

Bira Kishore Naik

Vs

Coal India Ltd. and Others

Writ Petition No. 12591 of 1983

(K. N. Singh, O. Chinnappa Reddy JJ)

07.05.1986

JUDGMENT

SINGH, J. –

1. By means of this petition under Article 32 of the Constitution, the petitioner has invoked the jurisdiction of this Court purporting to do so on behalf of 700 workmen claiming relief for issue of a writ of mandamus directing the respondents to declare that Natundihi Pahariabera Colliery has vested in the Central Government and in the alternative directing the Union of India to take over the colliery under the Coal Mines (Nationalisation) Act, 1973 and treat the petitioner and other workmen as workmen of the Central Government and to work the colliery by employing the workmen and to pay them arrears of their wages with effect from April, 1980.

2. Subodhchandra Mondal, respondent 4 obtained a composite lease for mining coal and fire clay and other minerals for a period of 30 years in respect of an area of 344.44 acres comprising Natundihi Pahariabera Colliery from the Government of West Bengal. According to the petitioner Subodhchandra Mondal after obtaining permission from the authorities commenced the extraction of coal from the mine in 1973 and in that connection he employed the petitioner and 700 workmen. Subodhchandra Mondal was prevented from working the coal mine in view of the nationalisation of the coal mines under the provisions of the Coal Mines (Nationalisation) Act, 1973 (hereinafter referred to as 'the Nationalisation Act'). After the closure of the coal mine the petitioner and 700 workmen were rendered unemployed and in spite of several representations to the Government of West Bengal, the Coal India and the Central Government nothing was done to alleviate their hardship. The petitioner has asserted that they have been thrown out of employment although under Section 14 of the Nationalisation Act they continue to be the employees of the Central Government and are entitled to their wages. On behalf of Coal India respondent 2 a government company, counter-affidavit has been filed disputing the petitioner's claim. It is asserted that although Subodhchandra Mondal had obtained lease for extracting coal in the Natundihi Pahariabera in the State of West Bengal but he never extracted coal and there was no coal mine in existence either on the enforcement of the Coal Mines (Taking Over of Management) Act, 1973 or on the date when the Nationalisation Act came into force. It is averred that in March, 1978 the Director General of Mines received information that Subodhchandra Mondal was indulging in extracting coal illegally, action was taken against him. After the enforcement of the Coal Mines Nationalisation (Amendment) Act, 1976 all mine leases including that of Subodhchandra Mondal stood terminated with effect from April 29, 1976 and thereafter Subodhchandra Mondal was not entitled to carry on any coal mine. It is further asserted that since on the appointed day no coal mine existed, there was no question of taking over of the mine either under the Management Act or under the Nationalisation Act. Petitioner and other workmen who may have been employed by Subodhchandra Mondal have no

right to be the employees of the Central Government or of the government company.

3. The Coal Mines (Taking Over of Management) Act, 1973 was enacted to provide for the taking over of the management of coal mines, "pending nationalisation of such mines with a view to ensuring rational and co-ordinated development of coal production and for promoting optimum utilisation of the coal resources consistent with the growing requirements of the country, and for matters connected therewith or incidental thereto". Section 2(b) of the Act defines a coal mine to mean "a mine in which there exist one or more seams of coal". Section 3(1) provides that on and from the appointed day (i.e. January 31, 1973) the management of all coal mines shall vest in the Central Government. Section 3(2) provides that the management of coal mines specified in the schedule shall be deemed to vest in the Central Government. Proviso to Section 3(2) lays down that if after the appointed day, the existence of any other coal mine comes to the knowledge of the Central Government, it shall by a notified order make a declaration about the existence of such mine, whereupon the management of such coal mine shall vest in the Central Government and the provisions of the Act would apply to it. Section 3(5) of the Act provides that if any coal mine is not included in the schedule, every person in charge of a coal mine shall within 30 days from the enforcement of the Act intimate to the Central Government the name and location of such mine giving the names and addresses of the owner thereof. Section 6 empowers the Central Government to appoint Custodians for the purpose of taking over of the management. Section 7 provides for payment of cash amount as compensation for vesting of management. Section 16 vests power in the Custodians to terminate contract of employment entered into by the owner or agent of the coal mine, any time before the appointed day by giving one month's notice to the employees concerned or by giving one month's salary in lieu thereof. The Coal Mines (Nationalisation) Act, (Act 26) of 1973 was enacted by the Parliament to provide for the acquisition and transfer of the right, title and interest of the owners of the coal mines specified in the Schedule. Section 2(b) to the Nationalisation Act defines a coal mine in the same way as the corresponding provision of the Management Act. Section 3(1) provides that on the appointed day i.e. May 1, 1973 the right, title and interest of the owners in relation to the coal mines specified in the Schedule to the Act shall stand transferred to, and vest absolutely in the Central Government free from all incumbrances. The schedule to the Act specified the names of coal mines which stood vested in the Central Government. Section 3(2) provides that if after the appointed day existence of any other coal mine comes to the knowledge of the Central Government, the provisions of Coal Mines (Taking Over of Management) Act, 1973 shall apply to such mines until that mine is nationalised by an appropriate legislation. Section 3(3) as amended by the Coal Mines Nationalisation (Amendment) Act, 1976 provides that on and from the commencement of the Amendment Act (i.e. April 29, 1976) no person, other than -

- (i) the Central Government or a government company or a corporation owned, managed or controlled by the Central Government, or
- (ii) a person to whom a sub-lease, referred to in the proviso to clause (c), has been granted by any such government, company or corporation, or
- (iii) a company engaged in the production of iron and steel, shall carry on coal mining operation, in India, in any form.

4. It further provides that excepting the mining leases granted before the commencement of the Amendment Act in favour of the government company or corporation or any sub-lease granted by any such government, company or corporation, all other mining leases and sub-leases in force

immediately before the commencement of the Amending Act (i.e. April 29, 1976) shall stand terminated. Section 5(1) empowers the Central Government to direct by an order in writing that the rights, title and interest of an owner in relation to a coal mine shall instead of continuing to vest in the Central Government, vest in the government company, whereupon such company shall be the lessee of the coal mine. Section 7 provides that the Central Government or the government company shall not be liable to discharge any liability of the owner, agent, manager or managing contractor of a coal mine in respect of any period prior to the appointed day (i.e. May 1, 1973). Section 11 provides that the general superintendence, direction, control and management of the affairs and business of a coal mine, the right, title and interest of an owner in respect of a coal mine vested in the Central Government under Section 3 in relation to a coal mine in respect of which Central Government has issued direction under Section 5(1) of the Act shall vest in the government company and in case of coal mine in relation to such (sic which) no direction has been made it shall vest in one or more custodians appointed by the government. Section 14 provides that every person who is workman within the meaning of Industrial Disputes Act, 1947 or even if he is not a workman and who has been in the employment immediately before the appointed day (i.e. May 1, 1973) shall become employee of the Central Government or of the government company as the case may be, and shall hold office or service in the coal mine with the same right to pension, gratuity and other benefits.

5. The Management Act and the Nationalisation Act both form part of an integral scheme to nationalise coal mines with a view to prevent slaughtering of coal mines and to provide for the coordinated development of coal production in a scientific manner and also to conserve the coal deposits. The Management Act was precursor of the Nationalisation Act. Under that Act the right, title and interest in the coal mine was not acquired. Instead only the management of coal mine as specified in the schedule to the Act was taken over pending nationalisation of the same. The management of the coal mines which existed on the appointed day namely, January 31, 1973 was taken over and custodians were appointed by the government to carry on the management of the coal mines, but the ownership and title in the coal mine continued to vest in the owners. The employees who were working in the coal mine also continued to be the employees of the owner and the custodian appointed by the Central Government was entitled to carry on the management and exercise control over the employees but the employees could not and did not become the employees of the custodian or the Central Government. The Central Government did not enjoy the right of the owner and the employees employed by the manager on behalf of the owner did not become the personal employees of the manager. They continued to be the employees of the owner. The management was carried out at the cost and for the benefits of the owner as was held by this Court in *Central Coal Fields Ltd. v. Bhubaneswar Singh* ((1984) 4 SCC 429). There is no provision under the Management Act like Section 14 of the Nationalisation Act protecting the interest of the existing employees or conferring right on them to be treated as employees of the Central Government. The Management Act does not contain any provision protecting the interest of the employees of the coal mines specified in the schedule.

6. The Nationalisation Act was enacted "for the acquisition and transfer of the right, title and interest of the owners in respect of the coal mines specified in the schedule with a view to reorganising and reconstructing coal mines so as to ensure the rational, coordinated and scientific development and utilisation of coal resources consistent with the growing requirements of the country, in order that the ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good and for matters connected therewith or incidental thereto". The Act came into effect on May 1, 1973. Under Section 3 of the Nationalisation Act the right, title and interest of the owners in relation to only those coal mines

stood transferred and vested in the Central Government which were specified in the schedule attached to the Act. The coal mines which were not specified in the schedule were not acquired and the owners' right, title and interest in relation to such coal mines remained unaffected. It appears that even after the nationalisation of coal mines a number of persons holding coal mine leases unauthorisedly started mining of coal in reckless and unscientific manner without regard to consideration of conservation of coal, safety and welfare of workers. They were resorting to slaughter mining by superficial working of outcrops and thereby destroying a valuable national asset and creating various problems. In various areas illegal and unauthorised operations were carried on without any assessment of reservations in regard to quality and quantity of coal consequently no scientific exploitation could be undertaken. It was therefore considered that it would not be inappropriate either to nationalise these unauthorisedly worked mines after taking them over under the Coal Mines (Taking Over of Management) Act, 1973 or to get the concerned mining leases prematurely terminated and regranted to government companies under the Mining and Minerals (Regulation and Development) Act, 1957. In order to achieve this purpose the Coal Mines (Nationalisation) Amendment Ordinance was promulgated on April 29, 1976 providing that no person other than the Central Government or a government company or a corporation owned, managed or controlled by the Central Government, or a person to whom a sub-lease has been given by any such government, company or a corporation or a company engaged in the production of iron and steel, shall carry on coal mining in any form. It further provided that all mining leases granted to any person excepting the mining leases granted in favour of a government company or a corporation shall stand terminated insofar as they relate to minning or mining of coal. The purpose of the Amending Act was to put an end to the unauthorised coal mining and to terminate the leases existing in favour of the private persons. The Ordinance was converted into the Coal Mines (Nationalisation) Amendment Act 67 of 1976. The validity of the Amending Act was challenged by the owners of the coal mines before this Court. In *Tara Prasad Singh v. Union of India* ((1980) 3 SCR 1042 : (1980) 4 SCC 179 : AIR 1980 SC 1682) a Constitution Bench of this Court upheld its validity.

7. At the outset of the hearing of the petition Shri L. N. Sinha, learned counsel appearing on behalf of respondent 1 and 2 raised a preliminary objection relating to the maintainability of the petition under Article 32 of the Constitution of India. According to his submissions the questions raised in the petition relate to employment which do not involve enforcement of any fundamental right under the Constitution as such petition under Article 32 is not maintainable. Sri Govind Mukhoty learned counsel for the petitioner vehemently contested the preliminary objection and urged that Article 21 of the Constitution guarantees right to life, which right would be meaningless unless the citizen has a right to live with dignity. According to him right to get employment is implicit in the right to life and as such petition under Article 32 is maintainable. He referred to a number of decisions of this Court in support of his submissions. We do not consider it necessary either to elaborate points raised by the learned counsel for the parties or to discuss the authorities cited by them as we do not consider it necessary to express any opinion on the preliminary objection since the petition is bound to fail on merits.

8. Admittedly Natundihi Pahariabera Colliery was not specified either in the schedule to the Management Act or in the schedule to the Nationalisation Act, the management of the colliery of Subodhchandra Mondal, respondent 4 was neither taken over by the Central Government nor was it nationalised under the Nationalisation Act. In the absence of nationalisation of the said colliery, the petitioner and other employees, even if they had been working in the said colliery could not get benefit of Section 14 of the Nationalisation Act as Section 14 protects the interest of those workmen who may have been working in a coal mine, specified in the schedule to the Nationalisation Act.

The employees of a private owner even though working in a coal mine are not entitled to be treated as employees of the Central Government unless the coal mine is nationalised and specified in the schedule to the Nationalisation Act. Since Natundihi Pahariabera Colliery was not specified in the schedule to the Nationalisation Act the workmen who may have been under the employment of Subodhchandra Mondal are not entitled to the benefit of Section 14 of the Nationalisation Act. Faced with this situation counsel for the petitioner urged that Natundihi Pahariabera Colliery was a coal mine as defined by Section 2(b) of the Management Act on the appointed day, but the same was not specified in the schedule to the Act due to some error. He further urged that since the Central Government had acquired knowledge about the existence of the mine it was under a legal duty to issue a notified order making declaration about the existence of such mine and to take over its management. Proviso to Section 3(2) of the Management Act confers power on the Central Government to make declaration about the existence of a coal mine for the purpose of taking over of its management if the existence of such coal mine comes to its knowledge after the appointed day. This provision pre-supposes the existence of the coal mine as defined by Section 2(b) of the Management Act on the appointed day namely, January 31, 1973. The legal duty cast on the Central Government to issue a notified order about a coal mine for the purpose of including the same to the schedule under the Management Act would arise if such coal mine as defined by the Management Act existed on the appointed day, no such legal obligation would be on the Central Government to issue any notified order making declaration as contemplated by Section 3(2) of the Management Act even though the Central Government may have acquired knowledge about the existence of coal mine. The prerequisite for the exercise of the power is the existence of a coal mine on the appointed day as defined by Section 2(b) of the Act. There is a serious dispute about the existence of Natundihi Pahariabera Colliery on the appointed day namely January 31, 1973. Since this question is a question of fact we would determine this question on appraisal of the material on record.

9. The petitioner has asserted that Natundihi Pahariabera Colliery was a coal mine within the meaning of Section 2(b) of the Management Act existing on the appointed day namely, January 31, 1973. Subodhchandra Mondal, respondent 4 the owner of the said colliery has filed his own affidavit supporting the petitioner's claim. Subodhchandra Mondal has asserted that he started extracting coal after giving information to the authorities of the mining department, in support of this assertion he referred to a letter of the Director of Mines Safety dated December 2, 1972 copy of which has been annexed to his affidavit. On a perusal of the same we find that Subodhchandra Mondal had given a notice in Form A to the Director General, Mines Safety, Burdwan on November 2, 1972 giving intimation about his intention to open the mine with effect from January 1, 1973. In reply to that notice the Joint Director of Mines Safety observed that the relevant area belonged to the category of gassiness and as such steps were required to be taken for statutory precaution under the Coal Mines Regulation, 1957 relating to working of gaseous mines before opening the mine. The Joint Director directed Subodhchandra Mondal to conduct gas survey and to submit a report of the survey to the directorate before opening the coal mine. No material has been placed before the court either by the petitioner or by Subodhchandra Mondal to show that the directions issued by the Joint Director relating to the safety were complied and the extracting of coal had actually commenced on or before January 31, 1973. On behalf of the petitioner a register of employees maintained by Subodhchandra Mondal was produced before us, containing endorsement of the Labour Enforcement Officer dated November 29, 1979. The register relates to the year 1979 and it does not relate to year 1973. The employees register does not by any stretch of imagination support the petitioner's plea that the coal mine was in existence on January 31, 1973. If in reality Subodhchandra Mondal had carried on mining operations then there could be conclusive proof in his possession, including the appointment of a manager to carry on mining operations as required by

Section 17 of the Mines Act, 1952, periodical inspection reports of the Inspector appointed under the Mines Act, 1952, communication of the actual date of opening of the mine to the Regional Labour Commissioner in the prescribed form as required by Payment of Wages (Mines) Rules, 1956 read with Section 2-A(1) of the Mines Act, 1952, assessment of payment of royalty on coal, annual returns required to be filed with the Labour Enforcement Officer, register of wages etc. None of these documents have been produced before the court, although Subodhchandra Mondal, owner of the colliery should in normal course be in possession of copies of these documents who is supporting the petitioner's case. Absence of these documents indicated that no mining operations had been carried on or before the appointed day.

10. As against this the Coal India has asserted that there was no coal mine either on January 31, 1973 or on May 1, 1973 or on April 28, 1976 when the Coal (Nationalisation) Amendment Act, 1976 was enforced. An affidavit has been filed on behalf of the State of West Bengal asserting that there had been no mining operations till April 28, 1976 on the entire property, and since no mining was carried on, Subodhchandra Mondal never paid any royalty, instead he paid only the dead rent. The burden of establishing that Subodhchandra Mondal had carried on mining operations on the relevant date was on the petitioner and respondent 4, they have miserably failed to discharge that burden. On the contrary on the material on record we are driven to irresistible conclusion that no mining operations were carried on by Subodhchandra Mondal on or before the appointed day. This conclusion is further supported by the circumstance that Subodhchandra Mondal did not give any intimation to the Central Government as stipulated by Section 3(5) of the Management Act. Had there been any coal mine in existence on the appointed day as defined by the Management Act Subodhchandra Mondal would have in normal course given intimation to the Central Government. The Management Act and the Nationalisation Act both provide for payment of amounts as compensation to the owners of coal mines whose rights were taken over. In the normal course of human affairs, particularly business affairs, it is difficult to conceive that the owner of a coal mine would not bring to the notice of the Central Government the existence of his coal mine when such coal mine was not included in the schedule to the Management Act or the Nationalisation Act. Absence of such intimation indicates that in fact no coal mine existed.

11. Learned counsel for the petitioner then urged that Central Government is under a legal duty to issue a declaration for taking over the management of Natundihi Pahariabera Colliery, even at this stage, and this Court should issue a mandamus directing the Central Government to issue a notified order to that effect. As already noted no mining operations is permissible by any person other than those mentioned in Section 3(3) of the Nationalisation Act and further as under the Amendment Act 1976 all leases of mines including that of Subodhchandra Mondal stood terminated. If Subodhchandra Mondal was carrying on mining of coal in 1978, it was wholly unauthorised and illegal, therefore no declaration can be made under the Management Act. No mandamus as claimed by the petitioner can be granted.

12. In view of the above discussion there is no escape from the conclusion that Natundihi Pahariabera Colliery was not a coal mine on the appointed day and neither its management nor its ownership ever vested in the Central Government. The petitioner and other workmen are therefore not entitled to the protection of Section 14 of the Nationalisation Act and no mandamus as claimed by the petitioner directing the Central Government to treat the petitioner and other employees as employees of the Central Government can be issued. The Central Government cannot be forced to operate the Natundihi Pahariabera Colliery as the starting of a coal mine would depend upon a number of factors. The petitioner is therefore not entitled to the mandamus directing the Central Government to work the colliery by employing the petitioner and other workmen. The Central

Government is not under any legal obligation to pay arrears of wages as claimed by the petitioner. The petitioner is not entitled to any of the reliefs claimed by him. We cannot avoid a feeling that the writ petition is really inspired by Subodhchandra Mondal. The petition fails and is accordingly dismissed but there will be no order as to costs.

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