

(SUPREME COURT OF INDIA)

Union of India

Vs

Karam Chand Thapar and Brothers (Coal Sales) Limited and Others

HON'BLE JUSTICE R. C. LAHOTI AND HON'BLE JUSTICE ASHOK BHAN

10/03/2004

Appeal (Civil) 2509 of 1997

JUDGMENT

R. C. LAHOTI J

Hon'ble Justice R.C. Lahoti

Just bare essential facts, as ascertainable on retrieval from a jumble of facts, are set out hereinafter, as those would suffice, in our opinion, to appreciate the crux of controversy arising for decision in this appeal. The controversy and the consequent litigation have spread over nearly four decades. In between, the parties have changed their identities by succession, amalgamation or supersession.

The Coal Board, a statutory body has been dissolved and taken over by Union of India. What was M/s.Bhulanbaree Coal Co. Ltd. has taken shape as Oriental Coal Co. Ltd., and then the respondent No.1 hereinafter. We would refer to the present parties only and that reference would include their respective predecessor legal entities.

The Oriental Coal Co. Ltd. shall be referred to as 'Coal Company' for short.

The Coal Company owns and possesses certain coal mines in the State of Bihar. The Coal Board was constituted under the provisions of the Coal Mines (Conservation and Development) Act, 1974, hereinafter 'the Act' for short. However, the said Coal Board was dissolved with effect from April 1, 1975 and all rights, privileges, liabilities and obligations of the Board have come to vest in the Central Government.

There are cross-demands between the parties. It is not necessary to set out the details and particulars of the demands. It would suffice for our purpose to notice that the Coal Company is liable to pay royalty on account of sand extracted by it for the purpose of carrying out stowing operations in the coalfields. We would not enter into yet another controversy which we will briefly set out hereinafter at an appropriate place as to whether it is the Central Government as successor of the Coal Board or the State of Bihar which is entitled to recover the royalty. For the purpose of the present appeal we proceed on an assumption that the amount of royalty on the sand extracted by the Coal Company is due and payable by it to the Central Government.

The fact remains that such obligation to pay the amount of royalty is contractual inasmuch as there is a contract i.e. a mining lease entered into by the Coal Company whereby it has earned the privilege of extracting sand from Damodar River-bed and an obligation to pay royalty on account of sand extracted, calculated at the rate appointed by the mining contract. So far as the quantified amount of royalty on sand is concerned the Coal Company is a debtor and the Union of India is creditor.

The Coal Mines (Conservation & Development) Act, 1974 came into force on and from April 1, 1975. Clause (j) of Section 3 defines "stowing" to mean as the operation of filling, with sand or any other material, or with both, spaces left underground in a coal mine by the extraction of coal. Sub-section (2) of Section 4 specifically empowers the Central Government to make order in writing addressed to the owner, agent or manager of a coal mine, requiring him to take such measures as it may think necessary for the purpose of conservation of coal or for development of coal mines including in any coal mine, stowing for safety. Sub-section (2) of Section 5 specifically obliges the owner of a coal mine to:- (i) execute such stowing and other operations as may be necessary to be taken in furtherance of the objects of this Act in so far as such objects relate to the conservation of coal or development of the coal mine or the utilization of coal obtained from the coal mine; (ii) acquire such stowing and other materials as may be necessary for ensuring the conservation of coal, and safety in, the coal mine; (iii) undertake such other activity as the Central Government may, for the furtherance of the objects of this Act, direct; and so on.

Out of the net proceeds of excise and customs duties on coal, the Central Government is obliged to disburse a certain amount inter alia for the purpose of grant of stowing materials and other assistance for stowing operations and execution of stowing and other operations for the safety of coal mines or conservation of coal. The amount released by the Central Government under Section 9 of the Act to the owner of every coal mine, is required to be credited into the Coal Mine Conservation and Development Account under Section 10 of the Act. The money standing to the credit of the Account shall be applied by the owner of the coal mine only for the purposes specified in sub-section (2) of Section 10 of the Act including, inter alia, the acquisition of stowing and other materials needed for stowing operations in coal mines and the execution of stowing and other operations in furtherance of the objects of the Act amongst others. Under Section 18 the Central Government is empowered to make rules.

In exercise of the power, conferred by the Coal Mines (Conservation and Safety) Act, 1952 on the Central Government, the Central Government has framed the Coal Mines (Conservations and Safety) Rules 1954. Rule 49 provides as under:

"49. Purposes for which assistance may be granted (1) The Board may grant assistance from the

Fund to any owner, agent or manager of coal mine

(a) for stowing or other protective measures which are required to be undertaken by an order issued under sub-section (3) of Section 13 or sub-rule (2) of Rule 35 or sub-rule (3) of Rule 40;

(b) for any measures which in the opinion of the Board are essential for the effective prevention of the spread of fire to or the inundation by water of any coal mine from an area adjacent to it;

(c) for stowing for conservation of coal or washing coal which is required to be undertaken by an order under Rule 36 or 37;

(d) for the following measures voluntarily undertaken by the owner agent, or manager of the coal mine :

(i) stowing operations in the interests of safety or conservation of coal,

(ii) any process of washing or cleaning coal which reduces its ash content and also improves its qualities or,

(iii) any other measures for safety in coal mines or for conservation of coal;

(e) for any other measures undertaken by the owner, agent or manager of a coal mine under the order of the Board to ensure conservation of coal.

(2) The Board may grant assistance to owner of any steel work, blast furnace or coke plant for blending of coal undertaken under the orders of the Board.

(3) The Board may grant assistance to the owner, agent, or manager of a coal mine which is specially handicapped by adverse factors rendering its working uneconomic, but which, in the opinion of the Central Government, should be maintained in production for the purpose of ensuring the conservation of coal. In such cases assistance shall be granted by the Board

(i) with due regard to the circumstances of each case;

(ii) only in respect of such adverse factors as may, from time to time, be specified by the Central Government as entitling a coal mine to receive assistance, and published by the Board in the Official Gazette for general information; and

(iii) in accordance with such procedure as may be determined, and not exceeding such rates as may be fixed, by the central Government, from time to time :

*Provided that the existence or otherwise of adverse factors in any coal mine, the extent to which such adverse factors render the working of the coal mine uneconomic, and the amount of assistance, if any, to be granted to the coal mine, shall be determined by the central Government." **

Coal Board Manual is a compilation of the rules and instructions issued by the Coal Board/Central Government from time to time. Some of them are statutory and some are executive. However, it is not disputed that whatever is contained in the Coal Board Manual is binding on the Coal

Board/Central Government and the coal companies. Vide para 34 of the Manual it is provided that the stowing assistance granted by the Central Government to the Coal Company includes amongst other items, the actual amount of royalty paid for stowing material excavated and transported. Other charges included in the amount of stowing assistance are wages of labour employed in and associated with stowing charges, certain charges related to sand pumps and so on, as stated in the Rules. Thus, it appears that while the Coal Company has to pay royalty on the amount of sand extracted by it for the purpose of carrying out stowing operations, the amount of royalty actually paid is reimbursed by the Central Government to the Coal Company as one of the constituents of the stowing assistance.

So far as the current amount of royalty is concerned there cannot possibly be any dispute as to adjustment or set off inasmuch as the amount of royalty on the quantum of sand extracted by the Coal Company for carrying out stowing operations, shall be actually paid by the Coal Company to the Central Government or anyone else entitled and it is only on such actual payment that the Coal Company would be entitled to be reimbursed for the amount as a constituent of the stowing assistance. So long as the Coal Company does not actually pay the amount or royalty, the question of its being reimbursed would not arise. If the amount of royalty is payable by the Coal Company to the Central Government by way of any arrangement arrived at with the State Government or otherwise the adjustment or reimbursement would pose no problem; for the Coal Company has first to pay the amount of royalty and then seek reimbursement of the amount of royalty included by way of an ingredient in the amount of stowing assistance released by the Central Government to it.

The controversy, however, arose because there were certain arrears of the amount of royalty payable by the Coal Company to the Central Government and the Central Government sought to enforce recovery of the amount of royalty due and payable on account of sand already extracted and utilized in its stowing operations by the Coal Company by making an adjustment from out of the amount payable by the Central Government to the Coal Company as stowing assistance consisting of wages and transportation charges etc. incurred by the Coal Company for carrying out the stowing operations. The Central Government sent a few communications to the Coal Company whereby the Central Government made it clear that the payment of stowing assistance was being withheld and the amount appropriated by the Central Government towards satisfying its demand outstanding against the Coal Company on account of royalty due and payable by the Coal Company to the Central Government on the sand extracted from the river-bed and utilized by it in stowing.

The Coal Company filed a civil writ petition in the High Court of Calcutta. A learned Single Judge held that it was not open for the Central Government to make an adjustment of cross demands and satisfy its contractual demand by making an adjustment out of the amount due and payable on account of its statutory obligation. The learned Single Judge directed the communications to the contrary made by the Central Government to be quashed. The Union of India preferred an intra-court appeal which has been dismissed by the Division Bench. The Division Bench has not only upheld the view taken by the learned Single Judge but it has also proceeded further to opine that under the law it was the State Government which was entitled to recover the amount of royalty on sand, and therefore, there was no question of Central Government raising a demand on account of royalty and withholding the release of stowing assistance pursuant to its statutory obligation.

The question which arises for decision is: whether the Central Government can withhold the release of stowing assistance, which is its statutory obligation to do, for the purpose of satisfying its demand of money arising under the contractual obligation (i.e. in mining lease) incurred by the Coal

Company

qua

it?

Though Shri N.N. Goswami, the learned Senior Counsel for Union of India, has urged that the Coal Company had entered into a contract by correspondence with the Central Government, supported by company resolutions, whereby the Coal Company had agreed for such satisfaction of cross demands but we are not satisfied if such a plea can be successfully urged by the Union of India from the documents and materials available on record. We cannot hold that the Coal Company had agreed to its demand of stowing assistance being set-off against the demand by the Central Government on account of royalty.

No statutory provision has been brought to our notice at the Bar to sustain the claim of the Central Government for such adjustment and satisfaction of cross-demands. We are called upon to decide if such an adjustment is permissible in equity. Shri Goswami, the learned Senior Counsel, has vehemently urged that the right of the creditor to withhold money due and payable by it to its debtor for the purpose of satisfying by appropriation the demand which the creditor legitimately has outstanding against the debtor, ought to be recognized and upheld as a principle of equity emanating from what is just, fair and convenient. The learned Senior Counsel submitted that it would be unfair and iniquitous if the Central Government was compelled to part with the money already available in its hands and left free or compelled to enforce its right of recovery wherein it may fail and consequently left high and dry.

On general principles supported by rationality and reasonability, it appears to be a sound proposition that a person who is obliged to pay a sum of money to another person and also has in his hands an amount of money which that another person is entitled to claim from him then instead of physically entering into two transactions by exchanging money twice that person may utilize the money available in his hands to satisfy the claim due and legally recoverable from such other person to him. However, this equitable principle is not one of universal application and has its own limitations.

"Set-off" is defined in Black's Law Dictionary (7th Edn., 1999) inter alia as a debtor's right to reduce the amount of a debtor by any sum the creditor owes the debtor; the counterbalancing sum owed by the creditor. The dictionary quotes Thomas W. Waterman from 'A Treatise on the Law of Set-Off, Recoupment, and Counter Claim' as stating,

"Set-off signifies the subtraction or taking away of one demand from another opposite or cross demand, so as to distinguish the smaller demand and reduce the greater by the amount of the less;

*or, if the opposite demands are equal, to extinguish both. It was also, formerly, sometimes called stoppage, because the amount to be set-off was stopped or deducted from the cross-demand." **

The writ petition filed by the respondent-Coal Company sought for quashing of the communication made by the appellant-Union of India informing it of its action to withhold the amount of stowing assistance against its claim for arrears of royalty. In effect, the Coal Company was seeking a relief for release of stowing allowance by compelling the Central Government to discharge its such statutory obligation. A debtor making an adjustment or set-off, may have done so in its own volition, nevertheless, the validity of such action shall be called in question and decided by a Court of law wherein the creditor would seek enforcement of his claim while the debtor would raise in defence the plea of adjustment or set-off. Though there is no specific provision of law or settled rule

of procedure governing decision of such dispute arising for adjudication in exercise of writ jurisdiction, yet being a money-claim, there is nothing wrong in borrowing the principles underlying Order 8 Rule 6 of the Code of Civil Procedure and applying the same as governing the discretion of the writ Court.

Sub-rule (1) of Rule 6 of Order 8 of the CPC provides as under :

*"6. Particulars of set-off to be given in written statement. (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off." **

What the rule deals with is legal set-off. The claim sought to be set-off must be for an ascertained sum of money and legally recoverable by the claimant. What is more significant is that both the parties must fill the same character in respect of the two claims sought to be set-off or adjusted. Apart from the rule enacted in Rule 6 abovesaid there exists a right to set-off, called equitable, independently of the provisions of the Code. Such mutual debts and credits or cross-demands, to be available for extinction by way of equitable set-off, must have arisen out of the same transaction or ought to be so connected in their nature and circumstances as to make it inequitable for the Court to allow the claim before it and leave the defendant high and dry for the present unless he files a cross-suit of his own. When a plea in the nature of equitable set-off is raised it is not done as of right and the discretion lies with the Court to entertain and allow such plea or not to do so.

In *Bhupendra Narain Singha Bahadur Vs. Bahadur Singh and Ors.* this Court ruled that a plea in the nature of equitable set-off is not available when the cross-demands do not arise out of the same transaction. A wrong-doer who has wrongfully withheld monies belonging to another cannot invoke any principle of equity in his favour and seek to deduct therefrom the amounts which may have fallen due to him. There would be nothing improper or unjust in telling the wrong-doer to undo his wrong and not to take advantage of it.

In the present case, what the Coal Company has sought to enforce is a statutory obligation of the appellant-Union of India. The Coal Mines (Conservation and Development) Act, 1974 has a public purpose and a beneficial object to achieve. The stowing assistance is released to the Coal Company in the interest of securing safety at the coal mines and the development thereof. In the absence of stowing, there may be accidents, casualties and difficulties of operation. Non payment of stowing allowance may discourage the coal mines from carrying out the stowing operations which would be detrimental to the interest of the workers. It would not be sound exercise of discretion on the part of the Court to permit set-off or recognize an adjustment made out-of-Court which would have the effect of withholding the release of stowing assistance and appropriating the amount thereof for the recovery of dues not arising out of the same transaction.

Shri Jaideep Gupta, the learned senior counsel for the Coal Company, has rightly relied on the decision of Calcutta High Court in *Coal Products Pvt. Ltd. and Anr. Vs. Income-Tax Officer, "M" Ward, Companies District II, Calcutta, and Ors.* 1969 Indlaw CAL 53, wherein a garnishee order was quashed. It was held that the money which is payable by the Coal Board to a Coal Company as and by way of stowing assistance was not available to be paid by the Coal Board to Income-tax

Department for recovery of income-tax dues as that would result in breach of statutory obligation of the Board with regard to the utilization of its fund as laid down in Section 12 of the Act as also in breach of statutory obligation of the Coal Company attaching to the grant of assistance from the Coal Board. Rule 49 referred to hereinabove came up for the consideration of this Court in Industrial Supplies Pvt. Ltd. and Anr. Vs. Union of India and Ors. , in some other context. Vide para 32, this Court observed that if the subsidy receivable from the Coal Board (succeeded by the Central Government) was by way of assistance, the grant being conditional, the recipient thereof would be bound to apply the same for the purposes for which it was granted viz. for the purpose of stowing or other safety operations and conservation of coal mines. In our opinion, in the facts and circumstances of the present case it would not make any difference whether the amount withheld by the Central Government is on account of assistance or reimbursement; in either case the Court would not hold in favour of adjustment being made by the Central Government by setting off the outstanding credit referable to stowing assistance as against the outstanding demand of arrears of royalty.

In our opinion, the High Court has not erred in allowing the writ petition filed by the respondent-Coal Company.

So far as the finding recorded in its appellate judgment by the Division Bench that the Central Government is not entitled to recover the royalty and it is the State of Bihar which only is entitled to demand and recover the royalty from the respondent-Coal Company is concerned, we set-aside that finding but without recording any opinion of ours on that aspect for the short reason that such issue is not required to be adjudicated upon in the present case in view of the finding arrived at hereinabove. We hasten to add that requisite pleadings and necessary material are also not available on record to arrive at a definite finding in that regard.

Before parting we make it clear that the appellant or the State of Bihar, as the case may be, is free to recover arrears of royalty by adopting such other method as may be available under the law.

The appeal is dismissed. No order as to the costs. #