M/s. Bahrain Coking Coal Ltd.

Vs

Shri Parmeshwar Kumar Agarwala

Civil Appeal No. 364 of 1976

02.11.1978

JUDGMENT

KRISHNA IYER, J. –

1. The short question that falls for decision is as to whether a coke oven which is the subject-matter of this case is a 'coke oven plant' as defined in Section 3(b) of the Coking Coal Mines (Nationalisation) Act, 1972 (hereinafter referred to as the Act). There is also another question as to whether the plaintiff-respondent I has retained with himself the ownership of the coke oven by reserving its ownership him in sale deed executed by them in favour of defendant-respondent 2.

2. We are not going into the details of the facts because at the end of the arguments we have found a broad concerns between the parties to dispose of the matter by a short order.

3. The crucial facts, necessary for appreciation of the order we make, are : the plaintiff was once the owner of a coal mine and also of a coal coke oven. He transferred the coal mine to another company and granted a lease of the coke oven to the same vendee. All this took place in 1967. Years later, under the Act above referred to, coal mines were nationalised and there was a separate provision therein for nationalisation of coke oven plants. While the colliery was nationalised by the Central Government by inclusion in the schedule to the Act, nothing was done under Section 5 of the Act to nationalise the coke oven plant. The plaintiff, upon nationalisation of the coal mine by the Parliament, demanded rent from the Central Government in whom the colliery had vested on the footing that the coke oven had not vested in the Central Government and it was, therefore, bound to pay rent for its use. The Central Government as defendant resisted the claim on the score (a) that the coke oven plant had also been transferred by the plaintiff along with the colliery and, therefore, he had no surviving title to it; and (b) in any case by virtue of the nationalisation of the mine, the coke oven also had passed and vested in the Central Government.

4. The trial Court and the High Court upheld the claim of the plaintiff and negative both the contentions of the Central Government which has come up in appeal before us by special leave. We find considerable force in the contention of the plaintiff which has found favour with the courts below. It must be stated that the statute leaves much to be desired in the matter of precision and clarity with special reference to coke oven plants. Indeed, it is obvious that the coke oven involved in this case has been retained with the plaintiff as the documents disclose. The endeavour of Shri Sinha, appearing for the Union of India, to make out that the coke oven also had been transferred has been rightly negatived by the courts below. In fact, the thrust of Shri Sinha's argument was that even if the coke oven was owned by the plaintiff at the time of the nationalisation, since coke oven was not "coke oven plant", but an integral part of the mine, it must be deemed to have been passed to the Central Government under Section 8 of the Transfer of Property Act. It is a little mystifying to hear counsel submit that there is a subtle distinction between coke oven and coke oven plant. We

could hardly appreciate the submission but the justification for putting forward such a rarefied distinction as a serious argument is derived from the definition of 'mine' in Section 3(J)(x) of the Act. Section 3(b) defines coke oven plant to mean:

> 3(b) "Coke oven plant" means the plant and equipment with which the manufacture of hard coke has been or is being, carried on, and includes -
>
> (i) all lands, building, works, machinery and equipment, vehicles, railways, tramways and sidings, belonging to, or in the coke oven plant,
>
> (ii) all workshop belonging to the coke oven plant, including buildings, machinery, instruments, stores, equipment of such workshops and the lands on which such workshops stand,
>
> (iii) all coke in stock or under production, and other stores, stocks and instruments, belonging to the coke oven plant,
>
> (iv) all power stations belonging to the coke oven plant or operated for supplying electricity for the purpose of working the coke oven plant or a number of coke oven plants,
>
> (v) all lands, buildings and equipment belonging to the coke oven plant where the washing of coal is carried on,
>
> (vi) all other fixed assets, movable or immovable, and current assets belonging to a coke oven plant, whether within its premises or outside;
>
> Explanation. - "Current assets" do not include dues from sundry debtors, loans and advances to other parties and investments, not being investments in the coke oven plant;
>
> Section 3(j)(x) reads :
>
> All lands, buildings and equipment belonging to, or in, a mine where the washing of coal or manufacture of coke is carried on.

5. Shri Sinha also relied upon Section 3(j)(vi) which reads thus :

> All lands, buildings, works, adits, levels, planes, machinery and equipment, vehicles, railways, tramways and sidings belonging to, or in, or about, a mine;

6. It must be said in fairness to counsel that there was some bafflement when confronted by these provisions although on a broader consideration, we are clear in our mind that a dichotomy was made by the statute between mines on the one hand as defined in Section 3(j) and coke oven plant as defined in Section 3(b) on the other. To give meaning to this dichotomy one has to read coke oven plants as clearly out from the mines, which in turn means that mere equipment where washing of coal or manufacture of coal is done as a simple subsidiary or an equipment or machinery which is a small part of a mine cannot be exalted to the position of a coke oven plant which, as Section 3(b) bears out, is an important but separate equipment with which the manufacture of hard coke is carried on. This is a processing of considerable significance, for coal that is extracted from a

colliery has an independent existence. It cannot be confused with a minor item such as is covered by Section 3(j)(xi) or (x) of the Act. It is easy to find industrial similarity when we are referring to oil mines. It is one thing to take over oil fields and minor machinery or equipment that may be attached thereto necessary for the very mining operation, but by no stretch of imagination can it be said that nationalisation of oil fields or mines also covers oil refineries. In this view, we think that there is no substance in the submission on behalf of the appellant (union of India) that mine by definition includes coke oven. The distinction between coke oven and coke oven plant is eloquently identical. That such a contention has been put forward indicates the desperate situation in which the Union of India finds itself. Indeed, on an earlier occasion, where this case was taken up there seems to have been some suggestion of a legislation to cover coke oven plants in the shape of a clarificatory measure.

7. Now that we have negatived both the contentions the short point that survives is as to whether the Central Government can be made liable at all of the liabilities ensuing from the encumbrance in the shape of a lease having regard to the provision in Section 9. We consider that taking note of this possible difficulty in the way, it was fair and proper on the part of Shri A.K.Sen and Dr. Y. S.Chitale, appearing for the respondent to have agreed to a scaling down of the rent payable under the indenture of lease. Having had a brief discussion at the Bar, both sides left it to the court to suggest what would be a fair return which has to be paid by the Central Government to the plaintiff. We think, all things considered, it would be just to fix a payment of 1/3rd of the rent stipulated in the indenture of lease. We fix the payment at that rate and direct that this will be operative from the date of the nationalisation way back in 1973. The defendant Central Government will, therefore be liable to pay the plaintiff-respondents at the rate of 1/3rd of the rent stipulated in the indenture of lease which was current as on the date of nationalisation. Counsel represented at the Bar that the rent as on the date of nationalisation was Rs.5000 per month. The Central Government's liability will, therefore, be reduced to 1/3rd of Rs.5000 that is Rs.1663-33 per month.

8. We need hardly say that if the plaintiff has been assessed to income tax and has paid it on the footing that the rent accrued to him was at the rate of Rs.5000 per menses, he should in fairness be entitled to start appropriate proceedings for refund of the excess tax paid, if any, in the light of the substantial reduction of the rate of rent made in this judgment.

9. Mr. A. K. Sen, rightly brought to our notice that while the Central Government in the present case is contending that the claim of Rs.5000 is unduly high, the same Government is paying to other coke oven plants owners a contract rent which by the present token must be high. There is force in this submission which means that the Central Government must treat all the owners of coke oven plants equally by resorting to appropriate legislation. It will be in the public interest and promotion of equity among the owners of coke oven plants to have a legislation whereby a central agency is created for equitable and rational fixation of fair and reasonable rents which should be payable by the Central Government to the owners of coke oven plants depending upon relevant considerations including the capitalized value of such plants. We also consider the in the light of the resolution of the dispute by us in the present judgment substantially scaling down the rent payable to the plaintiff, the earlier suggestion made by this Court in an interlocutory order regarding fresh legislation obviating payment altogether of any rent will be given up by the Central Government. Shri L. N. Sinha appearing for the Union of India agrees that this will be a fair gesture on the part of the Central Government. With these observations we dismiss the appeal subject to the modification in regard to the rate and quantum of rent. The parties will bear their respective costs.

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