

Central Coal Fields Ltd

Vs

M/s. Bhubaneswar Singh and Others

Bharat Coking Coal Ltd

Vs

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Civil Appeals Nos. 3374-75 of 1984

(P. N. Bhagwati, A. N. Sen, Ranganath Misra JJ)

23.08.1984

JUDGMENT

RANGANATH MISRA, J. –

Special leave granted.

2. Respondent 1, a partnership firm, held a coking coal mine known as Tariya Colliery within the State of Bihar the management whereof was taken over under the Coking Coal Mines (Emergency Provision) Ordinance of 1971 with effect from October 17, 1971, along with several other coking coal mines and some coke oven plants. The ordinance was in due course replaced by a statute bearing the same title (hereinafter referred to as the 'Management Act'). Then came the Coking Coal Mines (Nationalisation) Act, 1972 ('Nationalisation Act' for short) which received Presidential assent on August 17, 1972, but under Section 1, sub-section (2) thereof, the statute was deemed to have come into force with effect from May 1, 1972. Under Section 3, sub-section (a) of the Nationalisation Act, May 1, 1972 was the appointed day. Under the provisions of the Ordinance followed by the Management Act, ownership of the mines was not disturbed but management was taken over. Under the Nationalisation Act, the right, title and interest of the owner in the mines extinguished and became vested in the Central Government with effect from May 1, 1972. Under the Management Act, the Custodian carried on the management on behalf of the owner while under the Nationalisation Act ownership was abolished and payment of a sum to the owner by way of compensation was contemplated. So far as the period between October 17, 1971 and April 30, 1972, when title in the colliery continued to vest in the owner but only management had been taken over under the provisions of the first statute, was concerned, the business was run by the Custodian on account of the owner. Therefore, the Nationalisation Act provided that upon accounts being taken, either the owner was to be paid the surplus or if there had been excess expenditure, the same had to be recovered from the owner.

4. In the instant case there was a stock of 5650 tons of coking coal and 602 tons of soft coke when management was taken over on October 17, 1971 and on April 30, 1972, at the end of which ownership was extinguished, there was a stock of 30,411 tons of coking coal and 956 tons of soft coke. A total expenditure of about eight lac rupees had been incurred for raising the said quantity of

coal during the period of management. This stock was not taken into account and credit for it was not given to the owner but the expenses of extraction amounting to Rs. 7,95,071.94 were raised against the owner. The owner laid claim to a sum of Rs. 1,01,755.37 as its entitlement under the Nationalisation Act on the ground that if credit was given to the stock in trade on the basis of the closing balance, it would be entitled to that amount.

4. Claim having been laid for the recovery of the aforesaid amount from the owner under the Nationalisation Act, that amount was certified to be recoverable. The owner respondent 1 challenged the order of the statutory authority by filing a writ petition before the Patna High court impleading, inter alia, the Central Coal Fields Ltd. As also M/s. Bharat Coking Coal Ltd. Two Government companies as respondents. The High Court after hearing the parties came to the conclusion that the owner was entitled to credit for the coal lying in stock when the closing balance was drawn up and accordingly directed the accounts to be recast and payments to be made on the basis of the recast accounts. Central Coal Fields Ltd. And M/s. Bharat Coking Coal Ltd. Moved this Court under Article 136 of the Constitution separately for leave to appeal against the said decision of the High Court.

5. We have heard parties at length and detailed written arguments have been furnished by Mr. Lal Narain Sinha on behalf of the two appellants. The main plank of Mr. Sinha's argument against the decision of the High Court is the definition of 'mine' contained in the two statutes. Admittedly, the definition of 'mine' occurring in Section 2 of both the Acts does specifically include all coal in stock but obviously that inclusive definition is for the purpose of either take-over of management or abolition of right, title and interest for the purpose of nationalisation. Mr. Shanti Bhushan appearing for the respondent 1 does not dispute the position that the stock of coal, at the time when the title was abolished and vesting took place, was a part of the mine and that title in the stock got extinguished as a result of the nationalisation and vested in the Central Government from the appointed day. He concedes that the High Court was wrong in taking a contrary view.

6. While there is no dispute that the stock in trade at the commencement of the appointed day vested in the Central Government as a result of nationalisation, the question for examination is whether that stock was liable to be taken into account for the purpose of determining the amount payable to the owner in respect of the period when the mine was under the management of the Custodian. This necessitates reference to some of the provisions of the Nationalisation Act and the relevant provisions are Section 4, 10, 21 and 22. Under Section 4(1), on the appointed day, the right, title and interest of the owner in relation to the coking coal mines specified in the First Schedule stood transferred to, and vested absolutely in the Central Government free from all encumbrances. Section 10 contemplates that the owner of every coking coal mine specified in the second column of the First Schedule, shall be given by the Central Government in cash and in the manner specified in Section 21, for vesting in it under Section 4, the right, title and interest of the owner in relation to such coking coal mine, an amount equal to the amount specified against it in the corresponding entry in the fifth column of the said Schedule. Section 21, to which reference has been made in Section 10, makes provision for payment. The first two sub-sections of this section may be extracted :

21. (1) The Central Government shall, within thirty days from the specified date, pay, in cash, to the Commissioner, for payment to the owner of a coking coal mine... a sum equal to the sum specified against the coking coal mine...in the First Schedule or the Second Schedule together with the amount and interest, if any, referred to in Section 12.

(2) In addition to the sum referred to in sub-section (1), the Central Government shall pay, in cash, to the Commissioner, such amount as may become due to the owner of coking coal mine...in relation to the period during which the management of the coking coal mine... remained vested in the Central Government.

The present dispute is within the ambit of sub-section (2) of Section 21. Section 22 provides the procedure for the statement of accounts to be drawn up in regard to the period of management. Sub-section (1) so far as relevant, runs thus :

4. (1) The Central Government or the Government company, (the appellants before us are Government companies), as the case may be, shall cause the books in relation to each coking coal mine... the management of which has vested in it under the Coking Coal Mines (Emergency Provisions) Act, 1971, to be closed and balanced as on the thirtieth day of April, 1972, and shall cause a statement of account, as on that day, to be prepared, within such time, in such form and in such manner as may be prescribed, in relation to each such mine... in respect of the transactions effected by it during the period for which the management of such coking coal mine... remained vested in it :
4. In exercise of the powers conferred by clause © of sub-section (2) of Section 34 of the Nationalisation Act, the Central Government have made a set of Rules known as the Coking Coal Mines (Statement of Accounts) Rules, 1972. The Rules prescribe the form in which the accounts are to be prepared and reference to this form we shall presently make.

8. A policy decision to nationalise the coking coal companies was taken by the Central Government and with a view to facilitating nationalisation, the management was first taken over under the Management Ordinance followed by the statute with effect from October 17, 1971. This position continued till the Nationalisation Act came into force with effect from May 1, 1972. The Nationalisation Act contemplated two types of payments to be made to the owner - one, a sum of money contemplated under Section 10 of the Act for the extinguishment of title, and two - the dues, if any, payable in respect of the period of management as contemplated under Section 21(2) of the Act and arrived at on the basis of accounts prepared in the manner prescribed. The Management Act did not contemplate any kind of curtailment of the normal incidents of ownership except the right of management. Very appropriately, therefore, the Nationalisation Act contemplated the books of account to be closed and a statement of accounts, as on April 30, 1972, to be prepared, with a view to determining the final position for the period of management; - payment to be made to the owner if there was a surplus found and recovery to be made from him in case of shortfall.

4. We find force in the submission of Mr. Shanti Bhushan that the accounting for the period between October 17, 1971 and April 30, 1972, in the absence of any particular prescribed mode in the statute or the Rules made thereunder, had to be done according to the normal commercial practice. Since the statute contemplated the books to be closed and balanced, a balance sheet according to the normal commercial practice had to be drawn up. The observations of this Court in *C.I.T. v. A. Krishnaswami Mudaliar* ((1964) 53 ITR 122, 130 : (1964) 7 SCR 776 : AIR 1964 SC 1843), are worth quoting. Shah, J. (as he then was), spoke for the Court thus :

But whatever method of book-keeping is adopted, in the case of a trading venture, for computing the true profits of the year the stock-in-trade must be taken into account. If the value of stock-in-trade is not taken into account, in the ultimate result the profit or loss resulting from trading is bound to get absorbed or reflected in the stock-in-trade unless the value of the stock-in-trade remains unchanged at the commencement of the year and at the

end of the year.

10. Under the Income-Tax Act profits have to be ascertained for the purpose of computing tax liability. Under the Nationalisation Act the books had to be balanced with a view to finding out whether the Government company which was in management for the relevant period on behalf of the owner was to pay anything to the owner or the Government company having spent for the owner was entitled to recover any sum from the owner. Therefore, we accept the submission of Mr. Shanti Bhushan that the Nationalisation Act contemplated a balance sheet according to the commercial procedure to be drawn up while necessarily required stock-in-trade to be reflected.

11. Admittedly the amount claimed from the owner represents the cost of extraction of the coal from the mine. The appellants had conceded before the High Court and Mr. Sinha appearing for them before us accepted the position that if the extracted coal had been sold before the appointed day, the owner would have been entitled to the price. The mere fact that the extracted coal remained in stock at the commencement of the appointed date can make no difference to the position. The expenses were to be set off against the sale price of the stock to be received at the time of disposal. Therefore, the stock of coal had to be taken into account for balancing the position. Reliance on the definition of 'mine' and Section 10 of the Nationalisation Act to counteract this conclusion cannot avail the appellants. Indeed, the submission advanced on behalf of the appellants is so much opposed to common sense logic of the matter that in the absence of a legislative mandate we have no hesitation in rejecting it.

12. Much of the controversy could have been avoided if reference had been made to the statutory form. Statement 8 in the prescribed form clearly indicates that the stock as on April 30, 1972, had to be taken into account. We are sorry to observe that the High Court omitted to make a reference to it, and are equally sorry to note that the Government companies have failed to do their duty as cast on them by law and driven the owner to unnecessary litigation.

13. In view of what we have said, there is absolutely no substance in the stand taken by the appellants before us. Both the appeals fail and they are dismissed with cost. Consolidated hearing fee is assessed at Rs. 10,000.

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