

(1990) 03 CAL CK 0002
In the Calcutta High Court
Case No : C.O. No. 3658 (W) of 1989

Ashoke Kr. Banerjee

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 28-03-1990

Acts Referred:

Coal Mines (Nationalisation) Act, 1973 — Section 2, 3(3)(b), 3(3)(c), 30(2)
Coal Mines (Nationalisation) Amendment Act, 1976 — Section 3, 4
Constitution of India, 1950 — Article 226

Citation : AIR 1990 Cal 409 : 94 CWN 1194

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Ashok Kr. Sen, Amiya Narayan Mukherjee and Uma Prasad Mukherjee, for the Appellant; P.K. Malick, for the Respondent

Judgement

1. The petitioner, in this application under Article 226 of the Constitution of India prays, inter alia, for certain mutually exclusive orders for directing the respondents concerned to take delivery of coal mixed with the mining operation of fire clay upon payment of costs and expenses for lifting of such coal from the fire clay mine of the petitioner and to direct the respondents to enable the petitioner to carry on smoothly the fire clay mining operation of the petitioner in terms of the deed of lease dated August 2, 1975 and for quashing "the" purported order "if there be any", not to prevent the petitioner from carrying on the fire clay mining operation in terms of the aforesaid deed of lease. The respondent No. 3 Eastern Coal fields Ltd. has contested the case by filing an affidavit-in-opposition.

2. Bereft of verbiage the short case of the petitioner is that by a registered deed of lease dated August 2, 1975, a copy of which has been annexed to the petition marked with the letter "A", the Government of West Bengal granted to the petitioner a mining lease for fire clay in respect of the land measuring about 43 acres. Clause 9 of Part VII of the aforesaid lease, inter alia, requires the lessee to report to the State Government the discovery in the leased area, of any mineral

not specified in the lease within 60 days of such discovery along with the full particulars of nature and position of each such find. If any mineral not specified in the lease is discovered in the leased area, the lessee shall not win and dispose of such mineral unless such mineral is included in the lease or separated lease is obtained therefore.

3. It is stated that in course of the mining operation of the said fire clay mine the petitioner noticed that some inferior quality of coal was coming out mixed with fire clay.

4. It is the admitted case of the petitioner that the said coal was extracted from the said mine but was separately dumped on the open land in the said mine (vide paragraphs 6, 10, 13 and 16 of the petition). It is further stated in the petition that on the discovery of coal in the mine the petitioner sought to draw the attention of the authorities concerned for instruction and advice but the respondents did not take any active interest in the matter. Thereafter the Eastern Coalfields Ltd. advised their Chief Geologist to look into the matter and the said Chief Geologist informed the respondent No. 3 that "it is unknown to them under which provision the petitioner has been prevented from mining fire clay." .

5. It may incidentally be mentioned here that a Chief Geologist is not supposed to be conversant with the technicalities of law. It is his duty to carry out the orders of the Superior in the matter of excavations and inform the results thereof but not to advise his superior about the provisions of law relating to such excavations.

6. The petition is strewn with statements which go to show that the layer of coal which may also be called the seam of coal was factually waned or mined at least to a considerable extent while winning the fire clay from the demised mine.

7. The question involved in the case relates to the power, rights and authority of the petitioner to carry on the mining operation in respect of the demised mine containing primarily fire clay when admittedly there are seams of coal albeit, burnt coal, in the said fire clay mine. Mr. Ashok Kr. Sen, learned Senior Counsel appearing for the petitioner laid great emphasis, for dual purposes, on the case of Tara Prasad Singh and Others Vs. Union of India (UOI) and Others, . That is a landmark case deciding the rights of owners of mine in respect of both coking coal mines and coal mines proper as also composite mines in which there are alternate seams of coal and fire clay. Common experience has it that coal and fire clay are frequently found together in the bowels of earth like twins in the womb of the mother. The question that fell for consideration of the Supreme Court was whether mine owners in case of composite mines could win fire clay although it was the admitted position that fire clay could not be mined without undertaking the mining operation of coal. Mr. Sen laid great emphasis on the fact that the Supreme Court decided the questions of law involved in the backdrop of composite mines having alternate seams of coal and fire clay but submitted that in the instant case the lease was exclusively for winning fire clay and not

coal and as such the lease of the petitioner is not hit by the ratio of the decision laid down in the aforesaid case. It is curious that both the petitioner and the Eastern Coalfields Ltd. referred to the same case but for different purposes. Although the said case is a landmark case yet it is not necessary to refer to all the paragraphs of the said decision. Suffice it to refer to only a few sentences of that case. Paragraph 50 of the said judgment at page 1700 reads as follows:--

"Coupled with this is the unambiguous wordings of Section 3(3)(b) and section 3(3)(c) of the Nationalisation Act of 1973, which were introduced therein by Section 3 of the Nationalisation Amendment Act. Section 3(3)(b) says that excepting the mining leases and sub-leases granted before the commencement of the Act in favour of or by certain bodies or authorities, all other mining leases and sub-leases in force before such commencement, "shall in so far as they relate to the winning or mining of coal stand terminated."

Section 3(3)(c) provides that :

"No lease for winning or mining coal shall be granted in favour of any person other than the Government company or corporation referred to in Clause (a)".

These provisions carry the scheme of the Nationalisation Act to their logical conclusion by emphasising that the target of this Act is coal mines, pure and simple. What stands terminated u/s 3(3)(b) is certain mining leases and sub-leases in so far as they relate to the winning or mining of coal. The embargo placed by Section 3(3)(c) is on the granting of leases of winning or mining coal to the persons other than those mentioned in Section 3(3)(a)".

Paragraph 53 of the said decision at page 1701 reads as follows:--

"But what than is the sequitur? Can the lessees of composite mines (like the petitioners in writ petitions Nos. 257, 220, 111, 600, 1130-1134, 352, 221 and 178 of 1977) who hold composite mining leases for winning coal and fine clay continue their mining operations unabated despite the provisions of Nationalisation Amendment Act? We think not. It is one thing to say that a composite mine is outside of the scope of definition of coal mine in Section 2(b) of the Nationalisation Act of 1973 and quite another to conclude therefrom that the other provisions introduced into the Act by the Nationalisation Amendment Act will have no impact on composite leases for winning coal and fire clay. Section 3(3)(a) which was introduced into the parent body by the Nationalisation Amendment Act provides expressly that on and from the commencement of Section 3 of the Amendment Act that is front April 29, 1976 that no person other than those mentioned in clauses (i) to (iii) shall carry on coal mining operation in India in any form. Section 4 of the Nationalisation Amendment Act which introduced sub-section (2) in Section 30 of the parent Act provides : Any person who engages or causes any other person to be engaged in winning or mining coal from the whole or part of any land in respect of which no valid prospecting licences or mining lease or sub-lease is in force shall be punishable with imprisonment for a term which may extend to two years and also with fine which

may extend to ten thousand rupees".

These provisions of Section 3(3)(a) and 30(2) of the parent Act will apply of their own force, whether or not the lessee holds a composite lease for winning coal and fire clay and whether or not the mine is a composite mine containing alternate seams of coal and fire-clay. In other words as contended by the learned Solicitor General, if a person holding a composite lease can do fireclay mining without mining coal, he may do so. But if he cannot win or mine fire clay without doing a coal mining operation he cannot do any mining operation at all. If he does so, he will be liable for the penal consequences provided for in Section 30(2) of the Nationalisation Act, 1973."

Paragraph 54 of the said judgment reads as follows : The provision contained in Section 3(3)(a) totally prohibiting the generality of persons from carrying on coal mining operation in India in any form and the penal provision of Section 30(2) virtually leave with the lessees of composite mines the husk of a mining interest. That they cannot win or mine coal is conceded and, indeed there is no escape from that position in view of the aforesaid provisions..... The conclusion is therefore inevitable that the lessees of composite mine will for all practical purposes have to nurse their deeds of lease without being able to exercise any of the rights flowing from them. On their own showing they will be acting at their peril if they attempt to win fire clay. If they cannot win fire clay without winning coal they cannot win fire clay either even if they hold composite leases under which they are entitled to win coal and fire clay.

Their Lordships of the Supreme Court held in paragraph 57 of the aforesaid judgment that the petitioner who holds composite mining leases shall be entitled, for the duration of the unexpired portion of their existing lease to carry on mining operation for the purpose of winning fire clay so long as and to the extent that they do not carry on any coal mining operation or engage in winning or mining coal."

8. Mr. Sen stated with some force that the observation made by the Hon"ble Supreme Court relates only to the cases of composite mines but I am afraid that the said decision applies with equal force in the facts of the present case. The ratio of the decision seems to be that whether it is a case of composite lease or a lease exclusively for winning fire clay, the bar of S. 3(3)(a) read with subsection (2) of S. 30 of the Coal Mines (Nationalisation) Act, 1973 prohibits the winning or mining of coal simpliciter even in case of a lease exclusively for winning fire clay if it becomes impossible to win fire clay without winning coal. The moment the lessee reaches the layer or seam of coal he has to stop all operations and therefore can only nurse the deed of lease.

9. Mr. Sen in this connection referred to the "Principle of statutory interpretation, 4th Edition, 1988 by the Hon"ble Mr. Justice G. P. Singh, former Chief Justice of M.P. High Court. It is not necessary to refer to the purple passages indicated by Mr. Sen inasmuch as those are salutary principles, universally respected but even

those principles point to the fact that if any of the provisions of a statute is unambiguous then no effort should be made by the court to excavate the inner thoughts of the legislature embodied in the languages of the provisions of law. *Litera legis* is the rule and sentential *legis* can be taken recourse to only when *litera legis* lands one in ambiguity. In this connection I cannot resist the temptation to refer an observation of the Hon'ble Mr. Justice Vivian Bose in the case of *The Seksaria Cotton Mills Ltd. Vs. The State of Bombay*, . In paragraph 23 at pages. 281 and 282 His Lordship was pleased to observe as follows:--

"The more learned a person is in law, the more puzzled he would be for it is not till one is learned in the law that subtleties of thought bewilderness arise at the meaning of plain English words, which any man of average intelligence not versed in the law, would have no difficulty in understanding."

10. Not being that learned in law I did not feel much difficulty in understanding the relevant provisions on a plain, though careful reading of the provisions of S. 3 read with Section 30(2) of the Coal Mines (Nationalisation) Act, 1973. I hold that in the instant case if the petitioner can win fireclay without winning or being engaged in the mining operation of coal, he is free to do so but if in course of winning or mining fire clay he finds it impossible to win fire clay without winning coal, he has to stop all activities at that point, regardless of the fact that the lease is only for winning fire clay and not for mining coal. It is the admitted position that the petitioner has actually raised coal from the bowels of earth and in fact is asking for a command from this court to direct the authorities concerned to take such coal on payment of costs and charges for raising such coal. But in the instant case by such admission the petitioner has not necessarily rendered, himself liable to be treated under the penal section of the Act namely, sub-section (2) of S. 30 *inter alia*, inasmuch as in the instant case the action of the petitioner in raising coal have been only accidental and not intentional as it will appear from the pleadings which go uncontroverted that the moment the layer of coal was reached the petitioner not only stopped all mining activities but informed the respondents about the existence of such coal and asked for their advice. In fact that petitioner also approached this Court for a clarification on the point invoked in the matter.

11. For reasons stated above, this application fails and is rejected.

12. There will be no order as to costs.

13. Application dismissed.