

M/S. Bansal and Co. and Another

Vs

Union of India and Others

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Special Leave Petitions (Civil) Nos. 632 and 3386 and Writ Petition (Civil) No. 43 of 1985

(R. S. Pathak, Sabyasachi Mukharji JJ)

20.12.1985

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Special leave petition Nos. 632 and 3386 of 1985 by M/s Bansal & Co. and M/s Orient Distributors respectively and the Writ Petition No. 43 of 1985 by M/s Bansal & Co. under Article 32 of the Constitution challenge the validity of the order issued by the North East Frontier Railway dated December 21, 1984 whereby the said railways sought to implement the judgment and order of the High Court of Gauhati in Civil Rule No. 619 of 1984.
2. By the said order, it was held that M/s Vicky Coal Concern, Calcutta as well as M/s Mangalam Enterprises were entitled to priority 'E' and not to priority 'C'. None of the parties, it was declared by the Gauhati High Court by its order passed on December 11, 1984, fulfilled the requisite conditions for obtaining priority 'C' of the Preferential Traffic Schedule of the railways (for short PTS). It was declared also that there could not be any discrimination whatsoever between any trader and consumer whether privately sponsored trader or private consumer in priority 'E' and that they should be allotted and supplied wagons strictly in terms of the provision of Rule 201 of the Goods Traffic Rules (for short 'the Rules') for acceptance, carriage and delivery of general goods issued by Indian Railways from time to time, and in order to get priority 'C', they had to fulfill the five conditions enjoined in the decision of this Court in *Viklad Coal Merchant v. Union of India* ((1984) 1 SCR 657 : (1984) 1 SCC 619).
3. In order to appreciate the position, it is necessary to state that there is in existence a rationalisation scheme for movements of coal, booking of coal is allowed from North-Eastern Railways to different States only when the same is sponsored by the respective State Governments. However, coal is allowed to move freely up to the stations on east of Siliguri as per said rationalisation scheme.
4. From 1980 onwards certain High Courts had granted injunction orders on railways to allow booking of coals to various States in priority 'B' and 'C' without sponsoring certificates. The railways had tried to comply with those interim orders although in certain cases, courts were moved

by the railways for vacation of the interim orders. Movement of coal to various States took place under priority 'B' and 'C' during the pendency of such interim orders.

5. In *Viklad Coal Merchant v. Union of India* ((1984) 1 SCR 657 : (1984) 1 SCC 619), the question was considered by this Court. In that case, the petitioner in group of petitions under Article 32 of the Constitution were coal merchants who, according to them, had been denied the use of railways for transport of coal from various coal fields and wayside stations to their destination by certain orders of the railways which were described as illegal and unconstitutional by those petitions. The court examined these contentions and came to the conclusion that Section 27 of the Indian Railway Act cast a duty on the railway administration to arrange for receiving and forwarding traffic without unreasonable delay and without partiality. Section 28 of the said Act prohibited the railway administration from giving undue or unreasonable preference or advantage to any particular person or railway administration or any particular description of traffic. Section 27-A was inserted in the Act after 1950 to give power to the Central Government to issue directions for giving special facilities or preferential treatment in transport of goods or class of goods consigned to the Central Government or the Government of any State or of such other goods or class of goods as may be specified in the order.

6. The Government of India, Ministry of Railways issued an order dated April 1, 1972 containing its decision to add abbreviation 'GX' below the abbreviation 'G' in the list of abbreviation at page 14, Chapter VI of the IRCA Alphabetical list of Railway Stations in India and asking the railway administration to decide and notify the names of stations to which this new provision would apply. Putting abbreviation 'GX' against a station meant that the station was not open for outward booking of coal, coal shale etc. in wagon loads. Pursuant to this order, the abbreviation 'GX' was appended to all wayside stations in the coal belt. Thereafter Government of India, Ministry of Railways by its order dated April 27, 1972 revised Rules 1 and 2 of the Eastern Railway Coal Traffic Part I. The revised rules provided, inter alia, that all traffic in coal etc. in wagon loads will be loaded only from colliery sidings, coke oven plants and washeries on the Eastern Railway, but coal in wagons would not be permitted at the stations serving these colliery washeries.

7. In exercise of the powers conferred under Section 27-A of the Railways Act, the Union of India, Ministry of Railways issued a Preferential Traffic Schedule. This schedule prescribed five priorities i.e. priorities 'A' to 'E' with inter se priorities amongst 'A' to 'E' to be accorded by the railways for transport of certain goods or class of goods specified under each category. Different kinds of coal falls under priority 'C'(iii) which provides for movement of coal from collieries in accordance with programmes and movements sponsored or recommended by the Coal Controller and/or any Committee appointed by him and/or the State Government and/or other recommending authorities and accepted by the Railway Administrations and/or Director, Movement (Railways), Calcutta, and in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time. Priority 'E' is a residuary clause and also involves movement of coal from collieries

8. As contended by M/s Bansal & Co. certain condition had to be fulfilled for getting priority 'C'(iii) in accordance with the interpretation put by this Court in the aforesaid decision in *Viklad Coal Merchant* case ((1984) 1 SCR 657 : (1984) 1 SCC 619); it is necessary to set out priority 'C'(iii) as appears in the Preferential Traffic Schedule which is as follows :

(iii)(a) Coal from collieries in accordance with commodity quotas laid down from time to time for certain types of coal and/or in accordance with programmes and

movements sponsored or recommended by the Coal Controller and/or any Committee appointed by him and/or the State Governments and/or other recommending authorities and accepted by the Railway Administrations and/or Director, Movement (Railways), Calcutta, and in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time. A list of sponsoring authorities authorised to sponsor coal movements in this item is given in Annexure 'B'.

(b) Besides the sponsoring authorities mentioned in Annexure 'B' movement of Coal may be sponsored by "any other authority who may be appointed by the Government from time to time".

(c) Recommendation for allotment of wagons by a sponsoring authority or acceptance of recommendations or issue of sanction by the Railway Administration/Director, Movement (Railways) does not guarantee allotment/supply of wagons. Allotment/supply of wagons would be regulated according to operational exigencies from time to time. Allotment/supplies of wagons maybe cancelled or reduced by Director, Movement (Railways).

(d) The period of validity of programmes/sanctions for rakes/piecemeal movement may be laid down from time to time by Railway Administration/Director, Movement (Railways). The validity of programme/sanction does not guarantee allotment/supply of wagons.

(e) Inter se seniority of the class of consumers would be laid down from time to time by Railway Administration/Director, Movement (Railways) and may be altered/modified from time to time. Within the same class or category of consumers seniority may be fixed from time to time depending upon the operational and other considerations. Railway Administration/Director, Movement (Railways) may permit distress allotment/supply of wagons when considered necessary. Nothing laid down herein shall be considered as contrary to notes (a) to (b) appearing under priority 'E'.

Annexure B mentions the State collieries - about 27 in number who are sponsoring authorities to sponsor coal movements.

9. In *Viklad Coal Merchant case* ((1984) 1 SCR 657 : (1984) 1 SCC 619), the petitioners therein who were coal merchants alleged that sum total of various restrictions including one dated April 1, 1972 introducing abbreviation 'GX' and the Preferential Traffic Schedule specifying priorities under Section 27-A(1) of the Act in their cumulative effect imposed a total ban on transport of coal by the railways and their action was violative of Articles 14 and 19(1)(g) of the Constitution. Other contentions were also raised. Discussing the need for the controlling movement of coal and desirability of channelising coal for public sector by sponsoring agencies and accepting that railways was subject to constitutional check on the monopoly, the court came to the conclusion that instructions issued under Section 27-A were neither violative of the Act nor the provisions of the Act i.e. Sections 28 and 27-A violative of Article 14 or 19 of the Constitution. It was emphasised that a developing country with mixed economy and economic planning had certain targets to achieve. These targets were planned in advance and the economic activity was geared to the achievement of these targets. If the required resources necessary for achieving the targets were readily available, no difficulty would arise. But a developing country had to so distribute its scarce

resources to achieve and accomplish desired targets. This situation is bound to lead to a gap between demand and supply of various facilities. Transport was one of such. Once there was a gap between the demand for transport service offered by the railway and the supply of the service, the resources being not sufficient to meet with all existing demands, the scarce resources would have to be equitably distributed keeping in view the planned target. The equitable distribution would necessarily necessitate imposing of reasonable restrictions according to priorities. Then this Court analysed the Preferential Traffic Schedule of the list of sponsoring authorities and came to the conclusion that the list indicated that the Central and State Governments as well as highly placed Central and State Government officers had been appointed as sponsoring authorities in respect of coal required by different area and industries. This Court therefore rejected the contention that the setting up of recommending authorities in priority 'C' is ultra vires Section 27-A of the Act. This Court observed that transport of coal is according to a plan drawn up a year in advance. Further this plan was subject to the decision of the Standing Linkage Committee. Every meticulous detail was worked out in advance. A daily loading of maximum number of wagons was pre-planned. All the steps indicated therein were arranged including the abbreviation 'GX' in effective implementation of plan movement of coal. Therefore stoppage at wayside station of the booking of coal in wagons could not be described as violative of Section 28 of the Act or imposed unreasonable restrictions violative of Article 19(1)(g) of the Constitution.

10. Dealing with the Preferential Traffic Schedule, this Court dealt with different priorities and analysing priority 'C' which gave the movement of coal to sponsored dealers priority, this Court observed at pages 677-678 of the report as follows : (SCC pp. 636-8, para 16)

Priority 'C'(iii) which deals with coal provides for transport of coal from collieries to various parts in India. It was subjected to varying constructions. It has been extracted earlier. In order to be eligible for obtaining allotment of wagon under Priority 'C', it is necessary for the person indenting the wagon to satisfy the various conditions specified therein. They are : (i) that the coal is to be loaded from the collieries; (ii) that the coal to be loaded is in conformity with the commodity quotas laid down from time to time for certain types of coal and/or in accordance with the programmes and movements sponsored or recommended by the Coal Controller and/or any Committee appointed by him; (iii) or it is sponsored or recommended by the State Government and/or other recommending authorities and accepted by the Railway Administrations; (iv) or it is sponsored or recommended by Director, Movement (Railways), Calcutta; (v) and it must be in accordance with the Zonal Scheme applicable to each field and the principles of transport rationalisation in force from time to time. In order to comply with the preconditions for eligibility under Priority 'C', a list of sponsoring authorities authorised to sponsor coal movements is drawn up and is set out in Annexure 'B' to the Preferential Traffic Schedule. These general conditions are further subject to Notes A to E. Why such an exhaustive and detailed provision is made is not difficult to answer. Coal forms 32% of the total transport of goods handled by the Railways. On an average, more than 10,000 wagons will have to be allotted daily for transport of coal. Coal being a primary source of energy used by heavy industries, electricity generating plants, steel plants as also cooking fuel used in the remotest parts of the country, it is necessary to handle its transport with scientific precision. Therefore, there is a prior planning about a year in advance drawn up by the Director, Movement (Railways) setting out Zonal Scheme of distribution applicable to each coalfield and the principles of transport rationalisation in force from time to time. The purpose underlying setting up of sponsoring and recommending authorities is to ascertain the needs of various regions of the country who in their respective regions would be in close and intimate contact with the consumers of coal both industrial and individual. Even though power has been conferred on them to sponsor or recommend indenting of wagons of coal from collieries this network of sponsoring and recommending authorities is subject to the Zonal

Scheme applicable to each coalfield and the principles of transport rationalisation in force from time to time. The nerve-centre is the Director, Movement (Railways) of all the activities connected with transport of coal. In addition to this the Government has set up a Standing Linkage Committee in the Department of coal in the Ministry of Energy. The Committee assesses the link and requirement of particular source of coal. The Committee keeps in view the requirements of such major industries and establishments using coal like the Railways, thermal power stations, fertiliser plants, cement plants steel plants, textile factories, chemical industries and the like. This very narration would show that if there is disturbance in regular supply of coal to this priority sector resulting in their closure, there would be a ripple affecting various ancillary industries creating a major dislocation in the national economy an escalating haunted spectre of labour and unemployment. That is why planning is undertaken every year in advance and, but for any emergency it is considered inadvisable to disturb the advance planning because any such disturbance result in serious dislocation of this primary source of energy being distributed all over the country keeping in view national priorities.

11. The first condition indicated in priority 'C'(iii) is the coal to be loaded from collieries. This is one of the conditions. It has however been found and it is further stated and admitted by the railways that the railways had been allotting wagons and rakes to its sponsored traders even after the judgment of this Court in Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619) in priority 'C' when loaded from various stations nominated for coal loading on N.F. Railways. For movement of Khasi coal there is no station at colliery siding. As such the coal loaded from the stations nominated for coal loading on N.F. Railway had been taken as coal loaded from collieries. This was not pointed out to the court in Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619). One party M/s Manglam Enterprises - the respondent to SLP as well as to the writ petition filed a petition before the Gauhati High Court against the registration of indents on the basis of the priorities granted by other High Court, namely the Calcutta High Court. The Gauhati High Court passed its order in the aforesaid civil rule set out hereinbefore asking the railways to allot wagons in priority 'C' to the sponsored traders only when they fulfilled the five conditions set out in the judgment of this Court as set out hereinbefore, otherwise the registration would be made under 'E' priority and allotment of wagons rakes shall strictly be according to the seniority of indents at the booking stations as per Rule 201 of the Goods Tariff. It was further directed that all existing indents registered under item 'C' for the parties not fulfilling all the five conditions were to be covered in 'E'.

12. In pursuance of this order, the railways have been permitting loading of coal by those having sponsorship certificate and others as per various High Courts orders under item 'E' including M/s Bansal & Co. even though the indents might have been registered under item 'C'. This has resulted in the present special leave petitions as well as the writ petition.

13. As mentioned hereinbefore one of the conditions is that coal should be loaded from collieries and this condition is not fulfilled in the case of Khasi coal as there is no colliery in Meghalaya State unless the nominated stations in Assam are treated as colliery sidings for Khasi coal. Railways have issued a notification to that effect.

14. Two contentions were urged before us that those sponsorers who had to load coal from stations which are not collieries should not be given priorities in priority 'C'. Secondly, the Preferential Traffic Schedule enjoins that the movement of traffic schedule should be controlled by Controller of Movements and not by the General Managers of the regional railways.

15. So far as the first contention is concerned, it is true that railways had permitted movement of coal from nominated railway stations which are not at collieries. This had to be done in the interest

of equitable distribution of coal to the whole country. Otherwise State of Meghalaya which has no railway stations at the colliery sidings will not be able to transport any coal for the need of Punjab or north. This would be improper if there is coal in Meghalaya and there is need in Punjab and north then the scheme should be so read that even the nominated stations in Assam, nominated by high authorities of railways, should be treated for the purpose of the scheme as colliery sidings for Khasi coal in those areas. This railways did prior to the order of the Gauhati High Court. This was proper interpretation of the judgment of this Court keeping in view the rationale of the said decision and this should be adhered to.

16. The second contention was that this was not canalised by the Controller of Movements. It is true that the Controller of Movements who had the general idea of the scheme would know all of the movements. But this is a sponsored coal and General Managers of the railways would also know about the movements of coal.

17. Mr Ghosh appearing for some of the respondents submitted that the Preferential Traffic System was supported and reservation in priority 'C' was sustained subject to the conditions that the coal must be booked from the collieries and further urged that where in situations such coal could not be booked from the collieries, there was no warrant in the decision of this Court in Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619) to permit as has been done in this case loading of coal from nominated stations by railways. We are unable to sustain the submission made on behalf of the respondents on this ground. It is true that this Court in the aforesaid decision permitted the preferential traffic system on the basis of priority 'C' and one of the main conditions of priority 'C' was that booking of coal must be from the collieries. But the situation like the one we have before us is that areas having coal fields or having excess quantity of coal available for use in other parts of the country, having no railway stations in the collieries cannot supply coal to those places in Punjab and north where coal is required. This would be contrary to the system of equitable and reasonable readjustment of rights between the different sectors, upon the whole basis of which the decision of this Court rested in Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619), unless the nominated stations, stations nominated by the railways are treated as 'railway stations' in collieries in the spirit of Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619). We read it accordingly. We may further note that there was no allegation that the power of nomination so far has in any way been misused.

18. The second objection was, and there is some substance in that, that there is a zonal schedule and principle of controlled transportation should be borne in mind. In this connection our attention was drawn to page 177 of Special Leave Petition No. 632 of 1985 indicating the zonal rationalisation scheme for movement originating from different coal fields, where item (I) mentions Assam Fields. The area of Meghalaya falls within the Assam Fields. The list of zonal rationalisation of movement of coal from different coal fields suggests that such zonal rationalisation must be controlled by Central authorities and not by General Managers of different railways. This was vital for free and equitable distribution and was necessary for the ceilings for the year 1985 to be observed by sponsoring authorities for the core sectors by the Central and State sponsoring authorities for non-core sectors and these were indicated in Annexures 1-A, 1-B and 1-C of the said scheme. It was further submitted that in Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619) at page 668 of the Report (SCC p. 629), this Court emphasised that coal loading is a matter of huge dimensions and the Department of Coal, Ministry of Energy had set up a Standing Linkage Committee. The movement of such coal must be such that it should be coordinated by the Central authorities like the Coal Controller and cannot be done haphazardly by the General Managers of the different regions. As indicated before, there is some substance in this. But if the movements are coordinated and for this the Controller of Coal as well as General Managers, in case one authority requisitions wagons and

intimates the other, there should be sufficient compliance. In this case where requisitions have already been issued and sanctioned with the knowledge of the controller of Coal (because the procedure followed postulated that every item was intimated to him and was not objected), then there has been sufficient compliance. In future movements of coal should be sanctioned by the Zonal Managers of Railways with the prior consultation and concurrence of the Coal Controller. This can be achieved quickly if intimation of the same is sent to the Controller and no objection is received immediately, it will be deemed to have been sanctioned. So far as these cases are concerned, the indents for which wagons have been issued and which were cancelled due to the judgment of the Gauhati High Court should forthwith be rescinded and M/s Bansal & Co. and others similarly situated like them should be permitted to load the coal in wagons in pursuance of the wagons issued in their favour. We order as follows :

(1) that the stations nominated by the railways in Assam and Meghalaya Zones should be treated as stations at colliery sidings in terms of the directions given in Viklad case ((1984) 1 SCR 657 : (1984) 1 SCC 619).

(2) that the allotment of wagons made by the Zonal Managers should be adhered to so far as these have already been made and coal should be loaded but in future Zonal Managers should follow the procedure in making allotments indicated in this judgment.

(3) that in cases where the General Managers sanction movements of coal, immediate intimation should be given to the Controller of Movements and vice versa. These two authorities must act in harmony, and in consultation.

(4) that except these directions there will be no order on the special leave petitions as well as no order on the writ petition and these are disposed of accordingly.

19. Parties will pay and bear their own costs.

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