

Tata Iron and Steel Co. Ltd.

Vs

State of Bihar and Others

Criminal Appeal No. 129 of 1987 and Civil Appeal No. 576 of 1987

(Ranganath Misra, M. M. Dutt JJ)

03.12.1987

ORDER

1. Both these appeals are by special leave. The civil appeal is directed against the judgment of a bench of the High Court of Patna, Ranchi Bench rejecting a writ petition of the appellants. The criminal appeal is directed against the order of the High Court refusing to quash the criminal proceeding on the ground that it was premature.
2. It is not in dispute that "coal" is a subject covered under List I of Schedule 7 of the Constitution. The Colliery Control Order of 1945 made prior to the Constitution is operating as existing law and is in force. The Bihar Coal Control Order, 1956, defined 'coal' to be "coal received in the State of Bihar other than the Central quota". The definition of coal in the Central Order is found in clause (2)(a). Appellants who are manufacturers of steel had pleaded that about 85 per cent of their coal requirement for the manufacturing process is received from captive collieries and the remaining 15 per cent is received indigenously or by import. It is also asserted that for the purpose of steel manufacturing metallogical coke is necessary and according to them all coke whether it is within the category of 85 per cent is subjected first to conversion into metallogical coke and then utilised in the steel manufacturing process.
3. No difficulty was faced by the appellants notwithstanding the enforcement of the Bihar Coal Control Order of 1956 as in regard to their coal, State Government was not causing any interference; but when the Bihar Trade Article (Licences Unification) Order, 1984 by way of replacement of the 1956 Order came, the authorities of the State Government required the appellants to take out licence as dealer under the 1984 Order and to comply with its other requirement. The State authorities were of the view that the field covered by the Bihar Order of 1984 was different from what was covered by the Central Order of 1945 and the State of Bihar was entitled under the scheme of the Constitution to control the activities which 1984 Order sought to cover. There is no dispute that the 1984 Order defines "coal", "dealer" and "trade article", and has a schedule where coal is entered as an item to which the Order applies. There is hardly scope to doubt, that for matters covered by the Central Order, the State has no power to prescribe differently. In view of the wide definition of 'coal' in the Central Order it has to be found whether what is left after coke is consumed is still not 'coal' as defined.
4. It is relevant to point out that a Division Bench of the Patna High Court presided over by the learned Chief Justice in the case of Black Diamond Industries v. Coal Controller (1986 BLT 127) dealt with a case of coke manufacturers, with reference to the Bihar Order of 1984 and disposed of the matter by a regular judgment. The appellants had relied upon the certain observations of the Division Bench while their matter was being argued before the present Division Bench of the High

Court. The High Court in the impugned order has taken the view that in regard to 85 per cent of captive coal used by the appellants that Bihar Order would not apply, but in regard to 15 per cent of the coal otherwise collected by them, the impugned Order is applicable. This distinction is not intelligible. On the one hand, the reasoning adopted by the High Court would not reach to the conclusion it has reached and the fact that such a conclusion has been reached takes away the foundation of the ultimate decision.

5. We are of the view that very contentious issues were involved in the matter. The aspects that required examination could not have been disposed of in the manner in which the Division Bench has dealt with it. The question as to whether the appellants are dealers, has to be examined as without the appellants being a dealer within the meaning of the 1984 Order, no liability to comply with the impugned requirements of the Order, would arise. Even Mr. Jai Narain found it difficult to ask for sustaining the impugned order as relevant aspects have not been examined. Taking all these aspects into consideration, we set aside the order of the High Court and remit the matter to it for fresh disposal on merits after hearing the parties. Full opportunity should be given to the parties to place their arguments and the case should be disposed of in accordance with law. We did not intend to express any opinion on merit and if anything has been said it should be taken by way of justification for the remit.

6. Now a word about the criminal appeal. We are of the view that only when the writ petition is disposed of by the High Court on merit and if the stand of the appellants is rejected, it would be appropriate to proceed with the prosecution. Undoubtedly, it is at a very preliminary stage but the State would not be interested in the prosecution unless there is any basis for it.

7. We accordingly, direct that the prosecution shall not proceed until the writ petition in the High Court is disposed of on merits and the legal issues are settled. All the interim orders made in this Court shall subsist till the disposal of the matter in the High Court. If there be any complaint of breach or violation of orders or directions, the High Court shall be at liberty to pass necessary orders. We commend that the High Court to dispose of the case within three months from today.

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