

(1965) 07 CAL CK 0013
In the Calcutta High Court
Case No : Matter No. 163 of 1964

Banwarilal Agarwala

APPELLANT

Vs

The Coal Board

RESPONDENT

Date of Decision : 28-07-1965

Acts Referred:

Coal Mines (Conservation, Safety and Development) Act, 1952 — Section 17
Defence of India Rules, 1962 — Rule 81(2)

Citation : 69 CWN 964

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri and Bikas Ch. Sen, for the Appellant; Banamali Das and Sabyasachi Mukherjee, for the Respondent

Judgement

Sinha, J.—The petitioner in this application is the owner of several collieries including the East Lohapati Colliery in the district of Dhanbad. The respondent in this application is the Coal Board which is a statutory body created by the "Coal Mines (Conservation and Safety) Act, 1952, which came into operation on the 4th March, 1952 (hereinafter referred to as the "said Act"). In order to understand the dispute between the parties it would be necessary to refer firstly, to the Colliery Control Order (hereinafter referred to as the "said Order") which was published in 1945 under Rule 81(2) of the Defence of India Rules and secondly to the said Act. The said Order provides inter alia for the grading of coal and the fixing of prices at which coal could be sold. Under paragraph 3 of the said order, the Central Government has been given power to prescribe classes, grades or sizes into which coal may be categorised and the specification for each such class, grade or size of coal. Under paragraph 4, the Central Government may, by notification in the Official Gazette, fix the price at which, or the maximum or the minimum price, or both, subject to which, coal may be sold by colliery owners. Specifications of grades have been prescribed. For collieries situated in West Bengal and Bihar, it has been prescribed that with regard to coal from seams of the Ranigunj series, with which we are concerned in this case, the

grades will be as follows:- if the ash and moisture content thereof:

(i)

does not exceed 17.5 per cent

?

Selected Grade A.

(ii)

exceeds 17.5 per cent, but does not exceed 19 per cent

?

Selected Grade B.

(iii)

exceeds 19 per cent, but does not exceed 24 per cent

?

Grade I.

(iv)

exceeds 24 per cent, but does not exceed 28 per cent

?

Grade II.

On and from the 1st April, 1946 the petitioner's colliery namely, the East Lohapati Colliery was placed in the grade of "Selected Grade B" which appears from a letter of the Deputy Coal Commissioner (Production) dated 9th April, 1946 which is annexure "A" to the petition. In March, 1952 was passed the said Act mentioned above. On or about 24th September, 1954 was passed the Coal Mines (Conservation and Safety) Rules, 1954 (hereinafter referred to as the "said Rules"), in exercise of powers conferred by section 17 of the said Act. It will now be necessary to consider the relevant parts of the said Act and the said Rules. It appeal's from the statement of objects and reasons of the said Act, that it was enacted in order to preserve India's reserves of metallurgical coal. It has been found that India has only limited reserves of metallurgical coal and unless steps were taken to control such reserves the same would be wasted and rapidly disappear. The Planning Commission having urgently recommended measures for such conservation, an Ordinance was introduced in 1952 entitled, the "Coal Mines (Conservation and Safety) Ordinance, 1952" and a Coal Board was established. This was followed by the promulgation of the said Act and the Rules prescribed thereunder. The preamble of the said Act states that it is an Act to provide for the conservation of coal and to make further provision for safety of coal mines. Section 4 provides for the establishment of a Coal Board which was

to exercise such powers and such duties as might be assigned to it by or under the said Act. u/s 7, the Central Government may, for the purpose of maintenance of safety in coal mines or for conservation of coal, exercise such powers and take or cause to be taken all such measures as it may deem necessary or proper or as may be prescribed. u/s 8, coal of Selected Grade A, Selected Grade B and Grade I, means coal graded as such by the Board in accordance with the specifications laid down by the Central Government from time to time. u/s 17, the Central Government has been given power by notification in the Official Gazette to make rules for carrying out the purposes of the said Act which includes measures to be taken for the purpose of maintenance of safety in coal mines or for the conservation of coal. I have already mentioned that in or about September, 1954 rules have been prescribed u/s 17 of the said Act. The provisions of Rules 33 and 39 are important and are set out below:-

33. Coal Samples for analysis.- (1) The Board may for determining the grade and type of coal in any coal mine authorise in writing any technical officer of the Board or of the Central Government suitably qualified in this behalf to draw samples of coal for analysis from any seam or section of a seam of the coal mine and the owner, agent or manager of the coal mine shall afford reasonable facilities to the officer so authorised for the collection of such samples.

(2) Grading will be done in accordance with the specifications prescribed by the Central Government from time to time for the purpose of the Colliery Control Order, 1945.

39. Opening and reopening of coal mines.-(1) No coal mine or seam or section of a seam shall be opened and no coal mine or seam or section of a seam the working whereof has been discontinued for a period exceeding six months shall be reopened and no operation shall be commenced without the prior permission in writing of the Board and except in accordance with such directions as the Board may give.

(2) When the coal produced in any coal mine or seam or section of a seam has not been graded, the Board shall when granting permission under sub-rule (1) require the owner to apply for a certificate of the grade or grades of coal produced in each seam or section of a seam of the coal mine. The owner shall accordingly submit an application in the manner prescribed by the Board.

(3) The Board shall grant a provisional grade on the basis of the seam sample. When the coal is allowed to be despatched on the basis of the provisional grade the Board shall have power to draw wagon samples in the presence of a representative of the colliery to determine the quality of the coal pertaining to the seam or seams. On the basis of the wagon sample drawn on at least three different days the final grade of the seam or seams of the particular colliery will be fixed by the Board.

(3A) The final grade fixed by the Board under sub-rule (3) for a seam or section of a seam of a coal mine may be altered by the Board from time to time on the

basis of analysis of wagon samples if the Board is satisfied that the grade so fixed cannot be maintained. The drawal of seam samples and wagon samples by the Board for the purpose of sub-rule (3) or this sub-rule shall be in accordance with such procedure as may from time to time be laid down by the Board.

(3B) The Board may withdraw the grade fixed for a seam or any section of a seam in cases where the production or despatches of coal from the seam or section of the seam have stopped for a continuous period of six months or where the production of coal from the seam or section of the seam has been prohibited by law for the time being in force.

(3C) No order under sub-rule (3A) or sub-rule (3B) shall be passed unless the owner concerned has been given an opportunity of making a representation against the order proposed.

(4) No coal shall be despatched from a coal mine without getting certificate of grade under sub-rule (3) indicating the grade or grades of coal to be produced and despatched and no two grades of coal shall be mixed before despatch without the prior permission in writing of the Board.

(5) In the case of any coal mine producing more than one grade of coal the owner, agent or manager shall make such arrangements as may be required by the Board to ensure that different grades of coal are not mixed before despatch.

The petitioner has been raising and despatching coal from the said colliery since before 1944, that is to say, before the passing of the said Order or the said Act. After the passing of the said Order, the petitioner's colliery was graded under the said order as "Selected Grade B". It is alleged that since the year 1959, the authorities have been trying to alter the grade, and wagon samples were taken on the 28th December, 1959, 12th May, 1960 and 25th July, 1960. On or about the 20th May, 1961 the following certificate was issued by the Coal Board:-

Coal Board

Grade Certificate

(Rule 39 of the Coal Mines Conservation and Safety Rules, 1954).

No. 86 of 1961-62.

Provisional.

Colliery

?

East Lohapati.

Seam

?

Ranigunj "A" (or 4")

Section of the seam

?

full thickness (1.394 metres).

This is to certify that the above-mentioned seam for the section and at the colliery indicated above, has been placed provisionally in the following grade, in cancelling of previous grade certificate, if any, with effect from the date of this certificate.

Grade I (one).

2. On or about 1st August, 1961 the petitioner objected to the said order and certificate. On the 16th September, 1961 the petitioner received a letter from the Coal Board the relevant portion whereof is set out below:-

Sub.: Regrading of the Ranigunj A seam at the East Lohapati Colliery.

Dear Sir,

With reference to your letter dated the 1st August, 1961, forwarding an application for regrading of the Ranigunj A Seam, I am directed to state that the seam has been regraded to grade I provisionally on 20.5.61. The question of regrading of the seam, if any, will be taken up after the confirmation of the provisional grade.

Your application is, therefore, being treated as cancelled.

3. On the 1st December, 1962 a further letter was sent in respect of regrading, the relevant part whereof is set out below:-

Sub.: Application for regrading of Ranigunj "A" seam of East Lohapati Colliery.

Dear Sirs,

With reference to your application dated the 30th October, 1962, on the above subject, I am directed to inform you that the seam at your above colliery is in grade I (one) provisional and arrangement is being made to fix a final grade on the basis of results of analysis of loading samples drawn of coal of the seam. The question of regrading can be considered only after the seam is finally graded.

4. Thereafter, five further wagon samples were drawn on 16.10.60, 30.6.61, 21.12.61, 7.5.63 and 22.6.63. Of these, the wagon sample taken on 16.10.60 was not taken in the presence of the party. On the 22nd April, 1964 a certificate was granted purporting to be issued under rule 39 of the said Rules by which the coal in the said colliery of the petitioner was placed in Grade II. The relevant part of the said certificate is set out below:-

Coal Board

Grade Certificate

(Rule 39 of the Coal Mines Conservation and Safety Rules, 1954).

No. 36 of 1964-65.

Final

Seam

?

Raniganj "A" (or 4" ft.)

Section of the seam

?

Full thickness (1.4 metre approx.).

Classification

?

Non-cooking.

Colliery

?

East Lohapati

Coalfield

?

Jharia.

This is to certify that the above mentioned seam, for the section and at the colliery indicated above, has been placed in the following grade, in cancellation of previous grade certificate, if any, with effect from the date of this certificate:

Grade-II (Two).

5. The present application has now been made challenging the action of the respondent as being illegal and in contravention of the provisions of the said Act and the said Rules. I shall now consider the objections. The first objection is as to the method of taking samples in order to decide the grade. It will be remembered that in April, 1946 the colliery was graded under the Colliery Control Order as "Selected Grade B". In 1963, three seam samples were taken as has been set out in paragraph 23 of the petition but thereafter only wagon samples were taken. We find that on or about 20th May, 1961 the Coal Board did two things. The first was that it cancelled the previous grade certificate and reduced the grade to Grade II but did so "provisionally". The question is whether in determining the grade, the Coal Board could do so on the basis of wagon

samples which had not been taken contemporaneously but at intervals of a year or nearly two years. Also whether, grading can be provisional and whether an existing certificate can be cancelled for a provisional certificate. Assuming that the objection by the petitioner on the 1st August, 1961 about grading can be considered as an application for regarding, it will appear from the letter dated 16th December, 1961 that the Coal Board was making a "provisional" re-grading and the "final" regrading was done and the certificate dated 22nd April, 1964, issued, and the previous grade certificate was cancelled. All this was done on wagon samples which also were not contemporaneous samples but were wagon samples taken within a space of more than a year, and the last sample taken on 22nd June, 1963 was ignored. Coming back to the said rules, it is conceded that the relevant rules are rules 33 and 39 which have been set out above. Rule 33 lays down that the Board may draw samples of coal for analysis from any seams or any section of seams of coal for the purpose of determining the grade and type of coal in any coal mine. It does not authorise grading to be done from wagon samples. The grading itself was to be done according to the specification laid down by the Coal Board as mentioned above. There is no dispute on this point. It is not disputed by the respondent that if the matter comes under rule 33, the grading could not be done on wagon samples but only on seam samples. Mr. Chaudhuri has explained why this is very important so far as the colliery of his client is concerned. A seam is worked out from one end to the other and does not always give the same quality of coal in all parts of the seam. So far as wagon samples are concerned, it is almost impossible to connect them with a particular part of the seam from which the coal has been dug out. It is therefore not the same thing from a technical point of view, to take a seam sample and a wagon sample. The Board has been authorised under rule 33 to do grading only on seam sample and not wagon sample. We now come to rule 39. The very heading of the rule, namely, "Opening and reopening of coal mines" is significant and cannot be ignored.

6. The rule is therefore not of general application. It relates to two matters namely "opening" and "reopening" of a coal mine. This is also made clear by clause (1) which lays down that no coal mine etc. shall be "opened" and no coal mine etc. the working whereof has been discontinued for a period exceeding six months shall be "reopened" without prior permission in writing of the Board and except in accordance with the directions given by the Board. In this particular case, when the said Act and the rules came into operation the coal mine of the petitioner had long ago been opened and graded, and it is nobody's case that this is a case of the opening or reopening of a coal mine. Sub-rule (2) provides that in the case of opening and reopening, if the coal has not been previously graded then the owner may be required to apply for a certificate of the grade, which application must be done in the manner prescribed by the Board. This sub-rule again has no application to the facts of the present case. Sub-rule (3) lays down as to what would happen which such an application is made under sub-rule (2) It says that the Board shall grant a provisional grade on the basis of the

"seam sample". Having done this, it grants power to the Board to draw "wagon samples" in the presence of the representative of the colliery, to determine the quality of the coal pertaining to the seam or seams. On the basis of the wagon samples drawn on at least three different days, the final grade of seam or seams of the particular colliery will have to be fixed by the Board. Sub-rule (3A) provides that when the final grade has been fixed by the Board under sub-rule (3) it will be altered by the Board from time to time on the basis of analysis of wagon samples if the Board is satisfied that the grade so fixed cannot be maintained. It will be observed that sub-rule (3A) has reference to sub-rule (3) which necessarily has reference to sub-rule (1) and (2). Sub-rule (3B) speaks about the withdrawal of a grade. That again is restricted to cases where the production or despatches of coal from the seam etc. have stopped for a continuous period of six months or where the production of coal from the seam etc. has been prohibited by law for the time being in force. Firstly, it is nobody's case that either of these two conditions exists in the present case, and secondly, this sub-rule is also applicable to the case of "opening" or "reopening" of a coal mine and is not of general application. Under sub-rule (3C) no order under sub-rule (3A) or sub-rule (3B) shall be passed unless the owner concerned has been given an opportunity of making a representation against the order proposed. From the facts given above it appears that no such opportunity was given.

7. What has happened in the present case is that although there is no question of the "opening" or "reopening" of a coal mine, the Coal Board has purported to act under the provisions of sub-rules (3), (3A) and (3B) of rule 39, and even so has transgressed the terms thereof, because even for the purpose of provisional grading it is necessary to proceed on seam samples and it is only thereafter that wagon samples can be drawn for a final grading. Also, there is provision for regrading under rule 39 but no express provision for regarding under rule 33 or under the rules relating to grading generally. Mr. Das who appeared on behalf of the respondent had been unable to show me any provision for provisional grading on the basis of wagon samples or for cancellation of grading or for regrading apart from the provisions of rule 39. He has argued that sub-rules (3), (3A), (3B) of the rule 39 are of general application. I am unable to agree on this point. It is clear to me that the provisions of rule 39 relate only to the "opening" and "reopening" of a coal mine, and are not of general application. Even in the case of such "opening" and "reopening" the initial fixing of the provisional grade has to be done on seam samples and thereafter the Board has the power to draw wagon samples for the purpose of fixing the final grade. This is understandable, because the provisional grading having been fixed the wagon samples would represent coal from differ parts of the seam and at different times, so that it would demonstrate as to whether the quality was being kept up or was improving or deteriorating. In any event, I do not see how the grade can be fixed by taking wagon samples at an interval of more than a year or even two years. That by itself however is a technical point and I would not like to pass my judgment without further materials. What then is the position? It appears to me that under

the rules, the Board has been granted the authority to do the grading in accordance with the specification prescribed by the Central Government by drawing samples for analysis from any seam or section of a seam of a coal mine. Except in the case of "opening" or "reopening" of mines, there is no provision for provisional grading by making a provisional grade and then a final grade, and no provision for regrading or cancellation of a grade on the strength of wagon samples. I would not however go to the extent of saying that the Board has no power to regrade or cancel a grade once a grade has been certified. If the Board has the power to grade it must necessarily have the power to regrade and if it has the power to grade or regrade it must have the power to cancel the same. But under no circumstances can either the grading or regrading be done except on seam samples unless in the case of the "opening" or "reopening" of a coal mine, where it may be done on wagon samples in cases provided therein. There is no provision at present for any provisional grading followed by a final grading except in the case of the "opening" or "reopening" of a coal mine.

8. It appears from the facts of the instant case that the Board has proceeded upon the footing that rule 39 of the said rules applies and that sub-rules (3), (3A) and (3B) have general application and are not confined to the "opening" or "reopening" of coal mines. The result is that the orders made by the Board and the certificates issued on the strength thereof, namely the provisional certificate dated 20th May, 1961 and the final certificate dated 22nd April, 1964 are both invalid and not in accordance with the law. The Coal Board is a statutory corporation. As stated in Halsbury's Laws of England, 3rd Edn. Vol. 9, p. 62, the powers of a corporation created by statute are limited and circumscribed by the statute which incorporates it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation, or as may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised. What the statute does not expressly or impliedly authorise is to be taken to be prohibited. (See (1) *Baroness Wenlock v. River Dee Co.* (1883) 36 Ch. D. 675, (2) *Colman v. Eastern Counties Rail Co.*, (1846), 10 Beav. 1 at p. 14, (3) *Dundee Harbour Trustees v. Nicol*, (1915) A.C. 550, (4) *H.L. Deuchar v. Gas Light & Coke Co.* (1925) A.C. 691, H.L.). A Supreme Court decision, (5) *L. Hazari Mal Kuthiala v. Income tax Officer, Special Circle, Ambala Cantt.* (1961) 41 ITR p. 12 has been cited for the proposition that the exercise of a power should be made referable to a jurisdiction which confers validity upon it and not a jurisdiction under which it would be nugatory. That principle however has no application to the facts of the instant case. In that case, an order was made by the Commissioner of Income tax, purporting to be made under the Patiala Income tax Act, but the Income tax Commissioner should have acted under the Indian Income tax Act, which did confer upon him the jurisdiction to make the order which he had made. In the present case, if it was found that the orders made by the Coal Board would be justified by some statutory provisions other than rule 39, or sub-rules (3), (3A) and (3B) of rule 39 of the said rules, that would bring it within the

mischief of the Supreme Court decision. But no such provision of law has been brought to my notice and accordingly, there is no scope for the said decision. The rule is therefore accordingly made absolute and a writ in the nature of mandamus is issued directing the respondents not to give effect to the said two certificates. I must make it clear that although in the prayers in the petition the petitioner asked for an order that its colliery should be placed in a particular grade, such an order cannot be made by this Court in this application. The grading must be done by the Coal Board in accordance with law. The two certificates granted must not be given effect to but this will not prevent the respondent from now proceeding according to law and grading the coal mine and the coal therein, according to law. The respondent must pay the cost of the application. Certified for two counsel.