

(2004) 02 JH CK 0023
In the Jharkhand High Court
Case No : CWJC No. 1013 of 1996 (R)

Awadh Kishore Sahay

APPELLANT

Vs

Bharat Coking Coal Ltd. and Others

RESPONDENT

Date of Decision : 17-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 18

Citation : (2004) 1 BLJR 700 : (2004) 2 JCR 74

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Pradip Modi, Rajiv Sharma, Sheela Prasad, V. Shivnath and Birendra Kumar, for the Appellant; A.K. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioner has prayed that he may be allowed to remove the slurry/sludge/ fine dust accumulated on his raiyati land, after being abandoned by the respondent-Company as a waste product and/or allow him to take such other appropriate steps in relation thereto as he may deem fit and proper.

3. Petitioner filed a writ petition for the aforesaid reliefs in Calcutta High Court being C.O. No. 1754 (W). 1990, an interim order was passed. Ultimately, the said writ petition was dismissed on 21.12.1994 on the ground of territorial jurisdiction. The Letters Patent, Appeal was dismissed on 4.7.1995. The SLP (Civil) No. 20537/1995 was also dismissed by Hon''ble Supreme Court on 22.9.1995.

4. Petitioner's case is that the respondent-Company cannot claim the abandoned slurry accumulated on his land. The land of the petitioner has been rendered useless. The Central Government has not framed rules u/s 18 of the Mines & Minerals (Regulation & Development) Act, 1957 (hereinafter referred to as the

Act), therefore the petitioner can deal with the slurry in the manner he likes. The slurry is causing air & water pollution also.

5. Petitioner further stated that he raised similar issues before this Court earlier in CWJC No. 1191 of 1995 (R) in relation to a different plot of land. However, the Division Bench of High Court in the case reported in Keshri Mal Jain Vs. State of Bihar and Others, held that slurry deposited on raiyati land is coal and belongs to the State Government. This decision was overruled by the Full Bench in the case reported in Kundori Labour Co-operative Society Ltd. and Vs. State of Bihar and Others, The Full Bench held that slurry is not coal.

It may be noticed here that regarding abandonment of slurry, the Full Bench found that it is not possible to enter the thicket of disputed questions of fact and to adjudicate thereon. The writ petitions were dismissed and the parties were left to their ordinary remedies under the law, (please see para 33 of the judgment).

6. The matter went to Hon''ble Supreme Court. The judgment of Supreme Court is reported in (1990) 4 SCC 557, Bharat Coking Coal Limited v. State of Bihar and analogous cases.

7. Relevant portions of Section 18 as amended by the Amending Act 37 of 1986 reads as under :

"18(1) It shall be the duty of the Central Government to take such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mine operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit."

18(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely ;

(k) "the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine."

8. The Supreme Court found that the Central Government has not framed any rules either u/s 13 or u/s 18 of the Act but it does not affect the legal position. It held in paragraphs 18, 22 and 24 as follows :

18. "Thus, power to frame rules, regulating the discharge or disposal of slime or slurry emanating from a coal mine including its collection from the river bed or from raiyati land after its escape from the washery of the coal mines, would clearly fall within the expression "conservation of mineral." Slurry admittedly contains coal particles, its collection from land or river is reasonably connected with the "conservation of mineral." Section 18(2)(k) which expressly confers power on the Central Government to regulate disposal or discharge of waste of a mine makes the Parliamentary declaration apparent that the State legislature is not competent to regulate waste discharge of a coal mine. Mere absence of any

rule framed by the Central Government u/s 13 or 18 of the Act with regard to the disposal of slime or waste of a coal mine does not confer legislative competence on the State legislature to make any law or rule.

.....Since Section 18 of the Act covers the field with respect to disposal of waste of a mine, there is no scope for the contention that until rules are framed the State Legislature has power to make law or rules on the subject. Once the competent legislature with a superior efficacy expressly or impliedly evinces its legislative intent to cover the entire field on a topic, the enactments of the other legislature whether passed before or after would be overborne. Mere absence of rules framed by the Central Government, does not confer power on the State legislature to make law on the subject. Since the legislative field with regard to the framing of rules relating to the disposal of slime and waste of coal mine is fully covered by Section 18, the State legislature is denuded of its power of making any law with regard to those matters.

22.....The State of Bihar as well as the respondents in whose favour the right of collection of sludge/slurry has been settled have all along taken the stand that the discharge of slurry/ sludge by the appellant's washery into the river has been polluting the river and affecting the fertility of land, therefore, the State Government, permitted the removal of the slurry/sludge with a view to prevent pollution of the river and the land. On the admitted facts the entire activity relating to disposal of the industrial waste, slime or tailing in the shape of sludge/ slurry escaping from the washeries of the appellant's coal mines including the prevention of pollution of river water or land is covered by Section 18 of the Act.

.....We are therefore of the opinion that in view of the admitted case of the parties disposal of sludge/ slurry coming out from the washeries of appellant's coal mines is covered by the Act and the State Government had no authority in law to grant any lease or settlement authorizing collection of the same from the river bed or from any other land. Consequently, the respondents in whose favour settlements have been made by the State Government have no right or authority to collect sludge/slurry either from the river bed or from any other land.

24. In view of the above discussion, we hold that the slurry which escapes from the appellants' washeries is mineral and its regulation is within the exclusive jurisdiction of the Central Government. We further hold that in view of the Parliamentary declaration made by Section 2 of the Act and having regard to Section 18 of the Act and State Government has no authority in law to make a settlement or grant any lease to any person for the collection of slurry deposits either from the river bed or other land. The impugned settlements made in favour of the respondents by the State Government are illegal and the respondent-lessees have no right or title to collect the slurry deposits, therefore, they are restrained from lifting or collecting the same from the land in dispute."

9. Petitioner claims that he has purchased the plot No. 347 of Khatiyani 102, Mouza Gopinathdih, P.S. Putki, measuring 2.28 acres, vide registered deed dated

7th March. 1989.

10. Learned counsel for the petitioner in support of his title to the said land also relied on the letter dated 5/10th July, 1999 (Annexure-11), by which the Additional General Manager of the respondent Coal Company requested his higher officer to do the needful for acquisition of plot No. 347 (P) in Gopinathdih Mouza, Mouza No. 97, Khata No. 102.

Mr. Mehta, learned counsel appearing for the respondent-Coal Company, submitted that when the Company took steps for acquisition, it was informed by the Additional Collector, Dhanbad, who is the highest Revenue Authority in the district, that the said plot is recorded as a "Gair abad malik in the survey records of rights.

Thus there appears to be even a dispute over the ownership of the said land claimed by the petitioner.

11. Learned counsel for the respondents submitted that petitioner allegedly purchased the land in question by registered deed on 7.3.1989. This is after the Full Bench judgment of Patna High Court was pronounced, holding that slurry is not coal. It has not been brought on record whether slurry was accumulating over the said land from before the alleged purchase or it started accumulating after the purchase. Moreover it is conveniently not mentioned by the petitioner what happened to his earlier writ petition being CWJC No. 1191 of 1995 (R) in which he raised similar issues before this Court in relation to a different plot of land. In any event, he submitted that in view of the dispute over the title of the land in question itself and also in view of the said judgment of Supreme Court in the case of Bharat Coking Coal Limited (supra), this writ petition deserves to be dismissed.

12. In the facts and circumstances and the law on the subject, as noticed above, it is clear that no relief can be granted to the petitioner in this writ petition. There is dispute with regard to ownership of the land in question. There is also a dispute with regard to the ownership of the slurry accumulated on the said land. In terms of Sections 13 and 18 of the Act, the Central Government has to frame rules regarding all the matters involved in this case. No such rules have been framed. Only after such rules are framed the rights and obligations of the parties can be crystallized. The petitioner can avail the remedies available to him under the law for declaration of his right, title and interest over the land in question. If his right over the land is established, he may claim damages etc. However, if such remedies are availed by the petitioner, that will be without prejudice and subject to the rules, if any, framed by the Central Government under Sections 13 and 18 of the Act.

13. As per Sections 13 and/or 18, it is the duty of the Central Government to frame rules. It is high time that the rules are framed. The Central Government (respondent No. 11) is directed to frame rules under Sections 13 and/or 18 of the Act as early as possible and preferably within a period of six months from the

date of production/receipt of a copy of this order, so that the matter is set at rest and unnecessary litigations are avoided.

14. Learned counsel for the Union of India is directed to communicate a copy of this order to the competent authority of the Central Government.

15. With these observations and directions, this writ petition is dismissed.