bengal.

ii) For the purpose of grading of coal, the specification of each grade of the coal shall be as prescribed under rule 3 of the Colliery Control Rules, 2004.

56. The contention of the petitioner is that Section 9 read with Item 11 of the Second Schedule of the MMDR Act clearly indicates that royalty on coal has to be calculated on the basis of the formula given therein, i.e. a+bp and Item 11 of the Second Schedule does not classify coal by reference to its

constituent but classifies coal on the basis of its gradation for the purposes of calculation of royalty. According to the petitioner, royalty is to be levied at the time when coal is extracted from the mine and not to be deferred or postponed till it is subjected to any process of washing. Contention of the petitioner is that as per Colliery Control Orders, the petitioner-holder of mining lease, agent or manager will declare the class, grade or sizes of the coal extracted and as per the Colliery Control Orders returns are being filed before the Coal Controller and the Coal Controller verifies the same and therefore royalty is payable on the coal extracted as per the class/category declared by the holder of the mining lease.

57. There is no merit in the contention that when processed mineral is removed from the leased area, royalty is payable on the Run-of-Mine (ROM) – as per grade declared by the holder of the mining lease. Royalty is payable on the processed mineral which is removed from the leased area. As pointed out earlier, in the Second Schedule royalty is not prescribed as such on the Run-of-Mine (ROM). Royalty is fixed on the various categories like steel grade/washery grade and other grades. Steel grade/washery grade coal emerge only after washing or processing which is sold or marketed as coal. At this juncture, we may usefully recapitulate the definition of coal in Clause 2(ii) of the Colliery Control Order, 2004 *"'coal' includes anthracite, bituminous coal, lignite, peat and any other*

form of carbonaceous matter sold or marketed as coal and also coke."

58. Of course, as per Rule 64B(2), if the Run-of-Mine is removed from the leased area to a processing plant which is located outside the leased area, then royalty shall be payable on the unprocessed Run-of-Mine (ROM) mineral depending on its grade. Royalty is quantified on the Run-of-Mine (ROM) since Run-of-Mine (ROM) is removed from the mining lease area to the processing plant situated outside the leased area.

59. In case, if royalty is payable on Run-of-Mine (ROM) and not on the coal marketed as coal depending upon its grade, there will be huge loss to the revenue of the State. Royalty is an important source of revenue of some of the States like Jharkhand. The formula adopted R=a+bp is intended to give Coal Producing States reasonable share of income earned by producing and selling of non-renewable mineral resources, like coal. The legislature in its wisdom stipulated that in case, the mineral is processed in the leased area, royalty is payable on the mineral removed or consumed from the leased area. Since royalty forms a vital part of the revenue of the State Government, it is virtually impossible to lose money on the processed mineral which is the resource of the State.

60. In fact, earlier the petitioner, Tata Steel, itself was desirous of paying royalty only on the washed coal. As pointed

out earlier, in CWJC No.1/1984(R), the petitioner sought for a declaration that it was liable to pay royalty on the basis of Tonnage of the washed coal, when it is received from the coal washery. In CWJC No.1/1984(R), learned Single Judge, accepting the contention of the petitioner, held that the petitioner is to pay royalty on removed washed coal. Thereafter the notifications dated 1.8.1991 and 14.10.1994 came into force and the rate of royalty on the washed coal was slightly increased. Therefore, after the judgment in ***SAIL*** case, the petitioner changed its earlier stand and expressed its intention to the District Mining Officer, Hazaribagh, that it would pay royalty on raw coal extracted with effect from 10.8.1998, i.e the day on which the Supreme Court delivered the judgment and the same was rejected by the District Mining Officer, vide letter dated 27th September,1998, on the ground that the issue between the parties stood settled by the court decision in CWJC No.1/1984(R) and the petitioner cannot derive any advantage of the subsequent decision of the Supreme Court. That decision was challenged in CWJC No.3040/1998(R) and vide order dated 1st March, 2000, the said writ petition was dismissed by the learned Single Judge. As against the said order, appeal filed in L.P.A No.117/2000 was allowed and the same is subject-matter of challenge before the Hon'ble Supreme Court.

61. The contention of the petitioner that royalty is payable on Run-of-Mine (ROM) at its pit-head price is

untenable. In terms of Section 9 of the MMDR Act, the Petitioner– Tata Steel - is to pay royalty as per the Second Schedule in respect of mineral removed or consumed by Tata Steel from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral (coal). As per the Notifications mentioned above, the petitioner is liable to pay royalty at the rates indicated thereon in the notifications for the relevant period.

62. Re. Contention:- Judgment in the case of *State of Orissa & Ors. Vs. Steel Authority of India Ltd. [(1998) 6 SCC 476]* is binding upon the respondents.

Learned Senior Counsel for the petitioner contended that by virtue of Article 141 of the Constitution of India, the decision of the Hon'ble Supreme Court in SAIL case is the law of the land and shall be binding on all courts and by virtue of Article 144 of the Constitution of India, all the authorities, Civil and Judicial, in the territory of India shall act in aid of the Supreme Court. In support of his contention learned Senior Counsel placed reliance upon the decisions rendered in the case of ***Anil Kumar Neotia & Ors. Vs. Union of India & Ors.*, (1988) 2 SCC 587** and **Asstt. Collector of Central Excise vs. Dunlop India Ltd. &Ors., (1985) 1 SCC 260.**

63. Learned Senior Counsel for the respondents submitted that the judgment in SAIL case may not be applicable in the case of coal and distinguished the SAIL case. Learned Senior Counsel appearing for the respondents

submitted that in SAIL case, the mineral involved is Dolomite, which is in Entry 14 of the Second Schedule and the mineral Dolomite as such is exigible to royalty as prescribed in the Second Schedule and therefore, in the said judgment, Hon'ble Supreme Court was pleased to hold that putting the extracted mineral to processing would constitute consumption and in the peculiar nature of the particular mineral, "Dolomite", Hon'ble Supreme Court held that the entire mineral is exigible to levy of royalty. Learned Senior Counsel for the respondents submitted that such is not the case in so far as iron ore or coal is concerned and the coal is treated differently from other mineral and therefore, the petitioner cannot take the advantage of SAIL case.

64. In the SAIL case, the question, which arose for consideration, was "whether the respondent (SAIL) is liable to pay royalty on the quantity of mineral (Dolomite) extracted as it is or on the quantity arrived at after the said mineral had undergone a processing to remove waste and foreign matter". Paragraph 4 of the ***SAIL's*** judgment refers to the process through which the mineral undergoes in the Mechanized Section of the SAIL's quarry. As per the process indicated in paragraph 4 of the judgment, after blasting, the blasted materials containing limestone and other foreign materials are loaded by mechanical shovels and are brought to the crushing plant by dumpers and after processing in primary crusher and

secondary crusher, limestone is moved into screening plant and from the screening plant to the stockpile and the stockpile is then transported and loaded into the railway wagons. After process, part of it is shown as production and the wastage remained in the leased area. The High Court quashed the demands which were levied on the wastage remained in the leased area (unprocessed minerals). It is in this context Hon'ble Supreme Court held that Run-of-Mine (ROM) is placed in the crusher and such processing amounts to consumption and therefore, the entire mineral is exigible to levy of royalty. The Hon'ble Supreme Court set aside the judgment of the High Court and in paragraph 11, Hon'ble Supreme Court held as under:-

> *"11. It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the process that the mineral was said to undergo before the same was removed from the leased area. Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted. We are unable to agree with the distinction made by the High Court and the conclusion that the royalty can be levied only on the quantity of mineral obtained after processing."*

65. As per the processing of the mineral, "Dolomite" as indicated in paragraph 4 of the aforesaid judgment, the entire blasted materials containing limestone and other foreign materials are loaded and brought to the crushing plants by dumpers and processed, Hon'ble Supreme Court held that the

processing of the mineral 'Dolomite' amounts to 'consumption' and as per the Second Schedule, the entire mineral is exigible to levy of royalty.

66. In LPA No.117/2000, vide judgment dated 23.7.2002, the Division Bench held that judgment in SAIL case is applicable to the petitioner and the petitioner is liable to pay royalty on coal extracted – Run-of-Mine (ROM). Against the said judgment appeals are pending before the Hon'ble Supreme Court. Since the matter is pending before Hon'ble Supreme Court, we do not propose to go further into this question.

67. Suffice it to note that subsequent to the judgment in SAIL case dated 10.8.1998, by notification no.GSR 743(E) dated 25.9.2000, significant amendment has been made in the MMDR Act by introducing Rules 64B and 64C. It is also relevant to note that the judgment rendered in the case of SAIL has been referred to Larger Bench in the case of ***Central Coalfields Limited Vs. State of Jharkhand & Ors. [(2010) 15 SCC 603].*** It is pertinent to note that the scope of Rules 64B and 64C of the MCR, 1960 was not considered by the Division Bench in LPA No.117/2000.

68. In these writ petitions, impugned demands were issued in pursuance of Section 9 read with the Second Schedule of the MMDR Act read with Rules 64B and 64C of the MCR, the rival contention of the parties need to be

considered in the light of the amendments made and the non-compliance of Rule 51 and other Rules.

69. **Challenge to the vires of Rules 64B and 64C.**

The learned Senior Counsel for the petitioner submitted that Rules 64B and 64C of Mineral Concessional Rules are liable to be struck down as being :-

(i) Ultra vires the Constitution of India;
(ii) Contrary to the parent Act – Sections 9 and 13) of MMDR Act;
(iii) Wholly arbitrary and therefore, violative of Article 14 of the Constitution of India.

The learned Senior Counsel submitted that sub-section (2) of Section 13 of the MMDR Act illustrates the nature of the power granted to the Central Government and the power to enact Rules is only to "fill up the details" and the Rule making authority cannot supplant the Parent Act but can merely supplement it. The learned Senior Counsel placed reliance upon ***Indian Express Newspapers (Bombay) Private Ltd. and Others v. Union of India and Others, (1985) 1 SCC 641*** in which the Hon'ble Supreme Court in para 75 has held as under :-

> ***75.*** *A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of*

> *not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock, L.J. in Mixnam's Properties Ltd. v. Chertsey Urban District Council thus:*
>
> *The various special grounds on which subordinate legislation has sometimes been said to be void ... can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus, the kind of unreasonableness which invalidates a bye-law is not the antonym of 'reasonableness' in the sense in which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'...if the courts can declare subordinate legislation to be invalid for 'uncertainty' as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain."*

In support of his contention, the learned Senior Counsel also placed reliance upon the judgment rendered in the case of ***J.K.Industries Limited and Another v. Union of India and Others, (2007) 13 SCC 673***.Reliance was also placed on the various decisions wherein the subordinate legislations have actually been quashed and declared unconstitutional.

70. The learned Senior counsel for the petitioner submitted that Rules 64B and 64C travelled beyond Section 9 and are clearly in conflict therewith inasmuch as, they seek to impose royalty on processed minerals instead of minerals extracted. The learned Senior Counsel submitted that power of the Central Government to notify the rates of royalty by way of notification read with Section 9(3) has been upheld by the Hon'ble Supreme Court in the case of ***State of M.P. v. Mahalaxmi Fabric Mills Ltd. and Others,***

(1995) Suppl. (1) SCC 642 and therefore the notification and the Second Schedule are to be read as part of MMDR Act. It was contended that in respect of coal, Rules 64B and 64C are ultra vires the Parent Act because the Second Schedule, the Colliery Control Order and the notifications issued thereunder clearly stipulate levy of royalty and its quantification to be on Run-of-Mine (ROM) and at pit-head. It is the contention of the petitioner that Rules 64B and 64C are also unconstitutional in as much as by seeking to levy and collect royalty on the processed mineral, the rule making authority is actually seeking to levy excise duty or something in nature thereof which is wholly impermissible.

71. Placing reliance upon ***V.P.Pithupitchai and Another v. Special Secretary to the Govt. of T.N., (2003) 9 SCC 534***, the learned Senior Counsel for the respondents submitted that mineral must be given meaning of wide amplitude. Placing reliance upon petitioner's own case in ***(1990) 4 SCC 557*** it was submitted that coal washery is also part of mining operation and what comes out of the washery is also mineral and Rules 64B and 64C only seek to levy royalty on such processed mineral "being removed or consumed from the leased area" and, therefore, not arbitrary.

72. Section 9 of the MMDR Act contains statutory provision with regard to payment of royalty. By sub-section (1) of Section 13 of the Act, the Central Government is empowered

to make rules for regulating grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith. Sub-section (2) of Section 13 in its Clauses (a) to (r) enumerate the matters in respect of which the Central Government can make rules. Under Clause (i) of sub-section (2) of Section 13 of the Act, the rule may provide for fixation and collection of fees for prospecting licences of 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.

73. Section 9 of the MMDR Act obliges the holder of a mining lease to pay royalty. The words employed in Section 9 are "*shall pay royalty in respect of any mineral removed or consumed … … from the leased area*". The mineral removed from the mining lease area need not necessarily be the Run-of-Mine (ROM)/coal extracted from the earth. The definition of "mining operations" in Section 3(d) shows that mining operations cover every operation undertaken for the "purpose of winning any mineral". Under Section 2(j) of the Mines Act, "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes various works as indicated in Clause (i) to (xi) of Section 2(j) of Mines Act. Since washery plant comes within the definition of "mine" as per Mines Act, as

such final product coming out of the washery is in fact the quantity of mineral removed from the leased area which is liable for royalty.

74. The royalty in respect of mining leases is specified in Section 9 of MMDR Act and Second Schedule. Royalty is a variable return and it varies with the quantity of mineral removed. As discussed earlier, as per Second Schedule, coal is being grouped along with categorization and royalty is based on the categorization. If the processing of the mineral is done within the leased area, the removed mineral is only the processed mineral and as per Section 9 of the Act, royalty is payable on the processed mineral removed from the leased area. Rule 64B(1) mandates the quantification of royalty be deferred or postponed until the processing is over and if the processed mineral is removed from the leased area, royalty is payable depending on the grade of the processed mineral (vide Rule 64B(1)).In our considered view Rules 64B(1) only clarifies the royalty to be levied on such processed mineral removed from the leased area.

75. As rightly contended by the respondents, it is not necessary that coal produced from a mine should always be subjected to processing. It was stated that there are various coal mines in the country producing raw coal without any processing and they may be of high quality of coal which is coming out of the mine having useful Heat Value and when such mineral is removed from the leased area, it attracts

provision of royalty as per Section 9 read with Second Schedule of MMDR Act. Rule 64B(2) makes a provision for levy of royalty. In case, Run-of-Mine (ROM) is removed from the leased area to a processing plant which is located outside the leased area, then as per Rule 64B(2), royalty shall be chargeable on the unprocessed Run-of-Mine (ROM) mineral.

76. Under Clause (i) of sub-section (2) of Section 13 of the Act, the rule may provide for fixation and collection of fees and the manner in which the dead rent royalty shall be payable. In exercise of the power under Section 13, the legislature has introduced Rules 64B and 64C.Rules 64B and 64C have been inserted clarifying the existing position. In ***NMDC Case*** while referring to Rules 64B and 64C the Hon'ble Supreme Court held that Rules 64B and 64C only clarify the position as it already existed and are intended to remove the doubts.

77. The learned Senior Counsel for the petitioner submitted that such a distinction made between the mineral processed in the leased area and the Run-of-Mine (ROM) removed from the leased area to a processing plant situated outside the leased area is arbitrary and unreasonable. The learned Senior Counsel submitted that when royalty is payable on Run-of-Mine (ROM), in case such mineral is sent to a processing plant outside the leased area, there is no reason as to why the same basis should not be followed for the mineral

processed in the processing plant situated within the leased area and submitted that such distinction made in Rule 64B(1) and (2) is arbitrary and unreasonable.

78. We do not find any arbitrariness in the distinction between ROM processed in the leased area and royalty payable on such "processed mineral" removed from the leased area (Rule 64B(1)) and Run-of-Mine (ROM) being removed from the leased area to a processing plant outside the leased area, royalty is payable on such Run-of-Mine (ROM) (Rule 64B(2) removed from the leased area. Removal of Run-of-Mine (ROM) to a processing plant which is located outside the leased area involves host of other activities like transport, processing of Run-of-Mine (ROM) in the processing plant situated outside the leased area. During the course of process in the processing plant situated outside the leased area, the processed mineral might again be subjected to other levy like Excise and other charges. Therefore, we do not find any arbitrariness in levy of royalty on Run-of-Mine (ROM), in case the Run-of-Mine (ROM) is removed from the leased area to a processing plant situated outside the leased area.

79. It was then contended that Section 9 does not provide for charging event on removal of processed mineral, whereas Rule 64B(1) postpones the charging event of the royalty at the stage of processing and therefore Rule 64B is violative of the Parent Act. The above contention does not

merit acceptance. As per Section 9, 'the royalty shall be payable on the mineral removed or consumed from the leased area'. Rule 64B only clarifies the position as to the (i) levy of royalty, in case the ROM is processed in the leased area and processed mineral removed from the leased area and (ii) levy of royalty in case ROM itself removed from the leased area. As held by Hon'ble Supreme Court in ***NMDC Case***, Rule 64B only clarifies the existing position.

80. In Petitioner's own case ***(1990) 4 SCC 557 (Bharat Coking Coal Ltd. & Ors. Vs. State of Bihar & Ors.)***, the Hon'ble Supreme Court held that the coal particles which escape from the washery plant along with water which were deposited in the river bed or in other's lands, i.e. "slurry" is coal in liquid form. In the said case, the Tata Iron and Steel Company Limited (TISCO) - appellant claimed the right of the slurry which escape from the washery belong to it and contended that no other person had right to collect the same. The State of Bihar did not accept TISCO's claim, instead, it granted the lease to the respondent thereon the rights of collection of slurry. TISCO filed writ petitions before the Patna High Court challenging the authority of the State Government's action on the ground that 'slurry was a mineral being coal' and as such its collection and mining was regulated by MMDR Act and the State Government had no authority to grant lease for collection of sludge/slurry without the previous sanction of the Central Government. The Full Bench of Patna High Court dismissed TISCO's writ

petition on the findings that the slurry was neither coal nor mineral instead it was an industrial waste of coal mine which was not regulated by the provisions of MMDR Act and therefore the State Government was not under any obligation to obtain previous sanction of the Central Government. The High Court further held that after the slurry deposited into the river bed or in some other land, the same ceased to belong to the TISCO and State Government was entitled to execute lease for collection of the same. Referring to the definition of "mining operations" as given in Section 3(d), the Hon'ble Supreme Court held that the definition of "mining operations" and "mine" are very wide and that the essence of "mining operations" is that it must be an activity for winning a mineral whether under the surface or on the surface of earth and held that the slurry so deposited would form part of the mining operations within the meaning of Section 3(d) of the Act and on those findings, set aside the judgment of the Patna High Court. In para 11 and 12 the Hon'ble Supreme Court held as under:-

> *"**11**. If slurry is coal, the question is whether the leases in dispute granted by the State of Bihar constitute mine leases as contemplated by Section 5(2)(a) of the Act. "Mining lease" as defined by Section 3(c) means "a lease granted for the purpose of undertaking mining operations and include a sub-lease granted for such purpose." "Mining operations" as defined by Section 3(d) means "any operations for the purpose of winning any mineral". Section 5(1) places restriction on the grant of mining leases by a State Government. Section 5 (2)(a) lays down that except with the previous approval of the Central Government no prospecting*

licence or mining lease shall be granted in respect of any material specified in the First Schedule. The First Schedule to the Act specifies minerals as contemplated by Section 5(2)(a) and "coal" is specified therein at Item No. 4. The Patna and Calcutta High Courts have held that the collection of slurry did not involve any mining operations, therefore, the lease in question was not a mining lease. Consequently, the State Government was not under any legal obligation to obtain approval of the Central Government before granting leases for collection of slurry.

12. *These findings are assailed and the appellants contend that mining operations need not always involve extraction of mineral from the bowels of the earth, a mineral like sand, gravel may be deposited on the surface of the earth, and still its collection involves mining operations. It was strenuously urged that it is wrong to assume that mines and minerals must always be embedded under the sub-soil and there can be no mineral on the surface of the earth. See: Bhagwan Das State of U.P. The definition of "mining operation" and "mine" are very wide. The expression "mining of mineral" in the definition of "mining operation" under Section 3(d) of the Act is spacious enough to comprehend every activity by which a mineral is extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth. It is not a requirement of the definition of "mining operation", that the activity for winning the mineral must necessarily be an underground activity. The essence of 'mining operation' is that it must be an activity for winning a mineral whether under the surface or winning the surface of earth, vide Tarkeshwar Sio Thakur Jiu v. B.D. Dey & Co. The slurry which is deposited on the river bed is not dumped there artificially by any human agency instead coal particles are carried to the river bed by the flow of water through natural process. Therefore the view taken by the High Court that the slurry which is deposited in the river bed is dumped by the appellants by artificial process is incorrect. Once the coal particles are carried away by the water which is discharged from the washery and the same are settled in the river bed, any operation for the extraction or lifting of the coal particles from the river bed would involve winning operations within the meaning of Section 3(d) of the Act. We do not think it necessary to express any final opinion on this question as the appeals are bound to succeed on the ground of absence of legislative competence of the State legislature."*

[**underlining added**]

81. As held by the Hon'ble Supreme Court, the expression, "winning any mineral" in the definition of "mining operation" under Section 3(d) of the Act is spacious enough to comprehend every activity by which a mineral is extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in bowels of the earth. It is not a requirement of the definition "mining operation" that the activity for winning the mineral must necessarily be an underground activity. Rule 64B(1) brings within its fold such "mining operation" viz., processing of the Run-of-Mine (ROM) carried on in the leased area. In the petitioner's own case, even the escaped particles of coal deposited in the river bed or in other's land, coal slurry, was held to be a part of mining operation. Thus, Rules 64B and 64C only clarify the existing position.

82. Rule 64C of the Mineral Concession Rules deals with royalty on tailings or rejects. As per Rule 64C, on removal of tailings or rejects from the leased area for dumping and not for sale or consumption, outside leased area such tailings or rejects shall not be liable for payment of royalty. As per proviso to Rule 64C, in case, so dumped tailings or rejects are used for sale or consumption on any later date after the date of such dumping, then, such tailings or rejects shall be liable for payment of royalty. As discussed earlier, raw coal produced from the mine is washed to improve the quality and grade of

the coal for use in the steel plant. After washing the coal in the washery plant, the steel grade coal is sent to its own Steel Plant at Jamshedpur and the by-products that emerge i.e. middlings, tailings and rejects which are not fit for steel plant, are used partly by the petitioner in its power plant as fuel and partly sold to the customers. The middlings, tailings and rejects which emerge in the processing of coal also have economic value. Admittedly, petitioner-Tata Steel partly uses middlings, tailings and rejects for its captive power plant situated in the respective collieries and the remaining part sold to the customers. Since middlings, tailings and rejects are used for consumption or sale, royalty is payable as per proviso to Rule 64C.

83. The provisions of Rules 64B and 64C have been inserted in the Mineral Concession Rules, 1960 in view of ultramodern technology of coal beneficiation used in coal washeries situated in leasehold areas and the consequent use of all its by-products such as clean coal, middlings, tailings and rejects. Holder of a mining lease enjoys largesse in the form of mining leases. Levy of royalty on minerals is based on the premise that mineral resources are “wasting assets”, “one-crop-product”. The rationale for royalty is that it is a payment to the State Government/mineral rights holder from mineral producer in consideration for the extraction of valuable and non-renewable natural resources. Royalty forms

a vital part of a fiscal regime of mining and is an important means of revenue realization for the State Government. It is, therefore, virtually impossible to lose money on the processed mineral and also the by-products which are in the nature of middlings, tailings and rejects including de-shale rejects.

84. Royalty on coal as set out in the Second Schedule to the Act arising out of introduction of Rules 64B and 64C in the Mineral Concession Rules, 1960 only recognizes various categories of mineral removed from the leased area. For instance, in the case of coal, Rules 64B(1) and 64C recognize various categories of mineral exigible to royalty as clean coal, middlings, tailings and rejects coming out from the coal washery situated within the leased area. Rules 64B and 64C are in conformity with the MMDR Act and Second Schedule. We do not find any arbitrariness in the Rules 64B and 64C and we do not find any merit in the contention challenging the vires of Rules 64B and 64C.

85. **Challenge to notification dated 01.08.2007 issued by the Central Government inserting 'middlings' in the Second Schedule.**

The petitioner also challenged the notification dated 01.08.2007 issued by the Central Government as ultra vires Section 9(3) of the MMDR Act as it seeks to amend Item 11 in so far it relates to insertion of middlings. As pointed out earlier, in para 37, middlings are by-products of coal washery

and the middlings are used for power generation and also used by domestic fuel plants, brick manufacturing units, cement plants, industrial plants, etc. Middlings are one of the minerals removed from the leased area or consumed. It is an admitted case of the petitioner that the middlings and rejects are used by the petitioner in its own captive power plant and some quantity of middlings generated from the washery are subsequently sold to end users after taking due permission from the competent authority. In para (10) of the writ petition W.P.(C) No. 1504 of 2009, it is clearly stated that process of washing coal generates clean coal, middlings and rejects, each of which has an end use. Admittedly even according to the petitioner, when middlings and rejects have an end use and either used in the petitioner's captive power plant and being sold to consumers, middlings being one of the minerals removed or consumed from the leased area, the petitioner cannot challenge the notification dated 01.08.2007 amending item 11 in so far as it relates to insertion of middlings.

86. **Challenge to the levy of royalty on De-Shale Rejects (W.P.(C) No. 2995 of 2008).**

W.P.(C) No. 2995 of 2008 relates to levy of royalty on De-Shale Rejects pertaining to West Bokaro Colliery. In W.P.(C) No. 2995 of 2008 the petitioner challenges the levy of royalty on De-Shale Rejects and seeking for a direction to the respondents not to take any coercive step pursuant to the

notice dated 09.04.2008 in connection with Certificate Case No. 2/2008-09.

87. The petitioner has paid the royalty up to November, 1999 @ Rs. 50/M.T. on the dispatch of De-Shale Rejects coal showing as grade "F" and in December, 1999 as grade "G". In January, 2000, the royalty has been paid at the above rate on the road sale of 3715.33 M.T. of De-Shale Rejects coal showing as non-grade G(P) and royalty has not been paid on the road sale of 6969.76 M.T. of De-Shale Rejects coal showing the same as 'non-determinable'. On noticing the sale of De-Shale Rejects through road sale and that royalty was not paid on the same during the period from 1999-2000 to 2001-2002, demand notice on the royalty for Rs.1,41,83,857/- plus interest Rs.1,78,71,660/- totaling Rs.3,20,55,517/- was issued to the petitioner through letter dated 03.08.2007. The petitioner has sent the reply dated 21.08.2007 stating that De-Shale Rejects have been already declared as un-gradable and since royalty is not payable on un-gradable coal, the same has not been paid. The reply of the petitioner was not accepted by the respondents and Certificate Case No. 2/2008-09 has been filed for the recovery of the abovesaid amount of royalty and interest totalling to Rs.3,46,08,611/-.

88. On behalf of the petitioner it was contended that De-Shale rejects have already been declared as un-gradable and since royalty is not payable on un-gradable coal, the same

has not been paid. It was argued that when the Coal Controller has accepted the De-Shale Rejects as un-gradable, the second respondent has got no jurisdiction to fix the grade at par with non-coking coal grade "G" for the purpose of payment of royalty and the second respondent has acted illegally and beyond his jurisdiction in issuing the letter demanding royalty on the said un-gradable rejects as non-coking coal grade "G". The petitioner reiterates the contention that when royalty is paid on Run-of-Mine (ROM) then charging royalty on rejects or tailings, which is a part of the Run-of-Mine (ROM), amounts to charging royalty twice on the same mineral.

89. On behalf of the respondents it was contended that the middlings, tailings and rejects including De-Shale Rejects are partly used by the petitioner in its power plant as fuel and partly sold to the customers and as per Section 9 read with Rule 64C, royalty is payable on the same. It was further submitted that on scrutiny of the monthly returns submitted by the West Bokaro Colliery it was found that royalty on the de-shale rejects-grade "G" coal has not been paid during 1999-2000 to 2001-2002. Since the royalty has not been paid on the De-Shale Rejects and grade "G" coal, after issuing notice, Certificate Case No. 2/2008-09 was filed and notice under Section 7 has been issued by the Certificate Officer, North Chhotanagpur Circle, Hazaribagh through process

No.172 dated 09.04.2008. It was further argued that the petitioner has not filed any objection petition before the Certificate Court and without following the statutory procedure under the provisions of P.D.R. Act, the petitioner has filed writ petition which is contrary to the provisions of the P.D.R. Act and hence the writ petition is liable to be dismissed.

90. Rejects including De-Shale Rejects are used for FBC boilers (Fluidized Bed Combustion) for power generation, road repairs, briquette (domestic fuel) making, land filling etc. As discussed earlier, it is the admitted case of the petitioner that the process of washing generates clean coal, middlings, tailings and rejects each of which has an end use. As elaborated earlier, after washing the coal in the Petitioner's washery plant, the steel grade coal is sent to petitioner's own steel plant at Jamshedpur and the middlings, tailings and rejects including De-Shale Rejects which are not fit for steel plant are used partly by the petitioner in its captive power plants situated in the respective collieries and partly sold to the customers. Since the De-Shale Rejects are partly used in the petitioner's captive power plants and also sold to customers, as per Section 9 read with proviso to Rule 64C, the petitioner is liable to pay royalty. The petitioner is not right in contending that when royalty is paid on Run-of-Mine (ROM) then charging royalty on tailings or rejects which is part of same Run-of-Mine (ROM), amounts to charging royalty twice

on the same mineral. As per proviso to Rule 64C, the petitioner is liable to pay royalty on the De-Shale Rejects as grade "G" coal. Since we have already held that Rules 64B and 64C are not ultra vires and are in consonance with MMDR Act and since the De-Shale Rejects are partly used by the petitioner in its own captive power plant and partly sold, the demand of royalty on De-Shale Rejects is in accordance with Section 9 read with proviso to Rule 64C,the petitioner is not entitled to the relief sought for in W.P.(C) No. 2995 of 2008.

91. Re. Whether the respondent-Department is not justified in issuing the impugned notices in the light of the judgment dated23.7.2002 passed LPA No.117/2000?

It was then contended that the Division Bench of this Court decided, vide LPA No.117/2000, in favour of the petitioner holding that royalty is payable upon the quantity of the mineral extracted and not after washing and as against the judgment passed in LPA No.117/2000, the State has preferred an appeal before the Hon'ble Supreme Court in Civil Appeal No.307/2004, in which no stay has been granted by Hon'ble Supreme Court and when the Hon'ble Supreme Court is in seisin of the matter, the respondents are not justified in issuing the impugned notices. It was further submitted that Rules 64B and 64C were introduced in the year 2000, whereas the judgment of this Court in LPA No.117/2000 was passed in the year 2002 and having failed in their attempt to get stay order from the Hon'ble Supreme Court, after long

lapse of time of about six or seven years, the respondents are not justified in issuing the impugned demand notices and the State ought to have waited to undertake all these exercises either after the judgment of Hon'ble Supreme Court or they could have kept the demand pending awaiting the outcome of the decision of Hon'ble Supreme Court. Learned Senior Counsel submitted that the State has adopted arm-twisting tactics by lodging FIR against the officials of the petitioner, forcing the petitioner to make payment and the impugned demand notices are directly contrary to the judgment of this Court passed in LPA No.117/2000 and hence, they are liable to be quashed.

92. Of course the judgment in LPA No.117/2000 was rendered on 23.7.2002 after Rules 64B and 64C were introduced by amendment in the year 2000. As rightly pointed out by the learned Senior Counsel for the respondents that the judgment in LPA No.117/2000 was rendered in *sub-silentio*, i.e. without noticing Rules 64B and 64C, which were incorporated in the Rules in the year 2000 itself. Rules 64B and 64C was not perceived by the Court or presented before the Court when L.P.A. No. 117/2000 was decided by the Court. The decision was not authority on the point, i.e. the applicability of the Rules 64B and 64C.

93. The principle of *sub-silentio* has now come to be crystallized as held by the Apex Court in the case of **Municipal**

Corporation of Delhi vs. Gurnam Kaur (1989) 1 SCC 101, para-11 thereof, which reads as under:

> *"**11.** Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th Edn. explains the concept of sub silentio at p. 153 in these words:*
>
> *A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.*
> **(Underline added to add emphasis)**

94. The said judgment has also been referred to in the case of ***State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139,*** para-41 thereof and also in later judgment such as ***Purbanchal Cables & Conductors (P) Ltd. v. Assam SEB, (2012) 7 SCC 462***. The ratio of the above decision is squarely applicable to the present case. As pointed out above, the question relating to the applicability of Rules 64B and 64C to the facts and issue were

not argued and considered by the Court in LPA No.117/2000. Therefore, the said decision is said to have been passed *sub-silentio* on the applicability of Rules 64B and 64C. The impugned action of the respondents in issuing the notices of demand in terms of applicability of Rules 64B and 64C cannot be said to be an action overreaching the judgment passed by the Division Bench of this Court in LPA No.117/2000.

95. There is no merit in the contention of the petitioner that the State respondents should have waited for the outcome of the decision of the Civil Appeal No.307/2004 pending before Hon'ble Supreme Court or the State respondents should have taken leave of the Hon'ble Supreme Court before raising the demand in question. In fact, the Petitioner filed Transfer Petition before Hon'ble Supreme Court for transfer of these writ petitions and Hon'ble Supreme Court directed this Court to dispose of these four writ petitions at the earliest, preferably by the end of July, 2013 itself. In such view of the matter, there is no merit in the arguments advanced by the petitioner that in the light of the judgment passed in LPA No.117/2000, the Department ought not to have issued demand notices, and the said contention is liable to be rejected.

96. As discussed infra, according to the respondents, the petitioner has not filed returns in compliance with Rule 51 of the MCR and the returns were not filed on the minerals despatched and removed from the leased area in accordance

with Rule 51 and the notification no.3554 dated 4.9.1997 promulgated under Rule 51 of the MCR, 1960 by the State of Bihar (State of Jharkhand) showing royalty chargeable on the mineral despatched from the leased area. It is in this context, the impugned notices were issued demanding royalty being differential royalty on clean coal, middlings etc. Issuance of impugned demand notices was for the alleged non-compliance of the Rules 64B, 64C and Rule 51 of the MCR read with Section 9 of the MMDR Act and the above notification dated 4.9.1997. We are of the view that pendency of the appeal before the Supreme Court was not an impediment for issuance of the impugned notices.

97. **Re. Contention: *The impugned notices are barred by limitation?***

The demand in question has been raised between the years 2007 and 2012 for the period starting from the year 2000 till 2011. Learned Senior Counsel for the petitioner contended that although the MMDR Act does not provide any period of limitation for completing assessment, in absence of any specific period of limitation for exercise of such power, the same must be completed within a reasonable period, which could, in normal circumstances, be six months to one year. In support of his contention, learned Senior Counsel placed reliance on the decisions rendered in the cases of ***Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Ors. [(1989) 3 SCC 483] and Ram Chand Vs. Union of India***

[(1994) 1 SCC 44]. In paragraph 6 of the judgment rendered in the case of ***Citedal Fine Pharmaceuticals, Madras and Ors. [(1989) 3 SCC 483]***, Hon'ble Supreme Court held as under:-

> *"6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the rule is to be made, but that by itself does not render the rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rule can be laid down in this regard as the determination of the question will depend upon the facts of each case."*

98. Learned Senior Counsel contended that the petitioner-Tata Steel has succeeded before this Court in LPA No.117/2000, as per which the petitioner is to pay royalty on Run-of-Mine (ROM) and on the strength of the judgment passed in LPA No.117/2000, the petitioner was paying royalty on extracted coal and not paying royalty on clean coal, middlings, tailings, rejects etc. It was submitted that the respondent authorities were aware of the judgment passed in LPA No.117/2000 and if the respondents desired to levy

royalty on post-processing basis, the respondents ought to have issued the demand notices within a reasonable time and the demands are beyond the reasonable period of limitation and therefore, the impugned demand notices deserve to be quashed.

99. According to the State, the petitioner is under an obligation to file returns in accordance with the Rule 51 of the MCR and also notification 3554 dated 4.9.1997 promulgated under Rule 51 of the MCR by the State of Bihar showing royalty chargeable on the mineral despatched from the leased area. Learned Senior Counsel for the respondents submitted that since the returns filed by the petitioner were not in consonance with the Rule 51, Rules 64B and 64C of the MCR, and since the petitioner has committed default, the impugned notices were issued to the petitioner calling upon them to pay the differential royalty on clean coal, middlings etc. and the demand notices are, thus, just, legal and proper and in consonance with the provisions of the MMDR Act and Rules 64B and 64C of the MCR, 1960 and the notices are not barred by limitation.

100. As per the legal requirement under Rule 51 MCR, the details of the description of the coal extracted, stock, despatched or removed and consumed from the leased area are to be furnished by way of monthly returns to the District Mining Office. Since the washery plant comes within the definition of 'mines' as per Mines Act, 1952, the final product out of washery is in fact the quantity of mineral removed from

the leased area and the same is liable for royalty in terms of Section 9 read with Rules 64B and 64C.

101. In the counter-affidavit filed in W.P(C) No.2999/2008, it is stated that by perusal of the monthly returns submitted by the Colliery for the month of August, 2003, it was found that non-determinable reject coal shown in the closing stock in the monthly returns (Proforma–B) of August, 2003 was not shown as opening stock in the monthly returns of September, 2003. In paragraph 24 of the counter-affidavit filed in W.P (C) No.1504/2009, it is stated that the petitioner submitted monthly returns (Proforma–B) of November, 2008 and subsequently till March, 2009 comprising detailed description of the coal produced and despatched, from which it was found that the returns so filed did not reflect the royalty payable on the washed coal, middlings, tailings, rejects etc and thereafter the demand notices were issued calling upon the petitioner to pay royalty of Rs.88.52 crores (W.P (C) No.1504/2009) being the differential royalty on clean coal, middlings etc.

102. The demand notices were issued calling upon the petitioner to pay the differential royalty on clean coal for the reasons:- (i) that the returns filed by the petitioner did not specifically indicate the royalty payable on various heads, categories of coal – clean coal, middlings, rejects, tailings etc. (ii) middlings, tailings, rejects used for own consumption and sold to various parties were not properly shown in the returns and (iii) incorrect rate of royalty in the calculation of royalty

payable on the despatched coal from the leasehold area. The gist of the demand notices issued in the writ petitions are as under:-

Demand Notice	Categories of Demand	Amount (Rs.in crore)
Writ Petition No. 2999 of 2008: (West Bokaro: Washery Rejects)		
25.05.2007 **21.07.2007** **28.02.2008** **09.04.2008**	**Washery rejects (August 03 – March 06)**	**17.65 (Inc Int.)**
06.01.2011	**Coal rejects (April 06 – October 08)**	**13.02 (Incl. Interest) Revised by letters dated 09.03.2011**
09.03.2011	**Coal rejects (April 06 – July 07)**	**6.48 (Incl. Interest)**
09.03.2011	**Coal rejects (April 07 – December 10)**	**21.78 (Incl. Interest)**
Writ Petition No. 2995 of 2008: (West Bokaro: Deshale Rejects)		
03.08.2007 **09.04.2008**	**De-Shale Rejects**	**3.46 (Incl. Interest)**
06.01.2011	**Deshale Rejects (August 02 – March 05)**	**1.67 (Incl. Interest) Revised by letter dated 10.03.2011**
10.03.2011	**Deshale Rejects (August 02 – March 05)**	**2.48 (Incl. Interest)**
Writ Petition No. 1504 of 2009: (Jharia)		
07.01.2009 **07.02.2009** **07.02.2009** **12.02.2009** **14.02.2009**	**Clean Coal (October 00 – October 08) (Middlings + Tailings)**	**61.83 (Clean Coal)** **26.69 (By-Products)**
01.02.2010	**Interest on principal demand for October 00 – October 08**	**72.66 (Interest)**
06.01.2011 **17.02.2011**	**Differential amount based on calculations taking BCCL rates for Sijua Colliery. (Rate of base price taken as Rs.1370/- instead of Rs.1150/- taken by TSL)**	**17.84 (Incl. Interest)**
15.02.2011	**Royalty on coal rejects despatched from BhelatandWashery (Price of rejects prevalent in SAIL-Chasnala has been taken as the basis of calculation)**	**1.13 (Incl. Interest) Revised to: 0.49 (Principal) 0.11 (Interest)**
Writ Petition No. 1505 of 2009: (West Bokaro – Clean Coal)		
28.02.2009 **16.03.2009**	**Clean Coal (July 02 – October 08)**	**83.37 (Principal) 65.28 (Interest) Revised to: 81.55 (Principal) 62.50 (Interest)**

103. Even though there is no limitation in the MMDR Act, the necessary implication is that general law of limitation provided is excluded. As held in the case of ***Citedal Fine Pharmaceuticals, Madras and Ors.*** (supra), whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it is to be considered whether, in the facts and circumstances of the case, notice of demand for recovery was made within reasonable period. In the absence of any specified period of limitation in raising demand of royalty on coal, duty is cast upon the authorities concerned to raise the demand within the reasonable period of time depending upon the facts of the case. The period of reasonableness depends upon the wisdom and bonafide of the authorities concerned. When the matter comes to the Court, the duty is cast upon the Court to carefully examine the facts to ascertain the reasonableness of the period in question. No hard and fast rule can be laid down in this regard as the determination of the question will depend upon the facts of each case.

104. It is well settled principle that the rules of limitation are not meant to destroy the rights of the parties. Royalty forms a vital part of Revenue for the State Government. The parties are litigating the matter since 1998 and even prior to that with respect to payment of royalty. The demand notices indicate various grounds/violations on which they were raised.

The impugned demand, which is in accordance with the provisions of the MMDR Act and MCR, cannot be weeded out on the ground that the demand is barred by the principle of reasonableness of limitation. Having regard to the fact, nature of the claim and revenue involved, we are of the view that the law of limitation does not affect the statutory liability to pay royalty. The contention of the petitioner that the impugned demand notices are issued beyond the reasonable period of limitation and hence barred by limitation, is not tenable and is liable to be rejected.

105. **Re. Prayer for refund of the Royalty :-**

As pointed out earlier, various demand notices were issued demanding differential royalty on clean coal, middlings, tailings, rejects etc. When the W.P(C) No.2999/2008 was filed, interim order was granted on 7.7.2008 directing that no coercive steps be taken against the petitioner and by order dated 14.8.2008, W.P(C) No.2995/2008 was tagged with W.P(C) No.2999/2008.The interim order dated 7.7.2008 was extended for both the cases by orders dated 23.9.2008, 22.10.2008, 20.11.2008, 30.1.2009, 12.2.2009, 25.2.2009, 25.3.2009. By the interim order dated 11.01.2010, the Court directed the petitioner to pay a sum of Rs.7.65 crores against the demand of Rs.17.65 crores in W.P (C) No.2999/2008 to cover the part payment towards arrear of dues raised under Rule 64(B) (C) of the Rules by 31st March, 2010 for

continuance of stay in Certificate Case No.1/2008-09 and further directed the petitioner in W.P (C) No.2995/2008 to pay a sum of Rs.1.46 crores against the demand of Rs.3.64 crores by 31st March, 2010 for grant of stay in Certificate Case No.2/2008-09. Subsequently, vide order dated 27.03.2009 passed in W.P (C) No.1504/2009, the petitioner was directed (i) to deposit Rs.25 crores plus 4.55 crores by 31st March, 2009 and (ii) to continue to pay royalty on current basis without prejudice to the respective cases of the parties Likewise in W.P (C) No.1505/2009, similar order was passed on 27.3.2009 directing the petitioner (i) to deposit Rs.25 crores plus Rs.17 crores by 31st March, 2009 and (ii) to continue to pay royalty on current basis without prejudice to the respective cases of the parties.

106. It was contended that as per judgment passed in LPA No.117/2000, the petitioner is liable to pay royalty only on Run-of-Mine (ROM) and in compliance of the direction of the Court, the petitioner has paid the said amount and therefore, the petitioner seeks for a direction for refund of the excess amount of royalty paid. We have already held that the demand notices are in consonance with Section 9 of the MMDR Act and Rules 64B and 64C of the MCR and other Rules. Since the demand notices do not suffer from any infirmity, the petitioner is not entitled to any refund and the prayer for refund is rejected.

107. **<u>Whether on the demand made by the respondent-State, the State can claim interest for the present</u>**?

Power of the State to collect interest arises under Rule 64A of the MCR. In terms of Rule 64A of the MCR, the State 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 or other sum due to the Government under the MMDR Act or MCR 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. Rule 64A is for collection of the belated payment of tax. It is the contention of the petitioner that in view of the judgment passed in LPA No.117/2000, the petitioner was paying royalty on Run-of-Mine (ROM) and as per the judgment passed in LPA No.117/2000, the petitioner is not bound to pay royalty on washed coal, middlings, tailings, rejects etc. The further contention of the petitioner is that in view of the judgment passed in LPA No.117/2000, the State had no authority to levy royalty on clean coal, middlings, tailings, rejects etc. and therefore, no interest could be claimed on differential royalty.

108. Even though we have upheld the demand on differential royalty on clean coal, middlings, tailings, rejects

etc., the question then falling for consideration is whether presently the State can claim interest on such differential royalty. Since the appeal against the judgment passed in LPA No.117/2000 is pending before Hon'ble Supreme Court in Civil Appeal Nos.303/2004 and 307/2004, in our considered view, presently the State cannot claim interest on differential royalty and the demand for payment of interest is subject to the result of the Civil Appeal Nos.303/2004 and 307/2004.

Aparesh Kumar Singh,J.

109. I have gone through the judgment of the learned Chief Justice and I fully concur and respectfully agree with opinion delivered by her Lordship (Chief Justice). I wish to add the followings on the contention raised challenging the vires of Rules 64B and 64C of the MCR.

110. The provisions of section 64B and 64C which has been introduced by an amendment in the MCR Act with effect from 25th September 2000, is only a classification introduced for charging royalty in circumstances when a mineral is processed within the leased area and then removed or consumed or otherwise, the ROM mineral is removed from the leased area for processing at the site located outside the leased area. In terms of section 9, it is the <u>removal of mineral from the leased area</u> by the lease holder, which makes it exigible to payment of royalty. The rule making authority within the contours of provisions of section 9 therefore has chosen to

introduce a classification for levying of royalty by classifying the mineral into one which is processed within the leased area and the other which is removed from the leased area unprocessed. Though, not much light has been thrown upon the object and purpose of introduction of the instant amendment in the M.C.R, but it appeals to reason that on account of advancement of science and technology and the method of beneficiation of a mineral extracted in ROM form for washing of its impurity and producing clean coal, middling, tailings and rejects, etc. the factor of processing of the mineral has assumed enough significance for the legislature to lay down such a classification Under Rule 64B & C. The quality or grade of coal is important for subjecting it to be used in captive power plant, as per its grades or otherwise for different purposes, as explained at para-37 of this judgment.

111. The State being the owner of the minerals is therefore entitled to charge royalty on the processed mineral if they are removed from the leased area at the rates prescribed under the Second Schedule for such grades and categories of coal, as per prices notified under the Colliery Control Orders from time to time. Therefore, the provisions of rules 64B and 64C neither do appear to violate the equality clause of Article 14 of the Constitution, nor do they appear to be ultra vires to the provisions of the parent Act i.e. section 9 of M.M.D.R. Act read with the Second Schedule.

112. A classification is valid on the anvil of Article 14 if the same is based on rational differentia and has a reasonable nexus with the object sought to be achieved. Reference may be made to the judgment in the case of **State of West Bengal v. Anwar Ali Sarkar [AIR 1952 SC 75]** and in the case of **Ram Krishna Dalmia vs. Justice S.R. Tendolkar and Ors [AIR 1958 SC 538].** In the constitution bench decision of the Hon'ble Supreme Court in the case of **RE: The Special Courts Bill, 1978 (1979) 1 SCC 380,** the Hon'ble Apex Court introduced as many as thirteen propositions that bear relevance to forensic determination of the validity of a law with reference to equality clause enshrined in Article 14 of the Constitution. Hon'ble Supreme Court in para (72(7)) held that "*The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.*"

113. Applying the above to the case at hand, first and foremost question which is to be considered is whether the classification between levy of royalty on processed mineral

being taken out of the leased area and ROM mineral being taken out of the leased area is reasonable and that there is a rational differentia that distinguishes the two categories. If there is such differentia, whether the classification has a reasonable nexus with the object underlying the legislation?

114. There is no difficulty in answering the first question as the processed mineral itself forms a class in itself as the ROM after processing leads to removal of its impurities and results in various specified categories of mineral i.e. coal in the present case and also middling, tailings or rejects which are separately consumable for different purposes. Understandably, if the lessee undertakes the beneficiation of ROM coal i.e. its processing, it is intended to improve the quality of the mineral as aforesaid which comes out after the processing and leave impurities aside. ROM coal obviously coming out of the mine apart from containing a particular grade of coal, also contains unsegregated middling, tailings and rejects which without processing, cannot be subjected separately to use and consumption. In such circumstances, for different purposes as being undertaken in the case of processed coal, there is rational differentia for distinguishing the unprocessed ROM mineral coal with that of the processed mineral.

115. Since the processing or beneficiation result in better grades and categories of coal used for different specified purposes as indicated in the earlier part of the judgment, the

aforesaid classification made for exigibility of the mineral for royalty under Rules 64B(1) and (2) has a definite and reasonable nexus with the object of such classification. The State therefore chose to subject the processed coal, if removed out of the leased area, to levy royalty on the various grades and categories of coal obtained after such beneficiation, while subjecting the ROM coal to levy of royalty as a whole, if removed outside the leased area. If the processing of coal results in improvement of the quality of grades and categories of coal, the State's intention to levy different rates of royalty on such processed mineral does have a reasonable nexus with the object underlying the classification made on such reasonable differentia.

116. As per the proposition of law in the judgment quoted herein above, the State has the power of determining who should be regarded as a class for the purposes of legislation. This power no doubt in some degree is likely to produce some inequality. But the classification must not be arbitrary but must be rational. That is to say, it must only be based on some qualities or characteristics which are found in the things grouped together and not in others which are left out and have a reasonable relation with the object of the legislation. Article 14 forbids class discrimination but does not forbid classification for the purposes of legislation. Classification need not be constituted by an exact or scientific

exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. The law can set apart the classes according to the needs and exigencies and as suggested by experience. In this light, and the discussions made herein above, by the same reason, classification made under section 64C for levying royalty on tailings and rejects if they are later on used for sale or consumption is also neither arbitrary nor unreasonable. As already discussed, the relevant provisions of Rule 64B and 64C operate within the confines of ingredients of section 9 of the parent Act read with the Second Schedule. It has also been observed by the Hon'ble Supreme Court in the case of **N.M.D.C. (Supra)** that these rules only clarify the existing position and they are general in nature.

117. Conclusion:-

In the result it is held that :-

- **Rules 64B and 64C of the MCR are general in nature and applicable to all minerals. The opinion expressed by the Ministry of Coal, Government of India, that Rules 64B and 64C of the MCR may not be applicable to coal is self-serving and such opinion of Ministry of Coal cannot dilute the statutory Rules framed under the MMDR Act.**
- **Rules 64B and 64C are not ultra vires the Constitution of India and MMDR Act, 1957.**

- **The amendments made in the notification dated 1.8.2007 seeking to amend Item No.11 in the Second Schedule, in so far as it relates to insertion of middlings, is in accordance with the MMDR Act and MCR.**
- **In terms of Section 9 of the MMDR Act, the Petitioner-Tata Steel, holder of mining lease, is liable to pay royalty in respect of the processed mineral/washed coal removed from the leased area as per the rate prescribed for coal in the Second Schedule of the MMDR Act. The petitioner is liable to pay royalty on processed mineral/ clean coal/steel grade and other grades of coal, which is removed from the leased area of the petitioner to its own Steel Plant at Jamshedpur as per Section 9 read with the Second Schedule of the MMDR Act read with Rule 64B(1) of the MCR.**
- **The petitioner is liable to pay royalty on the middlings, tailings, rejects, de-shale, which are partly used in the petitioner's Captive Power Plants as fuel and partly sold to the consumers as per Section 9 read with the Second Schedule read with proviso to Rule 64C of the MCR.**
- **The demand in question cannot be brushed off on the ground that the demand notices are beyond the reasonable period of limitation. The notices demanding differential royalty on clean coal are in accordance with the provisions of the MMDR Act.**

- **The petitioner is liable to pay differential royalty on clean coal, middlings, tailings, rejects for the period to which the demand notices relate.**
- **The Petitioner is bound to pay royalty on De-Shale rejects and the Petitioner is liable to pay the demand of royalty in Certificate Case No. 2/2008-09 which is impugned in W.P.(C) No. 2995 of 2008.**
- **The petitioner is not entitled to any refund of royalty.**
- **So far as claim of interest in the demand notices is concerned, presently the State cannot claim interest on differential royalty and the demand for payment of interest shall be subject to the outcome of the Civil Appeal Nos.303/2004 and 307/2004 pending before the Hon'ble Supreme Court.**

118. All the writ petitions are dismissed. The interim orders granted in all the writ petitions are vacated. Consequently, all the interlocutory applications are dismissed.

(R. Banumathi, C.J.)

(Aparesh Kumar Singh, J.)

Jharkhand High Court, Ranchi
Dated the 12th, March, 2014
A.F.R.
Dey/Birendra