AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 04.09.2017

Order passed on: 03.11.2017

Writ Petition No.2203 of 2000

Steel Authority of India Ltd. A Government Company duly incorporated under the Indian Companies Act, 1956, having its Regd. Office at Ispat Bhawan Lodhi Road, New Delhi 110 003, Through its Managing Director, Bhilai Steel Plant, Bhilai (M.P.) (Now C.G.)

---- Petitioner

Versus

1. State of Madhya Pradesh, through Principal Secretary, Mineral Resources Department, Vallabh Bhawan, Bhopal
2. Collector, Dist. Durg (M.P.) (Now C.G.)

---- Respondents

For Petitioner : Mr.Prashant Jayaswal, Senior Advocate with Mr.Shailendra Sharma, Advocate

For Respondents : Mr.Dhiraj Wankhede, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, the petitioner herein/Steel Authority of India Limited has filed this writ petition calling in question legality, validity and correctness of order dated 3.3.2000 (Annexure P/15) passed by respondent No.2 herein/Collector, Durg as void and inoperative and further claimed that the respondents be commanded to refund the amount with interest at the rate of

24% per annum on payment of royalty recovered by the State in excess from the petitioner.

2. The Essential facts requisite to judge the correctness of the plea raised at the Bar are as under:-

2.1 The petitioner herein-Steel Authority of India Limited is a Government Company duly incorporated and registered under the provisions of the Companies Act, 1956, having its registered office at New Delhi and engaged in manufacture of steel and various other allied items of steel in its several plants situated and established in the various parts throughout the country, one of which is 'Bhilai Steel Plant' in the District of Durg (Chhattisgarh). Since the requirement of the petitioner is enormous and continuously requiring smooth and uninterrupted supply of raw materials, it has obtained captive mines for the aforesaid minerals under the lease granted by the State Government by virtue of the provisions of the Mines and Minerals (Regulation & Development) Act, 1957 (hereinafter called as 'MMRD Act') along with provisions contained in the Mineral Concession Rules, 1960. The petitioner Company is holding Captive Mines of Iron Ore, Limestone and Dolomite as per the mining leases in respect of 8 mines situated in Durg and Bilaspur Districts. Section 9 of the MMRD Act makes provision for payment of royalty in respect of mining leases. Section 9(2) of the MMRD Act inter alia lays down that the holder of the 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 of the time being specified in the Second Schedule in respect of that mineral. Section 9(3) further lays down that 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. In exercise of power conferred under Section 9(3) of the MMRD Act, the Central Government has notified the rate of royalty payable in respect of mineral as per Second Schedule by gazette notification dated 11th April, 1997.

2.2 The petitioner herein filed Misc. Petition No.2595/1992 (Steel Authority of India Ltd. Vs. State of M.P. and Ors.) in the High Court of Madhya Pradesh impugning the order dated 9.4.1992 passed by the Mines Tribunal as well as for quashing the notice of demand dated 1.7.1992 issued by the Additional Collector, Durg demanding additional royalty of ₹ 41.97 lacs in respect of the years 1971-72 to 1989-90 and also claimed refund of ₹ 10,95,837.61. During pendency of the aforesaid writ petition, the petitioner again filed writ petition being WP No.4813/1997 for issuance of appropriate writ, direction or order quashing demand notice

dated 17.2.1997 demanding additional royalty of ₹ 1,57,10,921/- in respect of the years 1990-91 till December, 1996. Both the writ petitions came to be dismissed by a decision of the Madhya Pradesh High Court on 15.2.2000. This judgment was not challenged either in writ appeal or by way of Special Leave Petition and same has attained finality. Thereafter, on 24.3.2000 this writ petition has been filed principally on the ground that respondent No.2 is making demand for payment of royalty payable by the petitioner under Section 9 of the MMRD Act contrary to the judgment of the Supreme Court in the matter of **State of Orissa and others Vs. M/s. Steel Authority of India Ltd**[1] and decision of Division Bench of the Madhya Pradesh High Court in the matter of **N.M.D.C. Vs. State of M.P.**[2] and decision of the Madhya Pradesh High Court in Misc. Petition No.2595/92 dated 15.2.2000, whereas the decisions referred to above lay down that royalty is payable by the petitioner on extraction of the minerals from the mines and finally, relief of quashing the order dated 3.3.2000 (Annexure P/15) demanding ₹ 10,00,88,874/- towards royalty on iron ore for the period 1971-72 till December 1999, was sought.

2.3 Return has been filed by the respondents/State opposing the writ petition stating inter-alia that the petitions filed by the petitioner being Misc.Petition No.2595/1992 and

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[1] AIR 1998 SC 3052

[2] 2000 (1) J.L.J. 12

Misc.Petition No.4813/1997 questioning the demand of additional royalty have already been dismissed and that judgment has attained finality as the petitioner did not challenge the order dated 15.2.2000 before the higher Court and that judgment would remain binding between the parties and therefore, the present writ petition deserves to be dismissed.

3. Mr.Prashant Jayaswal, learned Senior Counsel along with Mr.Shailendra Sharma, learned counsel appearing for the petitioner, would submit that the impugned order dated 3.3.2000 (Annexure P/15) passed by respondent No.2 demanding amount of additional royalty is unsustainable and bad in law as in the matter of **National Mineral Development Corporation Ltd Vs. State of M.P. and another**[3] the Supreme Court has already held that 'slime' or 'slimes' cannot be included in 'fines' or 'concentrates' for the purpose of charging royalty under Section 9(1) read with Entry 23 of the Second Schedule of the Act, as the earlier decision of the Supreme Court in the matter of **State of Orissa** (supra) has been distinguished in this decision. The decision rendered by the Madhya Pradesh High Court in the matter of **National Mineral Development Corporation Ltd., Hyderabad Vs. State of Madhya Pradesh and another**[4] was reversed by the Supreme Court later on,

[3] AIR 2004 SC 2456
[4] AIR 1999 Madhya Pradesh 112

therefore, the impugned order dated 3.3.2000 (Annexure P/15) passed by respondent No.2 deserves to be quashed.

4. On the other hand, Mr.Dhiraj Wankhede, learned Government Advocate appearing for the respondents/State, would submit that order dated 15.2.2000 passed in Misc. Petition No.2595/1992 and Writ Petition No.4813/1997 in the case of Steel Authority of India Ltd. Vs. State of M.P. and Ors. has become final as the petitioner did not take up the matter in appeal or in Special Leave Petition to challenge that order, therefore, that judgment is binding on the petitioner and change in law subsequent thereto, if any, does not take away the effect of the said judgment or order inter se between the parties thereto. He would also submit that principle of res judicata and constructive res judicata is squarely attracted to the facts of the present case as the petitioner is raising the matter which has earlier been decided on merits and that judgment has attained finality, therefore, the present writ petition deserves to be dismissed on the ground of principle of res judicata and constructive res judicata.

5. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

6. In order to decide the dispute raised at the Bar, it would be appropriate to notice the challenge made in the earlier two petitions and order passed in those petitions.

6.1 In Misc. Petition No.2595/1992 (Steel Authority of India Ltd. Vs. State of M.P. & Ors), the petitioner claimed the following reliefs:-

> “(a) to issue a writ of certiorari or any other appropriate writ, direction or order calling for the records before the Mines Tribunal wherein the impugned order dated 9.4.1992 (Annexure 'I') has been passed, and all connected records and papers as also the records before the Additional Collector, Durg wherein the impugned order dated 25.5.1989 (Annexure 'F') has been passed and after examining the same quash the said impugned orders (Annexure 'I' and 'F');
>
> (b) to issue an appropriate writ, direction or order quashing the notice of demand dated 1.7.1992 (Annexure 'J') issued by the Additional Collector, Durg demanding additional royalty of Rs.41.97 Lacs in respect of the years 1971-72 to 1989-90;
>
> (c) to issue a writ of mandamus commanding the respondents hereto to refund to the Petitioner the additional royalty amount of Rs.10,95,837.61 recovered from the Petitioner as aforesaid which, in the circumstances hereinabove set out, is without due authority of law and the Respondents are not entitled to retain the said amount;
>
> (d) to issue a writ of mandamus against the second and the third Respondent hereto restraining them from acting upon the said notice of demand dated 1.7.1992 (Annexure 'J') and enforcing payment of the amount thereunder or otherwise acting thereon;
>
> (e) to award to the petitioner the costs of the petition.”

6.2 In the aforesaid petition, the petitioner has challenged the order dated 9.4.1992 passed by the Mines Tribunal, order dated 25.5.1989 and also challenged notice demanding

additional royalty of ₹ 41.97 lacs in respect of the years 1971-72 to 1989-90 and claimed refund of additional royalty of ₹ 10,95,837.61.

6.3 Thereafter the petitioner filed Writ Petition No. 4843/1997 (Steel Authority of India Ltd., Vs. State of Madhya Pradesh and others), in which the petitioner claimed following two reliefs:-

> "(i) To issue an appropriate writ, direction or order quashing demand notice dated 17.2.1997, Annexure P-5 demanding additional royalty of Rs.1,57,10,921/- in respect of the years 1990-91 till December, 1996
>
> (ii) To issue an appropriate direction or order, not to demand notice of additional royalty for the period, subsequent to 1989-90, till disposal of the instant writ petition."

7. The sum and substance in Writ Petition No.4843/1997 is that the petitioner claimed quashing of demand notice dated 17.2.1997 demanding additional royalty of ₹ 1,57,10,921/- in respect of the years 1990-91 till December, 1996.

8. A careful perusal of the aforesaid petitions would show that only amount of additional royalty for the period 1971-72 to 1989-90 and 1990-91 till December, 1996 was challenged by the petitioner herein.

9. The above-stated two petitions (Misc. Petition No.2595/1992 and Writ Petition No.4813/1997) filed by the petitioner came to be dismissed by the Madhya Pradesh High Court. The order

dated 15.2.2000 passed in MP No.2595/1992 states as under:-

> “5. The submission canvassed by Shri Chaphekar pointedly came up for consideration before a Division Bench of this Court in the case of N.M.D.C. v. State M.P. 2000 (1) J.L.J. 12 and in the said case the Division Bench has held as follows:-
>
> > “But that does not mean that it ceases to have contents of iron ore. Therefore, the submission of the learned counsel that slime is not iron ore and it is not liable to be subjected to royalty is not correct. The basic of the charging of the royalty on the mineral is that the moment mineral is removed from the leased area, then the same is exigible to royalty. It is different matter that it cannot be put to use for commercial purposes. The moment mineral is removed from the earth, then the royalty is liable to be charged. It is different that the Parliament has given varying rates depending upon the quality of iron contents in the mineral, that does not mean that slime which also contains ferreous cannot be exigible to royalty. Slime is also a part of mineral though ferreous contents may be minimal but it does not cease to be the iron ore. Merely because slime has not been identified in all the three categories of iron ore, that does not mean that it ceases to have character of iron ore. It is nothing but part of second category i.e. 'fines'. As per the description given in the petition, it is more than apparent that at the time of crushing of the big boulders of the iron ore, certain powder in the form of iron is also produced which the present petitioner is not utilising and it is thrown as waste and dumped. Nonetheless, it contains fine ore. Simply because it is commercial commodity, it does not cease to be ore. It is a part of fines only and it is exigible to royalty.”
>
> 6. The decision of the Supreme Court in the case of State of Orissa and the decision of this Court in the case of N.M.D.C. squarely answers the submission of Shri Chaphekar. I do not find any substance in the submission of Shri Chaphekar. It is to be borne in mind that the moment mineral is extracted from the earth, then the royalty is liable to be charged on the mineral so extracted.”

The order dated 15.2.2000 passed in WP No.4813/1997 states as under:-

> “5. The submission canvassed by Shri Chaphekar pointedly came up for consideration before a Division Bench of this Court in the case of N.M.D.C. v. State M.P. 2000 (1) J.L.J. 12 and in the said case the Division Bench has held as follows:-
>
> > “But that does not mean that it ceases to have contents of iron ore. Therefore, the submission of the learned counsel that slime is not iron ore and it is not liable to be subjected to royalty is not correct. The basic of the charging of the royalty on the mineral is that the moment mineral is removed from the leased area, then the same is exigible to royalty. It is different matter that it cannot be put to use for commercial purposes. The moment mineral is removed from the earth, then the royalty is liable to be charged. It is different that the Parliament has given varying rates depending upon the quality of iron contents in the mineral, that does not mean that slime which also contains ferreous cannot be exigible to royalty. Slime is also a part of mineral though ferreous contents may be minimal but it does not cease to be the iron ore. Merely because slime has not been identified in all the three categories of iron ore, that does not mean that it ceases to have character of iron ore. It is nothing but part of second category i.e. 'fines'. As per the description given in the petition, it is more than apparent that at the time of crushing of the big boulders of the iron ore, certain powder in the form of iron is also produced which the present petitioner is not utilising and it is thrown as waste and dumped. Nonetheless, it contains fine ore. Simply because it is commercial commodity, it does not cease to be ore. It is a part of fines only and it is exigible to royalty.”
>
> 6. The decision of the Supreme Court in the case of State of Orissa and the decision of this Court in the case of N.M.D.C. squarely answers the submission of Shri Chaphekar. I do not find any substance in the submission of Shri Chaphekar. It is to be borne in mind that the moment mineral is extracted from the earth, then the royalty is liable to be charged on the mineral so extracted.”

10. The aforesaid orders passed in two petitions filed by the petitioner dismissing the petitions were not challenged before the higher Court either in appeal or by way of Special Leave Petition and orders have attained finality. The petitions filed by the petitioner were dismissed by the Madhya Pradesh High Court on the basis of decision of the Supreme Court in the matter of **State of Orissa** (supra) (Supreme Court) and decision of the Madhya Pradesh High Court in **N.M.D.C.** (supra). However, decision of the Madhya Pradesh High Court in **N.M.D.C.** (supra) was reversed by the Supreme Court later on in the matter of **National Mineral Development Corporation Ltd** (supra), in which it has clearly been held that 'slime' or 'slimes' cannot be included in 'fines' or 'concentrates' for the purpose of charging royalty under Section 9(1) read with Entry 23 of the Second Scheduled of the Act.

11. In order to answer the claim of the petitioner, it would be appropriate to notice the amount claimed by the petitioner which has sought to be challenged in the writ petition:-

कार्यालय कलेक्टर (खनिज शाखा) जिला दुर्ग
मध्य प्रदेश
कमांक 618/खनि. लि./लोह अयस्क/2000 दुर्ग, दिनांक 3.3.2000

प्रति,
महाप्रबंधक (खदान)
भिलाई इस्पात संसंत्र,
भिलाई, जिला – दुर्ग

विषयः– भिलाई इस्पात संसंत्र से लोह अयस्क की रायल्टी के संबंध में।
संदर्भः– इस कार्यालय के ज्ञापन कमांक 200/खनि.लि.
4/लोहअयस्क/2000, दिनांक 14.1.2000

भिलाई इस्पात संसंत्र द्वारा माननीय उच्च न्यायालय में दायर याचिका कमांक 2595/92 एवं 4813/97 में पारित आदेश दिनांक 15.2.2000 का कृपया अवलोकन करें।

पारित आदेशानुसार उपरोक्त दोनों याचिका माननीय उच्च न्यायालय द्वारा खारिज कर दिया गया है। अतः हैडलिंग लास की निम्न राशि शीघ्र जमा करवाये।

वर्ष	देय राशि	जमा राशि 50%	शेष देय राशि
71–72 से 89–90	41,97,000.00	20,00,000.00	21,97,000.00
90–91 से 9/96	1,57,10,921.00	78,55,000.00	78,55,921.00
1/97 से 12/97	33,73,728.00	16,87,000.00	16,86,728.00
1/98 से 12/98	26,65,100.00	–	26,65,100.00
1/99 से 12/99	22,85,442.00	–	22,85,442.00
	2,82,32,191.00	1,15,42,000.00	1,66,90,191.00

नोटः–अक्टूबर 96 से दिसम्बर 96 तक हैडलिंग लास की जानकारी नहीं होने से हैडलिंग लास की रायल्टी नहीं निकाला गया है कृपया जानकारी देकर रायल्टी जमा करावें।

(1) राजहरा से प्राप्त जानकारी अनुसार दल्ली कशिंग एवं स्क्रीनिंग प्लांट में अवधि 1978–79 से 1999 तक (दिसम्बर–99 तक) 69,61,189.00 टन स्लाइम लास हुआ है। माननीय उच्च न्यायालय में दायर रिट याचिका कमांक 487/98 में हुए निर्णय दिनांक 25.2.99 जिसका उद्धरण रिट याचिका कमांक 2595/92 एवं 4813/97 के निर्णय दिनांक 15.2.2000 में भी दिया गया है, के अनुसार स्लाइम लास पर भी रायल्टी देय है।

अतः उपरोक्त स्लाइम लास की रायल्टी संलग्न सूची अनुसार 2,65,34,475.00 रू0 शीघ्र जमा करावें।

(2) आपके द्वारा प्राप्त जानकारी दिनांक 7.12.99 के अनुसार राजहरा प्लांट एवं दल्ली प्लांट की फाइन्स दिसम्बर 1998 तक 53,57,216.00 मे. टन एवं जनवरी 99 से दिसम्बर–99 तक 7,60,477.00 कुल 61,17,693.00 में.टन फाइन्स लीज क्षेत्र के बाहर 1995 से दिसम्बर 1999 तक स्टाक किया हुआ है जिसकी रायल्टी नियमानुसार दिया जाना था जो संयंत्र द्वारा जमा नहीं की गई है उपरोक्त मात्रा की रायल्टी 3,97,62,979.00 रू0 होता है उपरोक्त राशि भी शीघ्र जमा करें।

(3) दल्ली एवं राजहरा प्लांट में प्रोसेसिंग के बाद डिस्पेच की गई लम्ब एवं फाइन्स की रायल्टी अप्रेल–99 से दिसम्बर–99 तक दिये गये माहवारी पत्रक अनुसार 7,81,14,077.00 रू0 रायल्टी होता है जबकि संयंत्र द्वारा आर.ओ.एम. के अनुसार उपरोक्त अवधि की रायल्टी 6,10,12,848.00 रू0 होना बताया है। अतः दिसम्बर 99 की स्थिति में अंतर की रायल्टी 1,71,01,229.00 रू0 और जमा करावें।

(4) लौह अयस्क खदानों में जनरेटेड फाइन्स की भी जानकारी मांगी गई है जो अपेक्षित है। उपरोक्त जनरेटेड फाइन्स की मात्रा माहवारी पत्रक फार्म एफ–1 में (खूला एवं बंद) (opening & closing stock) स्टाक में नहीं लिया जाता है। उपरोक्त की

गणना शीघ्र कर प्राप्त मात्रा पर रायल्टी की राशि भी शीघ्र जमा करावें तथा जनरेटेड फाइन्स एवं कंसनटेडेड की पूर्व में मांगी गई जानकारी तीन दिन के अंदर भिजवाने की व्यवस्था करें।

उपरोक्तानुसार लौह अयस्क की रायल्टी कम संख्या 5 के अलावा निम्नानुसार रायल्टी देय है:–

1.	हैडलिंग लास	रू0	1,66,90,191.00
2.	स्लाइम लास	रू0	2,65,34,475.00
3.	फाइन्स लीज क्षेत्र के बाहर स्टाक	रू0	3,97,62,979.00
4.	प्रोसेसिंग के बाद डिस्पेच की रायल्टी एवं आर.ओ.एम. की रालल्टी का अंतर अप्रेल–99 से दिस.99	रू0	1,71,01,229.00
		रू0	10,00,88,874.00

उपरोक्त राशि मांग पत्र प्राप्ति के एक सप्ताह के अंदर जमा करावें अन्यथा भू–राजस्व की बकाया के रूप में रायल्टी वसूल की जावेगी जिसकी पूर्ण जवाबदारी आपकी होगी।

कलेक्टर,
दुर्ग

12. A careful perusal of the aforesaid impugned order would show that the petitioner has claimed the amount of handling loss for the period 1971-72 to December, 1999 and also claimed the amount of slime/slimes/amount of royalty on fines. Thus, the petitioner has challenged the amount of additional royalty for the period 1971-72 to December, 1999 in two separate petitions, which have been considered and decided on merits by the Madhya Pradesh High Court in its order dated 15.2.2000 and those petitions have been dismissed relying upon the decision of **State of Orissa** (supra) (Supreme Court) and decision of **N.M.D.C.** (supra) (Madhya Pradesh High Court), but decision of the Madhya Pradesh High Court in **N.M.D.C.** (supra) was later on reversed by the Supreme Court in **National Mineral Development Corporation Ltd** (supra) holding that 'slime'

or 'slimes' cannot be included in 'fines' or 'concentrates' for the purpose of charging royalty under Section 9(1) read with Entry 23 of the Second Scheduled of the Act, but question would be whether subsequent change in law after judgment rendered inter parties and attained finality would effect the judgment already rendered.

13. In the matter of **State of Maharashtra and another Vs. R.S. Bhonde and others**[5], the Supreme Court has held that effect of change in law subsequent thereto (repeal of statutory provision on which said judgment/order based) does not take away the effect of the said judgment/order as between the parties thereto.

14. Similarly, in the matter of **Pradeep Kumar Maskara and others Vs. State of West Bengal and others**[6] the Supreme Court has held that subsequent change in law after the judgment has attained finality inter parties is not a ground to review the final judgment, which must be effectuated. It was observed as under:-

> "26. It is well settled that even if the decision on a question of law has been reversed or modified by subsequent decision of a superior court in any other case it shall not a ground for review of such judgment merely because a subsequent judgment of the Single Judge has taken contrary view. That does not confer jurisdiction upon the Tribunal to ignore the judgment and direction of the High Court given in the case of the appellants."

15. Therefore, in view of the principle of law laid down by the Supreme Court in **Pradeep Kumar Maskara** and **R.S.**

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[5] (2005) 6 SCC 751
[6] (2015) 2 SCC 653

Bhonde (supra), decision of the Madhya Pradesh High Court in Steel Authority of India Ltd. Vs. State of M.P. and Ors. dated 15.2.2000 would be binding upon the petitioner and amount of royalty, if any, is required to be paid by the petitioner herein on the ground of finality of the judgment inter parties.

16. In **Daryao and others Vs. State of U.P. and others**[7], the Constitution Bench held that the decision rendered in the writ petition on merits would be binding upon the parties unless it is set aside. The Constitution Bench held as under:-

> "If a writ petition filed by a party under Art. 226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution....."

17. Thereafter, again the Constitution Bench in **Gulabchand Chhotalal Parikh Vs. State of Gujarat**[8] held that the decision in earlier writ petition on merits would operate as res judicata in subsequent suit involving the same question and the same reliefs. The Constitution Bench held as under:-

> ".....Art. 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. Consequently on the general principle of res judicata the decision of the High Court on a writ petition under Art. 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same matter....."

[7] AIR 1961 SC 1457
[8] AIR 1965 SC 1153

18. The Constitution Bench of the Supreme Court in the matter of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra**[9] has held that the principle of constructive res judicata is also applicable in writ proceedings. It was observed as under:-

> "35. It is well established that the principles of res judicata are applicable to writ petitions. The relief prayed for on behalf of the petitioner in the present case is the same as he would have, in the event of his success, obtained in the earlier writ petition before the High Court. The petitioner in reply contended that since the special 'leave petition before this Court was dismissed in limine without giving any reason, the order cannot be relied upon for a plea of res judicata. The answer is that it is not the order of this Court dismissing the special leave petition which is being relied upon; the plea of res judicata has been pressed on the basis of the High Court's judgment which became final after the dismissal of the special leave petition. In similar situation a Constitution Bench of this Court in Daryao v. State of U.P. [(1962) 1 SCR 574: AIR 1961 SC 1457] held that where the High Court dismisses a writ petition under Article 226 of the Constitution after hearing the matter on the merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same reliefs filed by the same parties will be barred by the general principle of res judicata. The binding character of judgments of courts of competent jurisdiction is in essence a part of the rule of law on which the administration of justice, so much emphasised by the Constitution, is rounded and a judgment of the High Court under Article 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Article 32. An attempted change in the form of the petition or the grounds cannot be allowed to defeat the plea as was observed at SCR p. 595 of the reported judgment, thus: (SCR p. 595)
>
> > "We are satisfied that a change in the form of attack against the impugned statute would make no difference to the true legal position that the writ petition in the High Court and the present writ petition are directed against the same

[9] (1990) 2 SCC 715

> statute and the grounds raised by the petitioner in that behalf are substantially the same."
> The decision in Forward Construction Co. and others v. Prabhat Mandal (Regd.), Andheri [(1986) 1 SCC 100: 1985 Supp 3 SCR 766], further clarified the position by holding that an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata."

19. Recently, the Supreme Court in the matter of **Dr. Subramanian Swamy Vs. State of Tamilnadu**[10] has held that even the erroneous decision on question of law attracts the doctrine of res judicata. It was observed as under:-

> "40. Even an erroneous decision on a question of aw attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata (See Sha Shivraj Gopalji Vs. Edappakath Ayissa Bi[11] and Mohanlal Goenka Vs. Benoy Krishna Mukherjee[12]."

20. In the matter of **M. Nagabhushana Vs. State of Karnataka and others**[13] the Supreme Court following the decision of **Direct Recruit Class II Engineering Officers' Association** (supra) has held that principle of constructive res judicata is also applicable to the writ petitions. It was observed as under:-

[10] (2014) 5 SCC 75
[11] (1949) 62 LW 770 : AIR 1949 PC 302
[12] AIR 1953 SC 65
[13] (2011) 3 SCC 408

"22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of constructive res judicata, as explained in Explanation IV to Section 11 CPC, are also applicable to the writ petitions."

23. Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in K.K. Modi v. K.N. Modi[14]. In SCC para 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p.592)

> "44. One of the example cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata."

21. In the matter of **Union of India and others Vs. Major S.P. Sharma and others**[15] the Supreme Court has observed as under:-

"80. In M. Nagabhushana Vs. State of Karnataka (supra), this Court held that doctrine of res-judicata was not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. The doctrine was based on two age-old-principles, namely, *interest reipublicae ut sit finis litium* which means that it is in the interest of the State that there should be an end to litigation and the other principle is *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa* meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause.

81. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of

[14] (1998) 3 SCC 573
[15] (2014) 6 SCC 351

> res judicata has been evolved to prevent such an anarchy.
>
> 82. In a country governed by the rule of law, finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice. It would also nullify the doctrine of stare decisis a well-established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly the Apex Court of a country cannot and should not be unsettled lightly. ”

22. Thus, it is authoritatively held by Their Lordships of the Supreme Court in the aforesaid judgments (supra) that once an issue has been heard finally and decided by a High Court in a writ petition proceeding under Article 226 and/or 227 of the Constitution of India on merits after full contest, the said finding would operate as res judicata in a subsequent proceeding involving the same issue between the same parties.

23. Applying the principle of law laid-down by the Supreme Court in the aforesaid judgments (supra), if the facts of the present case are examined, it is quite vivid that decision rendered inter-parties in Misc. Petition No.2595/92 and Writ Petition No.4813/97 on 15.2.2000 on the basis of judgment of **State of Orissa** (Supreme Court) and decision of **N.M.D.C.** (supra) (Madhya Pradesh High Court) is binding upon the petitioner though decision of **N.M.D.C.** (supra) (Madhya Pradesh High Court) has been reversed by the Supreme Court

in the year 2004 in **N.M.D.C.** (Supreme Court) (supra). Since, the order of Madhya Pradesh High Court inter parties has attained finality, subsequent change in law would not render the earlier decision bad and it would not be ground for review and the petitioner will be required to pay the amount of additional royalty on the ground of principle of finality of judgment and principle of res-judicata discussed hereinabove. Merely on the basis of change in law, present petition is not maintainable as the Supreme Court has held in **Major S.P. Sharma** (supra) that doctrine of finality has to be complied in strict legal sense and emphasized great need for following the principle of res-judicata as it has to be made applicable to prevent anarchy. The principle of constructive res judicata is also applicable with full force to the facts of the present case.

24. In view of the aforesaid discussion, the instant writ petition is barred by principle of finality of judgment and principle of res-judicata and constructive res-judicata and as such, the writ petition is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

25. Before parting with the record, I must record my disapproval with the manner in which the Assistant General Manager (Law) has appeared in person before this Court on 4.9.2007 by wearing jeans and T-shirt. Maintaining decorum in Court room is not merely a superficial means of protecting the image of Court, but the same is very essential for the due

administration of justice and upholding the flag of justice. Maintaining appropriate attire in the Court room is the minimum fundamental requirement of law to be maintained by all concerned.

26. However, of late, there has been lamentable slackness in matters of litigants attire, more particularly, Government officers and officials appearing before this Court as held by Allahabad High Court in **Prayag Das Vs. Civil Judge, Bulandshahr**[16] that precipitates sartorial inelegance and judicial indecorum and undermines the majesty of law.

27. The Allahabad High Court in **Prayag Das** (supra) further held as under:-

> "Justice can best be administered when legal proceedings are conducted with decorum and certain decree of formality. "The place of justice" as Francis Bacon remarked, is a hallowed place." and those seeking its aid either for themselves or those whom they represent should so conduct themselves as to uphold its dignity. The trappings of a Court room and the costume specially meant for the Court and its officers invest the Court with a sort of dignity which is not without its effect. The traditional prescribed dress of an Advocate gives him certain aloofness wherefrom his submission come with added force. As A.G. Gardner has so eloquently expressed, "Dress", has its spiritual and moral reactions. It may seem absurd, but it is true that we are in a teal sense the creatures of our clothes."

28. Recently, the Himachal Pradesh High Court in the matter of **Om Prakash Vs. State of H.P. and others**[17] finding that a Junior Engineer appeared in Court was inappropriately dressed, observed as under:-

[16] AIR 1974 Allahabad 133
[17] 2017 SCC OnLine HP 1055

> “3. Dispensation of justice is inevitable feature in any civilized society. Judiciary is the backbone of democracy. In a democratic polity, the role of the judiciary is to maintain and stabilize the rule of law, which is essential in successful functioning of the democracy. The Judges and Magistrates play a pivotal role in the administration of justice and that is why they wear specific dress prescribed by the Rules framed by the High Court. This dress is worn compulsorily in order to maintain the dignity and decorum of the Court and, therefore, we see no reason why any litigant, more particularly, Government officers and officials should be improperly or inappropriately dressed while appearing before the Court. After all being appropriately dressed only induces a seriousness of purpose and a sense of decorum which is highly conducive for the dispensation of justice.”

29. In light of above, I feel this is right time as well as high time to reiterate that litigants appearing before the Court particularly Government officers and officials must be dressed atleast appropriately, if not formally.

30. A copy of this order be sent to the Chief Secretary, Government of Chhattisgarh as well as the Chief Managing Director, Steel Authority of India Limited for information and needful action.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No.2203 of 2000

Petitioner Steel Authority of India

Versus

Respondents State of Madhya Pradesh and another

HEAD NOTE

(English)

Principles of res-judicata and constructive res-judicata are applicable in writ proceedings.

(हिन्दी)

प्राड.न्याय और आन्वयिक प्राड.न्याय के सिद्धांत रिट कार्यवाहियों पर लागू होते है।