

RAJASTHAN STATE ELECTRICITY BOARD

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 7337 of 2002)

MAY 7, 2008

**(H.K. SEMA AND MARKANDEY KATJU, JJ.)**

*Constitution of India, 1950:*

*Article 226 r/w Article 136 – Dismissal of writ petition by High Court solely on the ground of availability of alternative remedy – HELD: Availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 – The Union of India having clearly admitted the liability, the High court ought not to have relegated the writ petitioner to his alternative remedy before the Railway Claims Tribunal and should not have dismissed the writ petition on that count – There is no disputed question of fact in the case – Impugned order of the High Court is set aside – Respondents are directed to pay the admitted liability along with interest at the rate of 6% p.a. as mentioned in the order.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7337 of 2002.

From the Judgment & Order dated 2.3.2001 of the High Court of Judicature at Bombay in W.P. No. 1123/1997.

Ramesh P. Bhatt, Duttatray Vyas, Mahima C. Shroff and Chirag M. Shroff for the Appellant.

K. Amereswari, Sunil Roy and Anil Katiyar for the Respondents.

The Order of the Court was delivered :

This appeal is directed against the judgment and order dated 02/03/2001 passed by the Division Bench of the High Court of Bombay in Writ Petition No.1123 of 1997 whereby the

- A Division Bench dismissed the writ petition of the appellant solely on the ground that alternative remedy being available the appellant must resort to the alternative remedy.

Heard the learned counsel for the parties.

- B By now it is a well settled principle of law that availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution.

- C In the present case between 4<sup>th</sup> March, 1992 and 31<sup>st</sup> December, 1992 the appellant had booked rakes for carrying coal to Gurla. A sum of Rs.3,56,69,671/- which had been collected from the appellant over a period of time by mistake. That the mistake has been committed is admitted by the respondent herein and it has duly been noted by the High Court. However, the High Court, in our view, erroneously rejected the claim on the ground of availability of alternative remedy. On the aforesaid premises the High Court dismissed the writ petition with the direction to the appellant to approach the Railway Claims Tribunal for alternative remedy provided under Section 13 of The Railway Claims Tribunal Act, 1987 (hereinafter the 'Act').

- E We are clearly of the view that as the respondent-Union of India has clearly admitted the liability, the High court ought not to have relegated the appellant to his alternative remedy and should not have dismissed the writ petition on that count. There is no disputed question of fact in this case. As already noted, in the present case the respondent had admitted its liability and, therefore, the question raised before the High Court being an admitted fact the High Court ought not to have directed the appellant to resort to its alternative remedy under the Act.

- G In the aforesaid premises, we set aside the impugned order of the High Court. This appeal is allowed. No costs. The respondents are directed to pay the admitted liability along with interest at the rate of 6% p.a. with effect from 6<sup>th</sup> January, 1993 till payment is made within three months from today.