

(1976) 05 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A. No. 962 of 1975

Bharat Coking Coal Ltd.

APPELLANT

Vs

Kalachand Mitra and Others

RESPONDENT

Date of Decision : 10-05-1976

Acts Referred:

Coking Coal Mines (Nationalisation) Act, 1972 — Section 17, 17(1), 3(1), 3(c), 7

Citation : 80 CWN 891

Hon'ble Judges : M.N. Roy, J;A.K. Sen, J

Bench : Division Bench

Advocate : Gouri Nath Mitra, A.G. West Bengal, Bhaskar Gupta, A. Lahiri and S.N. Sen, for the Appellant; Saktinath Mukherjee and Madhusudan Banerjee for Respondent No. 1., Archana Sengupta for Respondent Nos. 2-4 and B. Chatterjee, for the Respondent

Judgement

M.N. Roy, J.—This appeal is directed against the judgment and order dated February 5, 1975, made in Civil Rule No. 355 (W) of 1975, by Chittatosh Mookerjee J., whereby his Lordship was pleased to make the Rule, obtained by Respondent No. 1 herein (hereinafter referred to as the petitioner), absolute. In the Rule, the petitioner has contended that on or about August 3, 1944, he was appointed as a clerk in the Union Angarpathra Colliery (hereinafter referred to as the said Colliery), under the Union Coal Company Ltd., Respondent No. 5 herein (hereinafter referred to as the said Company). The said Colliery has been alleged to be a Coking Coal Mine and the said Company at all material times was under the common management with khas Junagore Colliery Company (P) Ltd. Central Junagore Coal Company (P) Ltd., New Heanagore Coal Company and the New Manbhoom Coal Company Ltd. He has further alleged that since such appointment, he duly served the said Colliery and ultimately in September 1957 he was made the Supervisor on promotion. He has also alleged that while discharging his duties as such, in or about August 1970, he was transferred to the Head Office of the said Colliery at Calcutta as an Accounts Clerk. The petitioner has further stated at all material times he was a contributory to the

Coal Mines Provident Fund and such contribution used to be sent to the authorities concerned under the Coal Mines Provident Fund Act and the scheme framed there under. In support of such statements, the petitioner has also duly pleaded the relevant facts in the petition, apart from referring to the necessary evidence. The petitioner has further alleged that his pay and allowances on such transfer was fixed at Rs. 425/-. The transfer order which is at Annexure "A" of the petition and would be of relevant consideration shows that; on such transfer, the petitioner was required to deal with all matters of the said Company and even after his transfer he continued to be in the employment of the said Colliery, and furthermore, the raising of coal therein and other matters required for the management and running of the same were controlled by the said Company's Head Office at Calcutta i.e. from the office where he was transferred. He In short has alleged that direction, control and supervision of the said Colliery was with the said Head Office.

2. On October 16, 1971, Coking Coal Mines (Emergency Provision) Ordinance, 1971 was promulgated by the President of India, for taking over management of all Coking Coal Mines pending nationalisation on and from October 17, 1971 which incidentally has been termed as the "appointed day" From the said appointed day, the management of Coking Coal Mines vested in the Central Government. Subsequently, by Coking Coal Mines (Emergency Provision) Act, 1971 (hereinafter referred to as the said Act) the provisions of the Ordinance as referred to hereinbefore were substantially re-enacted by the Parliament. The provisions of the said Act, which were more or less the same as those of the ordinance as mentioned hereinbefore came into force on December 23, 1971 and the "appointed day" as mentioned hereinbefore remained the same. Thereafter, on or about January 12, 1972, Bharat Coking Coal Ltd., the appellants herein, a Government Company, were appointed as the Custodian of the said Colliery. Then came the Parliamentary Legislation of Coking Coal Mines (Nationalisation) Act, 1972 on August 17, 1972 (hereinafter referred to as the 1972 Act), making provisions for the acquisition and transfer of the right, title and interest of the Coking Coal Mines as specified in the First Schedule of the Act. Under the said 1972 Act, the appointed day was fixed as May 1, 1972.

3. The petitioner has alleged that after such taking over of the management and subsequent nationalisation of the various Coal Mines, the Respondents have assumed charge of the records of the Head Office as aforesaid and have continued the employment of large number of employees of the said Head Office. He has stated that in fact the operation of the Coking Coal Mine concerned was not possible except through the management from the said Head Office, wherein he was employed in connection with the said Colliery.

4. The petitioner has contended that in terms of the provisions of the Statutes and Ordinances as mentioned hereinbefore, on the appointed day, the right, title and interest of the owners in relation to the Coking Coal Mines as specified in the First Schedule of the said 1972 Act, stood transferred to and vested absolutely, in

the Central Government, free from all encumbrances. It was further submitted by the petitioner that the Central Government, u/s 7 of the said 1972 Act, was empowered and authorised to direct that right, title and interest of and in relation to a Coking Coal Mine in the Coke Oven plant, instead of continuing to vest in the Central Government, shall vest in the Government Company and Chapter V of that Act contained provisions relating to employees of Coking Coal Mines and Coke Oven Plants in section 17(1), which is to the following effect:

Every person who is a workman within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed day, in the employment of a Coking Coal Mine or coke oven plant shall become on and from the appointed day an employee of the Central Government or, as the case may be, of the Government Company in which right, title and interest of such mine or plant have vested under this Act, and shall hold office or service in the Coking Coal Mine or coke oven plant as the case may be on the same terms conditions and with the same rights to pension gratuity and other matters as would have been admissible to him.

In view of the above, the petitioner submitted that since on the appointed date i.e. May 1, 1972, he was an employee of the said Colliery, so he was entitled to hold the office or serve the Coal Mine in question on the same terms and conditions as under the said Company. But even inspite of the aforesaid fact, the salary of the petitioner for the month of September 1971 was not paid. On such refusal and neglect to pay the due salary by the appellant, the petitioner including other employees similarly placed, made representations without any effect and on such refusal, the connected Rule was obtained by him on February 5, 1974. The material averments of the petition have already been indicated hereinbefore.

5. The Rule was actually contested by the appellant herein. The said Company, although entered appearance, but filed no return to the Rule and in fact they fully supported the claim of the petitioner viz. that immediately before the appointed date, he was employed in the said Colliery. The appellant herein on the other hand, in the affidavit-in-opposition dated September 24, 1974 denied and disputed the claim of the petitioner. It was categorically denied that even after the petitioner's transfer to the Head Office, he continued to remain employed in the said Colliery. It was stated that the name of the petitioner did not appear in the records of the said Colliery after his transfer to the Head Office. In fact it was stated that the petitioners name did not appear in the statutory registers and in the statutory returns filed and maintained by the said Colliery. The assumption of charge of the records of the Head Office of the said colliery by the appellant, after taking over the management and subsequent nationalisation, was also denied. It was also denied that the operation of the Coking Coal Mines, in which the petitioner was working, was not possible except through the management from the Head Office. It was further contended that the petitioner continued to be an employee under or of the said Colliery under the management of the

Central Government. It has also been alleged that as the petitioner was not an employee of the said Colliery, there was no question of the termination of his employment by the Custodian General or by other authority appointed under the Statute. It was contended that because of his age, the petitioner was also not entitled to have a fresh appointment.

6. Before the learned Judge in the trial Court, after making a reference to the expression "Coking Coal Mine", as defined in section 2(b) of the Ordinance of 1971 which is to this effect and includes a Coal Mine in which there exists one or more seams of Coking Coal, whether exclusively or in addition to any seam or other Coal and also to the definition of "Mine" in section 2(f) of the said Ordinance, and more particularly to clauses (x) and (xi) thereunder, which include all land, building and equipment adjacent to or belonging to a Mine where the washing of Coal or manufacture of Coke is carried on and all other assets, movable or immovable belonging to a Mine, whether within its premises or outside, which definitions have also been substantially maintained in section 3(c) and (i) of the said 1972 Act, it was submitted that in view of the inclusive definition of "Mine" in the promises as aforesaid, even after his transfer, the petitioner should have been deemed to have continued and continuing in employment of the Coking Coal Mine in question immediately prior to the appointed day. The appellant herein, apart from contending that neither the management nor the ownership of the said company was ever taken over, produced some of the records of the said Colliery, to substantiate their stand. But on consideration of those records and the arguments as indicated above it was held by the learned Judge in the trial Court that the petitioner should be and in fact he was in employment of the said colliery before the appointed day and as such he was entitled to the benefits of section 17 of the 1972 Act and on the basis thereof, the Rule was made absolute, commanding the appellant herein to treat the petitioner as holding his services in the Coking Coal Mine in question, with a consequential declaration that the petitioner, on and from the appointed i.e. in terms of section 17 of the 1972 Act became an employee under the appellant.

7. In this appeal Mr. Gupta, appearing for the appellant has argued that in terms of the provisions of the statutes and ordinance as mentioned hereinbefore, neither the management nor the ownership of the said Company was ever taken over and in fact the same continued to exist with its separate entity and character. It was also contended by Mr. Gupta that the learned Judge in the trial Court did not properly construe the records which were produced before him and in fact he has misconstrued them, and as such acted illegally and with material irregularity in finding the petitioner to be an employee of the said Company on the appointed day, on the basis of those documents and records. Mr. Gupta further submitted that even on the basis of the definition of "Mine" as indicated hereinbefore, the learned Judge in the trial Court should have held that the petitioner was not an employee concerned on the appointed day and as such could not claim the benefits u/s 17 of the 1972 Act.

8. The petitioner has pleaded that the raising of Coal in the said colliery was substantially controlled and managed from the Head Office where he was employed, purchase of various stocks necessary for the operation of the Coking Coal Mine in question, maintenance of accounts, disbursement of fund including the payment of salaries and wages to the employees concerned were all made from the Head Office. There is also no dispute that it appeared from the records produced before the learned Judge in the trial Court that petitioner's contribution to Coal Mines Provident fund had been entered in the relevant registers upto the first quarter of 1971, disbursement of salary had also been entered into the establishment register of the said colliery upto the Month of May 1971 and the records as produced did not indicate that the salary of the petitioner was entered in the establishment of the said colliery for the subsequent months.

9. Thus from the evidence on record, I am satisfied that the petitioner immediately prior to the appointed day, was employed under and discharging the duties in relation to work of the Coal Mine in question and as such he must be deemed to be in the employment of the Coal Mine in question just prior to the appointed day and in fact that is also the categorical findings of the learned Judge in the trial Court and I find no justification in interfering with the same. The definition of "Mine" in section 3(1) of the 1972 Act is wide enough to include not only the workmen employed for processing the mine but also those other employees in relation to other assets both movable and immovable and that would also be the case in case of assets of the mine whether within or outside the premises. In view of the above, I also concur with and approve the findings of the learned Judge in the trial Court on this aspect. Apart from these since the direction, control and supervision lay with the Head Office so the petitioner, when held the post in the Head Office on transfer from the said Colliery belonging to the said Company, should also be deemed to be in the employment of the said Company at all material times and more particularly on the appointed day. Whether an employee, is entitled to the benefits of section 17 of the 1972 Act, the decisive factor would not be the place of his employment but the nature and character of the duties discharged by him and in fact I am of the view that the petitioner has duly established that he was performing duties in relation to the assets belonging to the Mine in question and as such would be entitled to the benefits of the section 17 and the more so when his employment has not been terminated by the appellant under the provisions of the Ordinance of 1971 or under the corresponding provisions of the Act. I am further of the view that section 17 of the 1972 Act casts a statutory duty or obligation upon the Central Government or on its agent viz. the appellant in the instant case, towards the employees in employment on the appointed date and such obligation, so far as the petitioner is concerned, has not been duly discharged. The appellant had acted illegally and in improper use of its jurisdiction in refusing employment to the petitioner and such act was also unauthorised.

10. In view of the above, there is no merit in the appeal and as such the same fails and is dismissed. The judgment and order of the learned Judge in the trial

Court is upheld and affirmed.

There will however be no order for costs.

Anil Kumar Sen, J.

11. I agree with my lord that the writ of Mandamus issued by the learned Judge in the trial Court declaring the respondent petitioner Kalachand Mitra to be entitled to the benefits of section 17 of Coking Coal Mines (Nationalisation Act) 1972 must be upheld. It is not in dispute that the said respondent would be entitled to such benefits if it be found that immediately before the appointed day, i.e., May 1, 1972, he had been in the employment of the Coking Coal Mines. The said respondent was undisputedly an employee of the Union Coal Company Ltd. engaged as a clerk in the Coal Mines itself since August 1944. He was promoted as a Supervisor and transferred to Head Office in August 1970 but he continued to remain engaged in the work in relation to the operation of the Coal Mines upto the day the Mine was nationalised under the aforesaid Act. The term "in the employment of the Coking Coal Mine" has not been defined by the statute. According to Mr. Gupta in order to be in the employment of the Coking Coal Mine, the person must be engaged in the mining operation at the colliery and not a person like the respondent as aforesaid. In my view, strictly construed the term "in the employment of Coking Coal Mine" is a misnomer because none was employed by the Coking Coal Mine, all of them being employed by the Union Coal Company Ltd., operating the said mine. Intention behind the provision of section 17 was that the workmen employed in relation to the operation to the Coal Mine would be taken over along with the mine itself. Where two workmen are employed in relation to such operation and one of them works at the mine itself and the other outside, there is no reason why the latter should be excluded. Such exclusion would not be in consonance with the scheme of the enactment nor with its content. Mr. Gupta suggests that the company has not been taken over and such workmen still remain the employees of the company. But that in my opinion cannot be made a ground for distinction since all workmen remain the same whether engaged at the colliery or elsewhere. If they are not taken over after the taking over of the mine in relation to the operation of which they were all engaged, they become surplus and would face retrenchment, which the provision in section 17 wanted to avoid. In this view I agree with my lord in affirming the decision of the learned Judge in the trial Court that the said respondent was in the employment of the Coal Mine immediately before the appointed day and as such is entitled to get all the benefits of section 17 of the said Act.