

Har Prasad Choubey

Vs

Union of India and Another

Civil Appeal No. 1114 of 1967

(D.G. Palekar, A. Alagiriswami JJ)

24.04.1973

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by certificate against the judgment of the Madhya Pradesh High Court reversing on appeal the judgment and decree of the learned First additional District Judge of Raipur.

2. In order to deal with the question that arises in this case it is necessary to set out the facts of this case at some length. It appears that slack coal in railway yards is sold to brick manufacturers. In December, 1946 at the Kumhari station of the Bengal Nagpur Railway, 1045 tons of slack coal were unloaded out of which 158 tons were used by the contractors who refused to accept the balance as unsuitable for brick burning. Because the slack coal cannot be used for any other purpose and was gradually deteriorating, the Chief Engineer of the Bengal Nagpur Railway wrote to the Coal Commissioner to issue a permit to sell 852 tons of slack coal lying at Kumhari station by public auction as no coal could be sold except with the permission of the Coal Commissioner and even the provision of railway wagons for the purpose of transporting coal had to be done under this orders. The Coal Commissioner granted the permission. The auction notice was published in many newspapers. The appellant, who belongs to Ferozabad in Uttar Pradesh, made an offer of Rs. 20,321/9/- and paid a deposit of Rs. 4,100/-. It was accepted and in due course he paid the balance also.

3. He seems to have applied for allotment of wagons for transport of coal to Ferozabad on December 3, 1948, as is evident from Ext. P-72 written by the District Transport Officer of the Bengal Nagpur Railway, Bilaspur to the Deputy Coal Commissioner. Ext. P-27 shows that the Provincial Iron and Steel Controller, United Provinces also wrote to the Deputy Commissioner (Distribution) to arrange for a suitable number of wagons for movement of coal dust from Kumhari to Ferozabad. The appellant also wrote on March 4, 1949, to the Chief Engineer of the Bengal Nagpur Railway complaining that the Coal Commissioner had verbally refused permission to move the coal saying that it was to be locally consumed. The Chief Engineer had sent a copy of this letter to the Coal Commissioner with an endorsement pointing out that as no condition cannot be imposed by him that the coal would have to be consumed locally at the time of granting permission for public auction, such a condition cannot be imposed now, and asked for supply of wagons for despatch of coal to Ferozabad. The Chief Engineer replied to the appellant in response to his letter of the 4th March that it had been sent to the Coal Commissioner with the endorsement referred to. This seems to have produced a very angry reaction from the Coal Commissioner as is apparent from Ext. D-2. He replied that in the Engineer's letter asking for a permit for disposal of slack coal there was no mention or question of allotting wagons or stipulating that the coal must be used locally, and

that no wagon allotment can or shall be made. Apparently, for permission to sell the coal the Engineer had not said anything about allotting wagons or the coal not being used locally. However, the effect of this letter was a blanket refusal of any facility to move the coal to Ferozabad. That it also meant that the Coal Commissioner insisted upon the coal being used locally, would be apparent from further correspondence to be noticed hereafter.

4. When the Railways had applied to the Coal Commissioner for disposal of the slack coal by public auction after specifically mentioning that the local contractors had refused to take it saying that it was unfit for brickburning it would be realised how unreasonable and harsh was the attitude of the Coal Commissioner in taking this stand. However, the District Engineer, Bengal Nagpur Railway informed the appellant on March 5, 1949, that he was advising the District Transportation Officer, Bilaspur to allot wagons to the appellant for the despatch of coal. Though the language is a little confused it is obvious that is the intendment of the letter. Upset by the tone of the letter of the Coal Commissioner, the deputy Chief Engineer (West), Bengal Nagpur Railway, wrote to one Mr. J. S. Mallick, who is described as C.T.O. Calcutta a demi-official letter asking him to persuade the Coal Commissioner to make an allotment of wagons. In this letter it was pointed out that the Coal Commissioner while granting permission for auction had not imposed any condition that the coal would have to be consumed locally. The Deputy Engineer seems to have pursued the matter further by a conversation on the telephone on April 2, 1949, as is evident from Ext. P-22, and this letter also reiterates the earlier refusal to supply wagons until the Coal Transport Officer agreed to the same.

5. It would be apparent from a narrative of the facts so far that the appellant who had come from Ferozabad to Kumhari, which is said to be 800 miles away, to purchase this slack coal would naturally have expected to have the wagon facility provided for transporting this coal to Ferozabad. There is, of course, nothing to show that he had made it a specific condition when he bid at the auction that wagons for transport should be provided. But it is implicit in the circumstances of this case that he expected it to be provided. As he had not been told that the coal was to be consumed locally and the Coal Commissioner had permitted the sale it cannot be said to be an unreasonable expectation on his part. If we take it that he was entitled to transport it to Ferozabad the attitude of the Coal Commissioner that the coal was to be consumed locally, a condition which was not communicated to the appellant when he bid for the coal, is clearly one which cannot be supported. The refusal to provide the wagons for the transport seems to be a way of enforcing a condition that the coal should be consumed locally. In this context the supply of wagons assumes a secondary place.

6. Finding that he had to face a stone wall in the face of the refusal of the Coal Commissioner, the appellant approached the Minister of State in the Ministry of Transportation of the Government of India pointing out that no condition was imposed when he purchased the coal that it was to be locally consumed, that the Coal Commissioner was unnecessarily harassing him, that as the rainy season was fast approaching he feared that the coal dust would be spoiled if not removed, that the Transportation Manager of Bengal nagpur Railway had told him that it was not possible to supply him wagons unless the Coal Transport Officer agreed, and asked for allotment of a sufficient number of wagons to transport the coal from Kumhari to Ferozabad. The appellant also seems to have apprised the Minister for Industry and Supply and in reply he was told by the Deputy Secretary on behalf of the Minister, on May 18, 1949, to sell the coal for consumption locally and if it was not possible to apply for cancellation of the auction sale and to ask for refund from the District Engineer, Nagpur and that the Coal Commissioner will attend to the distribution of the coal for local consumption. A copy of the letter was sent to the Coal Commissioner asking him to let him know

whether it would be possible to utilize the coal locally and a suggestion was made that to avoid recurrence of cases of this type the Coal Commissioner should in future auction sales make it clear that rail transport for the movement of coal to other destinations will not be provided. This, of course, was a most reasonable view to take. Even then the appellant wrote on June 7, 1949, to the Minister of Industries and Supply for allotment of wagons if not in one instalment at least at the rate of 10 wagons per month. At last on July 25, 1949, in sheer despair and having apparently no response to his letter of the 7th June he took the Minister's suggestion and wrote to the District Engineer, Nagpur for cancellation of the auction sale and refund of the money deposited by him. On the same day a letter went from the District Engineer to the appellant asking him to remove the coal or else to pay occupation fees. The appellant replied on August 1, 1949, that as the Coal Commissioner had imposed a condition that the coal was to be consumed locally, the Ministry of Industry and Supply had advised him to ask for cancellation of the auction sale and to ask for refund of the money and accepting that advice he had applied for cancellation of the auction sale and refund of the money. On August 19, 1949, he again wrote another letter for refund of the money (though this letter is a little confused, the purport of it is quite clear). Even after this the Coal Commissioner continued to take the stand that no wagons could be allotted (see Ext. D-3) but now there was no reference to the coal having to be consumed locally. Instead, it was said that the Director of Industry, C.P. & Berar was requested to assist in the disposal of this coal locally. On 24th September (see Ext. P-6) the Chief Engineer of the Bengal Nagpur Railway wrote to the Coal Commissioner to arrange for allotment of the requisite wagons for transport of the coal. A copy of this was sent to the Financial Adviser and the Chief Accounts Officer to let him know if the amount of purchase was refundable. The Chief Engineer also wrote to the appellant on October 20, 1949, that the Coal Commissioner was not in a position to allot wagons and that he had moved the Director of Industry, C.P. & Berar to assist in the disposal of the coal locally. This apparently refers to letter (Ext. D-3) from the Coal Commissioner to the Chief Engineer, already referred to. It would thus be clear that till that date there was no offer of facilities for transport.

7. Having exhausted all efforts the appellant ultimately issued a lawyer's notice on November 7, 1949, giving the history of the whole case and how the Coal Commissioner had arbitrarily refused the movement of the coal and how the Minister of Industries had advised him to apply for cancellation of the auction sale and to ask for refund of his money. He had also stated therein that he had enquired from the District Engineer before purchasing the coal whether the Railway would afford reasonable facility for the movement of the coal to Ferozabad and that the District Engineer had assured him that they would do so. Whether this part of the statement found in the notice is correct or not, it is obvious that in the circumstances of this case the appellant would not have bid at the auction at all if he had been told that the coal would not be allowed to be moved out of Kumhari and no wagons would be provided for its transport. As suggested in the letter of the Minister of Industries and Supply already referred to, that would be the most reasonable thing to do and in any case there was nothing unreasonable in appellant's assuming that he would be allowed to remove the coal from Kumhari to Ferozabad and proceeding on that basis. Nobody did anything to dispel that impression. This is unfortunately a case of lack of co-ordination between one arm of Government and another and one of the arms, i.e., the Coal Commissioner putting all obstructions in the way of other arm performing its functions. We see from Ext. P-8 that the Private Secretary to the Minister wrote to the coal Commissioner asking him to take personal interest in the matter and to arrange for refund, and the appellant was also informed with reference to his notice sent through his lawyer, dated November 7, 1949, that the matter was receiving attention. Even on November 19, 1949, the Coal Commissioner wrote to the Chief Engineer, Bengal Nagpur Railway that it was not possible to allot wagons and that arrangements may be made for the cancellation of the sale and refund of the

amount as advised by the Ministry of Industry and Supply (see Ext. P-9) and the Chief Engineer wrote to the appellant on December 21, 1949, more than a year after the appellant's successful bid, referring to the above letter from the Coal Commissioner, and informing the appellant that action was being taken as instructed by the Coal Commissioner, to dispose of the appellant's case promptly. After all this, on December 22, 1949, Secretary to the Coal Commissioner wrote to the Chief Engineer that it was then possible to allot wagons for the movement of coal provided the auction purchaser was still interested in the movement of such coal. As would be apparent from the narration of the facts so far, this offer came too late. But it is interesting to note that it is on this letter that much of the defence to the appellant's suit was relied upon. We have no hesitation in holding that by this time everybody, including the Ministry, the Railways and the Coal Commissioner had proceeded on the basis that the coal could not be removed from Kumhari and that the sale was to be cancelled and the appellant's money refunded, and this letter will not in any way affect his claim. The appellant, therefore, rightly wrote on January 9, 1950, that he was not in a position to take delivery of the coal and expressing his surprise at the offer to allot wagons at that stage, and asked for refund of his money immediately. He again wrote to the General Manager, Bengal Nagpur Railway on February 27, 1950, asking for refund in accordance with the letter from the Minister's Private Secretary, dated November 9, 1949, already referred to. It is interesting to note that somewhere in between the appellant had gone to the office of the Secretary, Railway Board and was told that the file relating to this matter had been lost and he therefore had sent copies of various correspondence (see Ext. P-17). The Secretary, Railway Board, wrote an express letter on February 19, 1951, to the General Manager, Bengal Nagpur Railway pointing out that the matter had been pending for more than two years and that information may be furnished without further delay. The subject-matter was cancellation of auction sale. The appellant again wrote to the Minister of State in the Ministry of Transport and Railway complaining about the failure to refund his money and mentioning the earlier history pointed out that his amount was not being refunded by the Railways because the responsibility for the loss in coal due to natural reasons could not be fixed and he wanted that he should not be driven to the courts. How true this is seen from the fact that the coal is said to have been ultimately disposed of for a paltry sum of Rs. 111/-.

8. Finally, on November 23, 1951, the appellant sent a notice apparently under Section 80 of the Code of Civil Procedure, and received a reply on December 24, 1951, that according to the terms of the auction sale the Railway administration was not liable to refund the purchase money, in spite of the fact that the Coal Commissioner issued a directive to the Bengal Nagpur Railway to refund the same. It is, therefore, clear that the Railways were avoiding responsibility for what had taken place and the appellant, therefore, filed the suit out of which this appeal arises. The learned Additional District Judge decreed the appellant's suit but denied him the interest. The respondent filed an appeal to the High Court and the appellant filed a memorandum of cross objections in respect of his claim for interest which was disallowed by the lower Court. The High Court allowed the appeal and dismissed the appellant's cross objections and this appeal has been filed by the appellant.

9. This elaborate narration would make it clear that the appellant had bid for the coal under the honest and reasonable impression that he would be allowed to transport the coal to Ferozabad, that this was thwarted by the attitude of the Coal Commissioner, that later on the parties proceeded on the basis that the auction sale was to be cancelled and the appellant refunded his money. But apparently because by that time much of the coal had been lost and the Railways would have been in difficulty to explain the loss they chose to deny the appellant's claim. We can see no justification on facts for such a denial and the defendants cannot refuse to refund the plaintiff's amount. The contract had become clearly frustrated. We must make it clear that we are not referring to the refusal to supply wagons but the refusal of the Coal Commissioner to allow the movement of coal to

Ferozabad in spite of the fact that it was not one of the conditions of the auction. The appellant is, therefore, clearly entitled to the refund of his money. Furthermore, the contract itself not being in accordance with Section 175 of the Government of India Act is void and the appellant is entitled to the refund of his money. We are unable to understand the reasoning of the High Court when it proceeds as though the appellant was trying to enforce the contract. We can see no justification for the lower Court refusing to allow interest for the plaintiff's amount at least from the date of his demand, or the latest from the date of suit.

10. The appeal is, therefore, allowed and the appellant's suit will stand decreed, as prayed for, with the interest thereon from the date of suit till the date of realisation at 6 per cent. The appellant will also be entitled to his cost from the respondents in all the three Courts. It is unfortunate that due to sheer cussedness on the part of some officials the State has had to waste such a lot of money in litigation and also pay interest, but then they have had the use of the money so long.

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